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CUPERTINO CITY HALL
10300 Torre Avenue
Cupertino, CA 95014-3202
Via FAX: (408) 777-3366

Re: Proposed Amendments to Chapter 10.76, Firearms, of the Cupertino Municipal Code—OPPOSITION

Honorable Members of the Public Safety Commission,

We write to you on behalf of our clients, the National Rifle Association of America, and the California Rifle & Pistol Association, Inc., as well as the hundreds of thousands of their members in California, including those members residing in the City of Cupertino.

Our clients oppose the adoption of the proposed amendments to Chapter 10.76 of the Cupertino Municipal Code as it relates to firearms. As drafted, the proposal seeks to: (1) require the reporting of lost or stolen firearms within 48 hours; (2) require the locked storage of firearms in the home; (3) ban

the possession of magazines capable of holding more than 10 rounds; and (4) require all ammunition sales within the City of Cupertino to be recorded.

For the following reasons, we ask the Public Safety Commission to reject the proposed amendments and recommend that the City Council not approve the proposed ordinance.

First, the proposed amendments to the Cupertino Municipal Code are duplicative of or in conflict with existing state law. They are thus preempted and unenforceable.¹ The staff report on the proposal prepared by City staff states broadly that “voters overwhelmingly passed Proposition 63 requiring background checks for ammunition purchases and banning large-capacity ammunition magazines by July 1, 2017.” It also notes that Governor Brown has signed into law several measures in addition to the requirements imposed by Proposition 63. But the report is misleading. For it fails to mention that the majority of the proposed amendments are already in effect—and fully applicable to Cupertino residents—as a result of these recently enacted state laws.² Proposition 63, for example, not only bans the possession of magazines capable of holding more than 10 rounds and requires background checks for ammunition purchases, but also includes a mandatory loss/theft reporting requirement and requires all ammunition purchases to be recorded.³ Neglecting that fact, the staff report wholly ignores the proposal’s clear preemption problem—a problem that, standing alone, warrants a negative recommendation from the Commission.

Second, the staff report claims that the proposed ordinance will have no fiscal impact. The assertion is wrong. In fact, the ordinance itself makes clear that it will have a significant fiscal impact on City resources. For instance, the proposed ammunition sales reporting requirement dictates that all ammunition sales “shall be recorded on a form approved by the Chief of Police,” and that such logs “shall be open to reasonable inspection by peace officers . . . at all times the ammunition vendor is

¹ Under the preemption doctrine, a location regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. See Cal. Const., art. XI, § 7, *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007); *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 903-04 (2008). A local law “duplicates state law when it is “coextensive” with state law.” *O’Connell*, 41 Cal.4th at 1068. A local law “contradicts state law when it is inimical to or cannot be reconciled with state law.” *Id.*

² In addition to the recently enacted laws, California already enforces a comprehensive series of laws regarding the criminal storage of firearms. See Cal. Penal Code §§ 25000-25225. Among these provisions are restrictions against storing a firearm in a manner that allows a child to gain unauthorized access, with varying degrees of punishment depending on the result (such as if the child injured themselves or another). *Id.* An exception is provided when the firearm is kept in a locked container or in a location that a reasonable person would believe to be secure. Cal. Penal Code § 25205(b). Finally, California law also requires any person who owns a firearm, and who knows or has reason to know that another person residing with them is prohibited from possessing firearms, to store the firearm in a locked container or keep the firearm disabled with a firearm safety device. Cal. Penal Code § 25135.

³ *California Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban* (2016), Ballotpedia, [https://ballotpedia.org/California_Proposition_63_Background_Checks_for_Ammunition_Purchases_and_Large-Capacity_Ammunition_Magazine_Ban_\(2016\)](https://ballotpedia.org/California_Proposition_63_Background_Checks_for_Ammunition_Purchases_and_Large-Capacity_Ammunition_Magazine_Ban_(2016)).

regularly open for business.” In order to enforce the proposal, the Chief of Police must devote significant time and resources to both the administration and enforcement of the proposed ordinance.⁴

Third, because the City’s proposed ordinance is clearly preempted by state law, its adoption merely invites litigation to have the requirements declared invalid and their enforcement enjoined. Such can be both time-consuming and costly. Recently, the City of Pleasant Hill agreed to pay over \$400,000 to settle a lawsuit challenging the City’s unlawful firearms ordinance.⁵ When first proposed, our clients warned Pleasant Hill that despite being promised “pro bono” legal representation, “the City [would] remain[] liable for attorneys’ fees,”⁶ and also warned of the cost for countless hours of public discussion, hundreds of pages of correspondence, internal memoranda, and other required administrative tasks. Despite these warnings, Pleasant Hill pressed on with its agenda. Now, Pleasant Hill taxpayers are paying the price for that decision. We urge Cupertino to not make the same mistake.

I. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms. To that end, they have a number of programs available to the City upon request.⁷ These include firearm safety training,⁸ the Eddie Eagle GunSafe® Program,⁹ the National School Shield Program,¹⁰ and youth-specific programs designed to teach firearm safety and responsibility.¹¹ Each of these programs have proven to reduce accidental gun deaths and promote public safety—more so than any gun-control law can hope to achieve. Instead of recommending approval of the proposed amendments, we ask the City of Cupertino to consider such alternatives.

⁴ Proposition 63, for example, appropriates \$25 million from the State’s General Fund for start-up costs associated with its ammunition sales provisions. Although Proposition 63 is a state-wide program, there can be no dispute that implementing a similar program in Cupertino will have a significant fiscal impact.

⁵ *California City Pays NSSF Legal Fees in Ordinance Lawsuit Settlement*, National Shooting Sports Foundation, <http://www.nssfblog.com/california-city-pays-nssf-legal-fees-in-ordinance-lawsuit-settlement/> (Dec. 6, 2016).

⁶ See <http://www.calgunlaws.com/wp-content/uploads/2012/07/OPPOSITION-Propozed-Zoning-Amendment-Firearms-and-Ammunition-Sales.pdf>.

⁷ <https://explore.nra.org/interests/safety-and-education/>.

⁸ <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

⁹ <https://eddieeagle.nra.org/>. The Eddie Eagle GunSafe® program is a gun accident prevention program that seeks to help parents, law enforcement, community groups and educators navigate a topic paramount to our children’s safety, teaching children when they see a gun to “Stop! Don’t touch! Leave the Area, and tell an adult.”

¹⁰ <https://www.nationalschoolshield.org/>. The National School Shield program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy.

¹¹ <http://youth.nra.org/>.

For these reasons, we strongly encourage the Public Safety Commission to reject the proposed amendments and recommend that the City Council not approve the proposed ordinance. If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in dark ink, appearing to read 'M. Cubeiro', written in a cursive style.

Matthew D. Cubeiro