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VIA E-Mail

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**Re: Proposed Ordinance Adding Chapter 6.211, "Security Measures for
Ammunition Retailers," of the Ventura Municipal Code—
OPPOSITION**

Honorable Councilmembers:

We write on behalf of our clients, the National Rifle Association of America, and the California Rifle & Pistol Association, Inc., as well as the thousands of their members who reside within the state of California, including those members residing in the City of Ventura. We apologize for the last-minute letter, but we were just made aware of this matter late last week.

Our clients oppose the adoption of the proposed ordinance amending Division 6 of the Buenaventura Municipal Code to add a new Chapter 6.211 relating to "Security Measures for Ammunition Retailers." As drafted, the proposal will require any ammunition vendor to install "Vehicle Impact Protection Devices" in the form of bollards "adjacent to the ammunition vendor's warehouse doors, glass windows, and/or other doors and entrances, where a motor vehicle can impact and gain unauthorized entry to the ammunition vendor's business."

To be clear, our clients are not opposed to reasonable security and safety requirements for firearm and ammunition vendors per se. In fact, more storefronts selling ammunition voluntarily take extensive precautions to prevent the theft of their products. But as drafted, the proposed ordinance suffers from a number of problems, some of which were expressed by members of the City Council and the City Attorney during the Council's March 6 regular meeting.

First, a similar requirement is already being considered for state-wide implementation via Senate Bill No. 464 ("SB 464").¹ Under the current draft of SB 464, Penal Code section 26890 would be amended to require all firearm dealers to meet the requirements for a "secure facility,"² and when not open for business, secure any firearm with a hardened steel rod or cable or in a locked fireproof safe. What's more, if not stored in a safe, firearm retailers would be required to "install concrete or hardened steel pillars . . . of sufficient strength, width, height, and spacing to stop a vehicle." If SB 464 is adopted after the City has chosen to pursue its own ordinance, the City will have only achieved exposing itself to a costly and time consuming preemption lawsuit.³

But even if SB 464 fails to pass, and Penal Code section 26890 remains unchanged, the City will remain the sole target of a Second Amendment lawsuit. As stated in *Teixeira v. Cty. of Alameda*, "the right to purchase and sell firearms is part and parcel of the historically recognized right to keep and bear arms." 822 F.3d 1047, 1056 (9th Cir. 2016). Imposing a requirement mandating firearm and ammunition retailers barricade their businesses with fortress-like protection raise concerns under the Second Amendment. Installing such devices can be cost prohibitive, especially in the manner required by the proposed ordinance. Yet no other businesses, let alone constitutionally protected ones, are required to maintain similar protective features, even those which are often the target of "smash and grab" type robberies.

Setting aside the serious constitutional concerns, there is also a question as to whether firearm and ammunition vendors will even be able to comply with the requirements of the proposed ordinance. Not all businesses control the property immediately adjacent to their premises where such bollards would be located. And certain lease agreements or other municipal codes may prohibit the construction

¹ A copy of the text of SB 464 is available online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB464.

² See Cal. Penal Code § 17110 ("secure facility" defined).

³ 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.*

Recently, the City of Pleasant Hill agreed to pay over \$400,000 to settle a lawsuit challenging the City's own unlawful firearm zoning ordinance. When first proposed, our clients warned Pleasant Hill that despite being promised "pro bono" legal representation, "the City [would] remain[] liable for attorneys' fees,"³ 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.

of such devices. What's more, a bollard may not always be appropriate for a given location, but the terms of the proposed ordinance dictate their construction regardless. In any case, imposing an impossible pre-condition on the operation of a lawful firearm business violates the Second Amendment. *Ezell v. City of Chicago*, 651 F.3d 684, 712 (7th Cir. 2011).

I. CONCLUSION

Our clients understand the need to combat criminal access to firearms and ammunition, as well as to promote the safe and legal use of firearms. To that end, they have a number of programs available to the City upon request.⁴ These include firearm safety training,⁵ the Eddie Eagle GunSafe® Program,⁶ the National School Shield Program,⁷ and youth-specific programs designed to teach firearm safety and responsibility.⁸ Each of these programs have proven to reduce accidental gun deaths and promote public safety—more so than any local law can hope to achieve. Instead of adopting the proposed ordinance, we ask the City of Ventura to consider such alternatives.

For these reasons, we strongly encourage the City Council to reject the proposed ordinance or to at least delay the vote on its adoption until the Council has had time to hear our clients' concerns. 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.



Matthew D. Cubeiro

⁴ <https://explore.nra.org/interests/safety-and-education/>.

⁵ <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.

⁶ <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."

⁷ <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.

⁸ <http://youth.nra.org/>.