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**Re: Pre-Litigation Demand  
To Repeal LAMC § 55.16 "Sale of Ultracompact Firearms"**

Honorable Councilmembers and City Attorney Feuer:

We write on behalf of our clients, the National Rifle Association and the California Rifle and Pistol Association, as well as their members in Los Angeles and throughout California, to demand that the City repeal section 55.16 of the Los Angeles Municipal Code.

Los Angeles Municipal Code (LAMC) section 55.16 bans any firearm dealer or individual from selling, lending, giving, transferring ownership of, or otherwise transferring to any other person any “ultracompact firearm.” As explained in greater detail below, the City’s ordinance is preempted by state law and is thus invalid and unenforceable. Unless the City initiates the repeal process within the next thirty (30) days, our clients will proceed with litigation to enjoin enforcement of the ordinance and have it declared invalid. Should our clients be forced to pursue litigation to secure the repeal of section 55.16, our clients will seek to recover any and all attorneys fees authorized by law.

## **I. LAMC § 55.16 BAN IS PREEMPTED BY STATE LAW**

Under the preemption doctrine, a local 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. (*Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 903-904 [70 Cal.Rptr.3d 324] (citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897).) Under the Unsafe Handgun Act (UHA), California has enacted an extensive and comprehensive regime for determining which handguns may be sold in California. (Pen. Code, §§ 32000-32030.) For example, the UHA prohibits the sale of any handgun that does not meet the state’s expansive safety requirements. Handguns that satisfy the requirements of the UHA are placed on the “Roster of Handguns Certified for Sale” maintained by the California Department of Justice; they are thus authorized for sale throughout the state.<sup>1</sup>

LAMC section 55.16 is preempted by the state law because it duplicates, contradicts, and enters into an area of law that is fully occupied by state law.

### **A. The Ordinance Duplicates and Contradicts the UHA**

A local ordinance duplicates state law if it is coextensive with state law. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898 [16 Cal.Rptr.2d 215, 844 P.2d 534].) Because section 55.16 prohibits the sale of firearms that are already prohibited from sale under state law, the City’s ordinance impermissibly duplicates state law and is thus preempted.

A local law contradicts state law “when it is inimical to or cannot be reconciled with state law.” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 [63 Cal.Rptr.3d 67, 162 P.3d 583].) Section 55.16 *prohibits* at least 40 handgun models that appear on the DOJ’s Roster of handguns expressly *approved* for sale in California. In doing so, the ordinance flatly prohibits what California explicitly authorizes—squarely contradicting state law.

### **B. The Ordinance Enters a Field Fully Occupied By State Law**

An ordinance “enters a field fully occupied by state law” if the Legislature manifests an intent to occupy that field, either expressly or by implication. California Government Code section 53071

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<sup>1</sup> [http://certguns.doj.ca.gov/safeguns\\_resp.asp](http://certguns.doj.ca.gov/safeguns_resp.asp).

expressly preempts all local laws “relating to” the licensing or registration of firearms.<sup>2</sup> By denying licensed firearm sales and restricting firearms that may be purchased and registered, section 55.16 directly relates to the licensing and registration of commercially manufactured firearms and is therefore expressly preempted by section 53071 of the Government Code.

State regulations impliedly preempt local restrictions in any of three circumstances: (1) the subject matter has been fully and completely covered by state law, (2) the subject matter is partially covered by state law, but explained in such a way to indicate clear state concern, or (3) the subject matter has been partially covered by state law, but the subject is of such a nature that the adverse effect of a local ordinance would outweigh the benefits. (*Fiscal, supra*, 158 Cal.App.4th at 904 (citing *Sherwin-Williams Co., supra*, 4 Cal.4th at 898; *O’Connell, supra*, 41 Cal.4th at 1068).) Again, the UHA is a comprehensive regime that determines which handguns may be sold within California, and the Roster of Handguns Certified for Sale was created to expressly delineate between handguns that may be sold in California, and those that may not. When the Legislature enacted the UHA, it noted that “[t]his bill would appear to preempt any such local ordinance, both those already in existence and any proposed locally in the future.”<sup>3</sup> And although multiple cities asked the Legislature to amend the bill to include a non-preemption provision,<sup>4</sup> the Legislature did not do so.<sup>5</sup> Section 55.16 is thus impliedly preempted because it regulates in a field that has been fully covered by state law and the legislature has indicated a clear statewide concern.

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<sup>2</sup> “It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, *relating to registration or licensing of commercially manufactured firearms*, by any political subdivision as defined in Section 1721 of the Labor Code.” (Gov. Code, § 53071.) (Emphasis added.)

<sup>3</sup> Sen. Pub. Safety Com., Rep. on Sen. Bill No. 15 (1999-2000 Reg. Sess.) Apr. 6, 1999, p. 9.

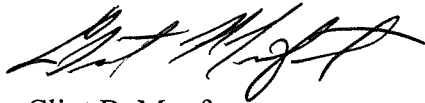
<sup>4</sup> See, e.g., City of San Jose, newsletter to Sen. Pub. Safety Com. Chairman Vasconcellos, Apr. 1, 1999 (Copy available upon request.)

<sup>5</sup> Where specific proposed language would have accomplished a specific result, the Legislature’s failure to incorporate that language in the Act is probative of a contrary intent. (See *People v. Superior Court* (1996) 13 Cal.4th 497, 520, 528 [53 Cal.Rptr.2d 789, 917 P.2d 628].) As to the value and admissibility of such legislative history, see *People v. Ledesma* (1997) 16 Cal.4th 90, 98, 100 [65 Cal.Rptr.2d 610, 939 P.2d 1310] (committee reports and analyses); *Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465 [253 Cal.Rptr. 236, 763 P.2d 1326]; *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 917, 926 [64 Cal.Rptr.2d 814, 938 P.2d 876] (letters by proponents of the bill urging its enactment); *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219 [185 Cal.Rptr. 270, 649 P.2d 912] (“undated memo in Assemblyman Lockyer’s files, furnished by the Legislative Intent Service.”)

## II. CONCLUSION

Our clients and their members respectfully urge the City of Los Angeles to repeal section 55.16 of the Los Angeles Municipal Code. We hope the city will not waste limited taxpayer and judicial resources defending an unenforceable and preempted ordinance. Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,  
**Michel & Associates, P.C.**



Clint B. Monfort

CBM/dsk