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VIA EMAIL & U.S. MAIL
Hon. Mary-Lynne Bernald, Mayor
Hon. Manny Cappello, Vice Mayor
Hon. Howard Miller, Council Member
Hon. Emily Lo, Council Member
Hon. Rishi Kumar, Council Member
Saratoga City Council
13777 Fruitvale Ave.
Saratoga, CA 95070
EMAIL: Saratoga_cc@saratoga.ca.us

Re: City Council Consideration of Mandatory Lock Storage Ordinance

Dear Honorable Council Members:

We write to you on behalf of our client California Rifle & Pistol Association, Inc. ("CRPA") as well as the hundreds of thousands of their members in California, many residing within the Saratoga ("City") area.

It has come to our attention that the City is considering a mandatory lock storage ordinance at a future council meeting. We ask that the City carefully consider the intended objectives or any proposed ordinance and any legal or constitutional issues that may arise out of such action. Please accept this correspondence as an education tool in looking at mandatory lock storage in the home.

I. Preemption by State Law

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 regulations, either expressly or

by implication.[1] Dictating the manner in which residents keep their firearms while in the home, and requiring that they keep handguns in a locked storage container or disabled with a trigger lock, runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area that is fully occupied by state law.

A local law "contradicts state law when it is inimical to or cannot be reconciled with state law.[2] The recommended ordinance is likely contrary to state law to the extent it dictates the manner one must store their firearms in the home. California maintains a comprehensive set of statutes, creating liability for the criminal storage of a firearm whenever a minor or prohibited person may access a firearm and uses that firearm to cause death or bodily injury or carries it to a public place.[3] Liability for such is subject to an equally comprehensive set of exceptions.[4] The proposed ordinance that would mandate locked storage of firearms in the home for residents of the City would strip from those residents the rights to engage in behavior specifically deemed lawful by the state.

Similarly, a recommended ordinance mandating locked storage of firearms is impliedly preempted by state law because it encroaches on an area of law occupied by state law. The storage of firearms is fully and completely regulated by the California Penal Code. In addition to the laws regarding the prevention of access by minors and prohibited persons, California mandates that any firearm sold by a licensed dealer must include a firearm safety device.[5] Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.[6] Such safety devices must meet rigorous safety standards as determined by the California Attorney General so that they "significantly reduce the rate of firearm-related injuries to children 17 years of age and younger."[7]

There are also several firearm storage requirements when one lives with another individual who is prohibited by state or federal law from owning firearms.[8] Because the state's firearm storage scheme is so comprehensive, any local interference with that scheme (except that which was expressly authorized) is preempted. If local governments are permitted to enact further criminal restrictions on

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[1] *Fiscal v. City and County of San Francisco*, 158 Cal.App.4th 895, 903-04 (2008).
[2] *O'Connell v. City of Stockton*, 41 Cal.4th 1061, 1068 (2007).
[3] Cal. Penal Code §§ 25100-25135, 25200-25225.
[4] Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.
[5] Cal. Penal Code § 23650(a).
[6] *See* State of California, Bureau of Firearms From 978 (Re. 01/2013), available at ttps://oag.ca.gov/all/files/agweb/pdfe/firearms/forms/bof_978.pdf
[7] *Id.* at § 23650(a).
[8] *Id.* at § 25135.

the storage of firearms, firearm holders will be confronted by a patchwork quilt of firearm and storage laws each time they enter another jurisdiction, sowing frustration, uncertainty, and the fear of prosecution among California residents as they travel throughout the state.

II. Fourth Amendment Violations

As a threshold matter, the City cannot enforce the proposed locked storage requirements without running afoul of the Fourth Amendment of the United States Constitution, which provides for "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[9] This prevents the City from inspecting how individuals are storing their firearms in their home or vehicle without first having established probable cause that the person is in violation of the ordinance. Tellingly, although some California cities have similar ordinances in effect, we are unaware of a single instance of enforcement.

III. Second Amendment Violations

In the words of the United States Supreme Court, the "inherent right of self-defense has been central to the Second Amendment right[,]" and "the need for self-defense, family, and property is most acute" in the home.[10] At issue in *Heller* was a District of Columbia ordinance substantially similar to the recommendations of the City; requiring residence to store firearms in a locked container or disable the firearm when not in use. But because of the importance of self-protection in the home, the Supreme Court expressly held that "any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home inoperable for the purposes of immediate self-defense."[11] Given the striking similarity, the proposed recommendation by the City is completely at odds with *Heller* and violates the Second Amendment.

The Ninth Circuit case of *Jackson v. City of San Francisco*, while on point, is not dispositive of this issue. In *Jackson*, the Ninth Circuit only heard an appeal for the denial of a motion for preliminary injunction, not a final decision on the merits of the case. Upon appeal to the Supreme Court, where certiorari was denied, Justice Thomas wrote a scathing opinion noting that "The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not

[9] U.S. Const. amend IV.
[10] *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).
[11] *Id.* at 635.

engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights."[12] Because of the *Heller* decision and the fact that *Jackson* was never decided on the merits, it is likely that the should the Supreme Court ever hear a case regarding a mandatory lock storage ordinance, it would hold such an ordinance unconstitutional.

IV. Conclusion

Our clients understand the need to combat the criminal misuse of firearms and to keep communities safe. The proposed items only seek to target law-abiding citizens and residents will be powerless to prevent or minimize the criminal elements that you seek to eliminate in your communities should these provisions be enacted. For the reasons noted herein, we strongly encourage the City Council not to adopt the recommended ordinances and instead look at how education and community action can better work to serve the safety needs in your community. We stand ready to help should you have any further questions regarding this information.

Sincerely,
Michel & Associates, P.C.

Tiffany D. Cheuvront

[12] See *Heller*, 554 U.S. at 634; *Id.* at 635 (explaining that the Second Amendment "elevates above all other interest the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.").