

SENIOR PARTNER  
C. D. MICHEL\*

MANAGING PARTNER  
JOSHUA ROBERT DALE

SPECIAL COUNSEL  
W. LEE SMITH

ASSOCIATES  
ANNA M. BARVIR  
SEAN A. BRADY  
TIFFANY D. CHEUVRONT  
MATTHEW D. CUBEIRO  
ALEXANDER A. FRANK  
LOS ANGELES, CA

\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA



OF COUNSEL  
JOSEPH DI MONDA  
SCOTT M. FRANKLIN  
CLINT B. MONFORT  
MICHAEL W. PRICE  
TAMARA M. RIDER  
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:  
562-216-4450  
TCHEUVRONT@MICHELLAWYERS.COM

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**VIA EMAIL & U.S. MAIL**

Hon. Georgette Gomez, Council President  
**San Diego City Council**  
City Administration Building  
202 C Street, 10<sup>th</sup> Floor  
San Diego, CA 92101  
EMAIL: [cityclerk@sandiego.gov](mailto:cityclerk@sandiego.gov)  
[georgettegomez@sandiego.gov](mailto:georgettegomez@sandiego.gov)

**Re: PROPOSED ORDINANCE TO MANDATE LOCKED  
STORAGE OF FIREARMS INSIDE THE HOME  
OPPOSED**

Dear President Gomez:

I write to you on behalf of our client the California Rifle & Pistol Association, Incorporated ("CRPA") and their tens of thousands of supporters, many of which live in the City of San Diego, to oppose the proposed ordinance that seeks to impose firearm related restrictions on residents and visitors to the City of San Diego ("City").

Earlier this month the City's Public Safety and Livable Neighborhoods Committee voted to send a proposed ordinance to the City Council. This proposed ordinance would require gun owners to store guns in a locked container or disable them with a trigger lock when not in use in the home. Additionally, the storage and the reporting requirement for lost or stolen firearms are both duplicative and preempted by state law.

The CRPA and its members advocate for responsible gun ownership and not permitting prohibited person access to firearms, but the government does not have the authority to infringe on the right to self-defense by dictating what a person does *in their home*.

Requiring that handguns be kept in a locked storage container or disabled with a trigger lock violates the Second and Fourth Amendments to the Constitution and the preemption doctrine because it contradicts and duplicates state law.<sup>1</sup>

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<sup>1</sup> *Fiscal v. City and County of San Francisco*, 158 Cal.App.4th 895, 903-04 (2008).

## **The Proposed Requirement for Mandatory Locked Storage of Firearms Is Preempted**

California state laws already create liability for the criminal storage of a firearm for any gun owner who allows a minor or prohibited person to access and misuse a firearm.<sup>2</sup> The statute contains a comprehensive set of exceptions.<sup>3</sup> There are also several firearm storage requirements when one lives with another individual who is prohibited by state or federal law from owning or possessing firearms.<sup>4</sup> California law also mandates that any firearm sold must include a firearm safety device.<sup>5</sup> Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.<sup>6</sup>

The state's firearm storage regulatory scheme is comprehensive and full. Local ordinances imposing further criminal penalties on the storage of firearms are preempted. Where a state "so fully and completely" legislates a subject covered by general law "as to clearly indicate that it has become exclusively a matter of state concern,"<sup>7</sup> the local jurisdiction has no authority and the state law stands.

## **The Proposal is Unenforceable Under the Fourth Amendment**

The City will not be able to enforce the proposed locked storage requirements because the Fourth Amendment prohibits an inspection unless probable cause is established.<sup>8</sup> The City Attorney has acknowledged that enforcing the ordinance is impossible without some other reason for law enforcement to enter and inspect a home.

## **The Proposal Infringes on Second Amendment Rights**

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.<sup>9</sup> At issue in *Heller* was a District of Columbia ordinance substantially similar to the proposed ordinance.

The Supreme Court 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.**"<sup>10</sup> While *Heller* did not answer every conceivable question about the Second Amendment, it is particularly clear that "law

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<sup>2</sup> Cal. Penal Code §§ 25100-25135, 25200-25225.

<sup>3</sup> Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

<sup>4</sup> *Id.* at § 25135.

<sup>5</sup> Cal. Penal Code § 23650(a).

<sup>6</sup> See State of California, Bureau of Firearms Form 978 (Re. 01/2013), available at [https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof\\_978.pdf](https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof_978.pdf)

<sup>7</sup> *Sherwin-Williams Co. v. City of Los Angeles*, 844 P.2d 534, 537 (1993).

<sup>8</sup> U.S. Const., amend. IV.

<sup>9</sup> *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

<sup>10</sup> *Id.* at 635.

abiding individuals are entitled to keep handguns in their homes that are both operable and immediately accessible for self-defense.”

The City Attorney noted in the staff report that the case of *Jackson v. San Francisco* upheld a lock storage ordinance. But *Jackson* is not dispositive of this issue and did not address preemption. In *Jackson*, the Ninth Circuit only heard an appeal from the denial of a motion for preliminary injunction. They did not issue a final decision on the merits of the case or on the ordinance itself. A request for review by the Supreme Court was denied, but Justice Thomas wrote a scathing opinion noting that “[t]he Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights.”<sup>11</sup>

In light of the strong language in the *Heller* decision, the fact that *Jackson* was never decided on the merits, and the newly comprised Supreme Court that has already decided to hear a Second Amendment case in the next session, it is unlikely that this type of Ordinance will survive future constitutional challenges.

The City Attorney report argues that as long as a person can “have a fully operable firearm on their person or within their immediate control while in the home” then the proposed Ordinance is not a burden to the individual Second Amendment rights. But the meaning of “immediate control” is unclear. Does this apply to a sleeping person? What if they walk into an adjoining room? What if the person has to put on reading glasses in order to disable the lock? This proposed Ordinance is in direct contradiction to the rights espoused in *Heller*, is vague, and another unenforceable law meant for political pandering to the gun-control lobby.

### **The Requirement to Report Theft or Loss of a Firearm Duplicates and Conflicts with State Law**

A local regulation will be struck down if it duplicates state law, conflicts with state law, or enters a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. An explicit contradiction between an ordinance and a state statute occurs “where the language of the ordinance directly contradicts the operative language and statute, e.g., by penalizing conduct which the state law expressly authorizes...” (See *Small Property Owners of S.F. Instit. v. City and Cty. of San Francisco*, 22 Cal.App.5th 77, 86 (2018) (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383, 396-397 (1993).)

Proposition 63 created a state statute that subjects gun owners to penalties if a lost or stolen firearm is not reported to authorities within 5 days of the time he or she knew or reasonably should have known that the firearm was lost or stolen.<sup>12</sup>

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<sup>11</sup> See *Heller*, 554 U.S. at 364-35. (explaining that the Second Amendment “elevates above all other interests the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.”)

<sup>12</sup> Cal. Penal Code § 25250.

The proposed ordinance mandating the reporting of the theft or loss of a firearm both duplicates and conflicts with the existing state law which provides for a 5-day reporting requirement. (See, e.g., *O'Connell v. City of Stockton*, 41 Cal.App.4th 895, 1068 (2007).) Under the City's proposed ordinance, the victim who has not yet reported the theft would still be in compliance with the proposed ordinance even though they would be in violation of state law if not reported within 5 days. The proposed Ordinance contains the sort of conduct already considered *specifically* under state law that the preemption doctrine forbids. (See *Small Property Owners, supra*, 22 Cal.App.5th at 86.) "The consequences of the preemption of a local measure is that the measure is unenforceable against anyone." (*City and Cty. of San Francisco v. Regents of Univ. of Cal.*, 11 Cal.App.5th 1107, 1118 (2017).) Other cities like Palm Springs recently repealed their reporting ordinance due to preemption issues and Morgan Hill<sup>13</sup> is currently embroiled in litigation over this same issue.

Our client and their thousands of members oppose this proposed ordinance. The City should address firearm safety goals through education, enforcing the law against criminals, and addressing mental health issues.

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

Tiffany D. Chevront

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<sup>13</sup> <http://michellawyers.com/wp-content/uploads/2019/05/Kirk-2019-04-15-Complaint-1.pdf>