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September 9, 2015

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**Re: Use Permit UPR-5-15-10913 - Firearm Repair and Sales at 7345  
Mission Street**

Honorable Mayor and City Council Members, City Clerk, and City Attorney:

We write on behalf of our clients, the National Rifle Association ("NRA") and the California Rifle and Pistol Association ("CRPA"), as well as the hundreds of thousands of their members in California, including those members residing in Daly City (the "City"). We write to you now in support of Use Permit UPR-5-15-10913, currently pending before the City Council.

On May 7, 2015, Todd Settergren, CEO of SetterArms, LLC, applied for a use permit with the City's Planning Division to open a business involving firearm repair and retail at 7345 Mission Street, Daly City, CA 94014. A public hearing was held on June 7, 2015, before the Planning Commission, which voted unanimously to support the application. Following this hearing, the City Council conducted its own meeting on August 10, 2015, where a motion was made to delay a decision on the application even though no evidence suggested this delay was necessary. In fact, everything presented thus far clearly demonstrates that Mr. Settergren's proposed business will be a benefit to the community and local law enforcement. For the following reasons, this delay is unnecessary and unlawful. We therefore request you approve Mr. Settergren's application promptly.

**I. THE DALY CITY MUNICIPAL CODE PROHIBITS THE CITY COUNCIL FROM DENYING SETTERARMS' APPLICATION**

**A. The Municipal Code Permits Firearms Business Within C-1 Light Commercial Districts**

The City's Municipal Code identifies Mr. Settergren's proposed business location as within a C-1 Light Commercial District.<sup>1</sup> No where in the table of uses for a C-1 Light Commercial District is firearm retailer or gunsmithing listed as a permitted use. However, the code does state that when a use is not specifically listed, "it shall be assumed that when the unlisted use is similar to nor more objectionable than a permitted use, such use *shall be permitted* in the district subject to the same requirements of the most similarly listed use."<sup>2</sup>

Here, Mr. Settergren's business shares significantly identical traits with several types of businesses listed as acceptable for a C-1 Light Commercial District. These include "manufacturing and assembly of electronic and scientific equipment when chemicals are used in the process," "motor vehicle repair or parts supply," "new or used car sales," and "pawnshops."<sup>3</sup> Similar to motor vehicle repair shops and in many car dealerships which service cars, SetterArms will offer a wide variety of gunsmithing services, including cleaning, metal finishing, woodworking, installation, and repair work.<sup>4</sup> For the firearm retail portion of the business, the listed approved use that most closely resembles a firearm retail store is a pawn shop, which if in possession of the necessary federal and state licenses, can legally engage in buying and selling firearms.

Because Mr. Settergren's business closely resembles that of several businesses specifically listed as an authorized use, his use must be permitted as required by the City's own municipal code.

**B. The Planning Commission Unanimously Supports SetterArms' Application, and the City Council Has No Justification for Denying It**

As required by the Daly City Municipal Code, the Planning Commission held a public hearing on Mr. Settergren's application on June 7, 2015.<sup>5</sup> Notification of this hearing to the public was made via newspaper on July 31, 2015, as well as by U.S. Mail to property owners within 300 feet of the

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<sup>1</sup> Daly City, Cal., Municipal Code § 17.18.010 (2014).

<sup>2</sup> Daly City, Cal., Municipal Code § 17.18.010(1) (2014) (emphasis added).

<sup>3</sup> Daly City, Cal., Municipal Code § 17.18.010(1)(B) (2014).

<sup>4</sup> See SetterArms, LLC, *Gunsmithing Price List*, available at [http://www.setterarms.com/ESW/Files/Setterarms\\_price\\_sheet.jpg](http://www.setterarms.com/ESW/Files/Setterarms_price_sheet.jpg) (last visited Sept. 9, 2015).

<sup>5</sup> See Daly City, Cal., Municipal Code § 17.44.030 (1965).

proposed business location.<sup>6</sup> During this meeting, Lieutenant Christensen of the Daly City Police Department explained that Mr. Settergren had gone above and beyond what was expected in providing the Police Department the necessary security plan for the proposed business location.<sup>7</sup> Following the Police Department's statements and recognition of Mr. Settergren's outstanding presentation, the Planning Commission voted 5-0 to recommend approval of his application.<sup>8</sup>

In its decision, the Planning Commission found that Mr. Settergren's application is "in compliance with . . . the Daly City Municipal Code,"<sup>9</sup> and that the "project would not be detrimental to the health, safety, morals, comfort and general welfare of persons residing in or working in the neighborhood, or be injurious or detrimental to the property and improvements in the neighborhood or the general welfare of the City."<sup>10</sup> This is no surprise, as other city planning commissions have reached the same conclusion.<sup>11</sup>

The Planning Commission further stated that the approval of the application "is in the best interest of the public health, safety, and general welfare of the community," and that it would "ensure compatibility with adjacent buildings and [] provide an attractive environment."<sup>12</sup> The Planning Commission based these findings on an operational narrative Mr. Settergren provided, which he has agreed to strictly adhere to. Additionally, Mr. Settergren's prior military and law enforcement experience demonstrated his extensive knowledge about operating such a business in a manner that minimizes impacts to the City's law enforcement resources while increasing safety.

Although City law recognizes that the City Council has the authority to reject the Planning Commissions recommendation, its decision to do so *must* be based upon substantial evidence in view

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<sup>6</sup> See City Council Agenda Report, *Use Permit UPR-5-15-10913 - Firearm Repair and Sales at 7345 Mission Street* at 4 (Aug. 10, 2015).

<sup>7</sup> See *id.* at 1.

<sup>8</sup> See *id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> See, e.g., 2011-7071 Location and Operation of Firearm Sales Businesses (Study Issue) Report to Mayor and Council, available at <http://sunnyvale.ca.gov/Portals/0/Sunnyvale/Council/Reports/2011/11-209.pdf> (last visited Sept. 9, 2015) (stating that staff could not find any reports that substantiated the concern that a firearm sales business devalues nearby properties, as well as no tangible evidence that a firearm sales business within a commercial district adversely affects surrounding businesses).

<sup>12</sup> City Council Agenda Report, *Use Permit UPR-5-15-10913 - Firearm Repair and Sales at 7345 Mission Street* at 3 (Aug. 10, 2015).

of the whole record to justify its action.<sup>13</sup> Given the Planning Commission's unanimous decision and findings, nothing in the record suggests that Mr. Settergren's application should be rejected. He has gone above and beyond what is required of such businesses and has the full support of City staff.

## **II. PRIOR CITY COUNCIL ACTION SUGGESTS FIREARM BUSINESSES ARE AN APPROVED USE FOR COMMERCIAL ZONES**

Moreover, and perhaps more importantly, Daly City is already home to two firearm retailers—Big 5, located at 314 Gellert Blvd., and Dick's Sporting Goods, located at 64 Serramonte Center. As part of a significant commercial development, the City Council approved Dick's Sporting Goods in a C-2 Heavy Commercial District in 2012.<sup>14</sup> Dick's Sporting Goods was not required to obtain a use permit in order to operate. Businesses located in a C-2 Heavy Commercial District do not require a use permit when involving "[a]ny use permitted in the C-1 district, except where specifically subject to the requirements of this section."<sup>15</sup> But like SetterArms, Dick's Sporting Goods firearm retail business is not specifically listed as an approved use for C-1 Light Commercial Districts. Because Dick's Sporting Goods did not need to obtain a use permit and was approved by the City Council, the City Council has effectively *ipso facto* stated that firearm retailers are a permitted use for C-1 Light Commercial Districts. The City Council therefore cannot treat SetterArms differently than Dick's Sporting Goods absent significant justification or evidence to support such treatment, which the City does not have nor does the record provide for.

## **III. DENYING THE APPLICATION WOULD RAISE SERIOUS CONSTITUTIONAL CONCERNS**

In addition to violating municipal law, denying Mr. Settergren's application would also raise significant constitutional concerns, including conflicts with the First Amendment, the Second Amendment, and the Equal Protection Clause. Should the City Council subject applications such as Mr. Settergren's to especially harsh treatment for no other reason than his business involves repairing and selling firearms, the City is subjecting itself to a lawsuit to vindicate Mr. Settergren's rights. Second Amendment civil rights jurisprudence is evolving rapidly in the wake of the Supreme Court's ruling in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), recognizing an individual and fundamental right to arms. In addition, a right to keep firearms necessarily implies a right to buy and sell firearms, as well as the right to keep them in good working order. See *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014); see also *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

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<sup>13</sup> Daly City, Cal., Municipal Code § 17.44.080 (1965).

<sup>14</sup> See City council Meeting Agenda Report, *General Plan Annual Progress Report (2012)* at 1, 3 (June 10, 2013).

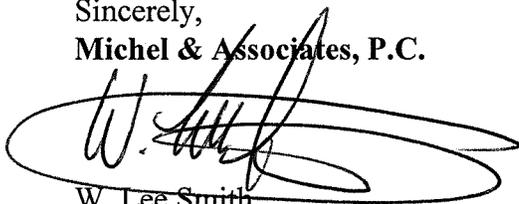
<sup>15</sup> Daly City, Cal., Municipal Code § 17.20.010(1)(A) (1994).

#### IV. CONCLUSION

Our clients understand the need to fight the criminal misuse of firearms and gun violence. The NRA and CRPA have a variety of effective programs for doing so that they would be happy to make available to the City free of charge upon request. These programs do not overburden responsible business owners like Mr. Settergren or flout constitutional guarantees. We ask that the City consider implementing such programs before taking any action that would target the otherwise lawful business of firearm retailers and repair shops, especially considering that they are the purveyors of constitutional rights.

For these reasons, we strongly encourage the City Council to approve Mr. Settergren's application immediately. If you have any questions, please feel free to contact us at your convenience.

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



W. Lee Smith

cc: Mr. Todd Settergren