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March 4, 2013

Angela Cavillo, Clerk of the Board
Board of Supervisors
CITY AND COUNTY OF SAN FRANCISCO
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102
VIA E-Mail & Overnight Mail

Re: BOS File No. 130039: Police Code - Reporting Ammunition Sales of 500 or More Rounds – OPPOSITION

Dear Ms. Cavillo:

We write on behalf of our clients, the National Rifle Association (“NRA”) and the California Rifle & Pistol Association (“CRPA”), as well as the hundreds of thousands of their members in California, many residing within the City and County of San Francisco. Among other things, these organizations seek to promote firearms and hunting safety, protect hunting rights, enhance the marksmanship skills of those participating in the shooting sports, and educate the public about firearms in order to reduce violence and encourage gun safety.

Our clients oppose the current proposal to require registration of certain ammunition purchases, File No. 130039 [Police Code – Reporting Ammunition Sales of 500 or More Rounds], scheduled to be heard by the Board of Supervisors on March 5, 2013.

The proposed ordinance is unsound public policy that does nothing to promote the sponsors’ stated goals, while it seriously burdens gun owners, retailers, and law enforcement. The proposal is also preempted by state law and illegal.

I. THE PROPOSED ORDINANCE IS INEFFECTIVE PUBLIC POLICY

Perpetrators of gun violence typically fire only small quantities of ammunition in the commission of a crime. In his book, *Targeting Guns*, leading criminologist Gary Kleck recounts

numerous studies showing that armed assaults usually involve either no shots or only a few shots fired, noting that “[e]ven in a sample of gun attacks on armed police officers, where the incidents are more likely to be mutual combat gunfights with many shots fired, the suspects fired an average of only 3.7 times.”¹

Those criminals who might seek to “stockpile” ammunition will *always* find a way to do so. In the City’s own words, they can easily escape registration because the “Ammunition Ordinance allows San Franciscans either to buy . . . ammunition online or at gun stores outside of San Francisco (including at gun shows at Cow Palace, which is literally across the street from San Francisco) . . .”² Or criminals will simply make several smaller purchases over time to circumvent the requirement.

The law will thus impact only law-abiding gun owners, placing them on a sort of government “watch list” and subjecting them to unwarranted investigation simply for making a common, lawful retail purchase of ammunition. There is nothing extraordinary about a single purchase of 500 rounds of ammunition. Law-abiding sportsmen and target shooters regularly purchase ammunition in bulk to save money, and they may keep rounds on their shelves for years. One can *easily* expend 500 rounds in one vigorous day at the shooting range. And it is common for a firearms instructor or target shooting event organizer to purchase large quantities of ammunition for distribution to class or event participants.

The proposal also harms businesses within San Francisco, placing a serious burden on ammunition retailers to register every ammunition sale over 500 rounds – which, as described above, are not uncommon. Further, registration of ammunition sales will create an unnecessary backlog of paperwork for the police department, and it wastes valuable law enforcement resources and taxpayer dollars.

Consider the following experiences.

In 1997, the City of Pasadena examined the effectiveness of the ammunition sales registration ordinance that it had on the books for several years and found that the ordinance did not work. The record-keeping requirements were onerous to those who sell ammunition legally, and the ordinance provided no deterrent at all to those who peddle bullets on the street. As a crime-fighting tool, the ordinance was totally ineffective. The records never helped police to solve a crime.

Indeed, the Pasadena Police Department confirmed that ammunition registration had been of no use in reducing the rate of gun related violence and that, in the years it had been in effect, the law proved to be nothing more than a distraction and an ineffective tool for law enforcement.

¹ Gary Kleck, *Targeting Guns* 123 (1997).

² Defs.’ Opp’n Mot. Prelim. Inj. at 19, *Jackson v. City and County of San Francisco*, No. 09-2143 (N.D. Cal. Sept. 13, 2012).

Pasadena ultimately voted to repeal the ordinance.

Similarly, through the 1980s, Congress considered repeal of an a federal ammunition regulation package that required licensing of ammunition retailers, registration of ammunition sales, and a ban on the mail-order sale of ammunition. In 1986, the director of the Bureau of Alcohol, Tobacco and Firearms supported eliminating the record keeping requirement: “The Bureau and the [Treasury] Department have recognized that current *recordkeeping requirements for ammunition have no substantial law enforcement value*. In addition, their elimination would remove an *unnecessary recordkeeping burden from licencees*.”³ As a result, the Firearms Owners Protection Act of 1986 repealed the ammunition restrictions, with little opposition despite heated debate over other provisions of the bill.

Undaunted by these failed experiments, the City of Los Angeles adopted an ammunition registration ordinance several years ago. It has likewise accomplished nothing except to divert scarce police resources. In 2006, the Rand Report entitled “The Criminal Purchase of Firearm Ammunition,” concluded that while ammunition sales records can provide information for generating leads on illegal firearm possession, because of the labor involved the information was not being used. The study shows that because of the manpower involved in monitoring the records and doing background checks, the Los Angeles Police Department was not doing so.

II. THE PROPOSED ORDINANCE IS PREEMPTED BY CALIFORNIA STATE LAW

California law expressly preempts localities from regulating “the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, . . . such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms”⁴

The proposed ordinance seeks to require the registration of certain common ammunition purchases, which are necessarily related to firearms. The city cannot circumvent state law explicitly prohibiting registration of firearms by requiring their *de facto* registration through the reporting of ammunition sales to local authorities.

San Francisco is free to adopt reasonable laws regulating the commercial sale of firearms, such as requiring employee background checks, some security measures, etc. But, as the California Court of Appeal admonished in *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 919 (2008), itself a preemption challenge to the city’s restrictive gun laws, “the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with state law Therefore,

³ *Legislation To Modify the 1968 Gun Control Act*, Hearing Report, Committee on the Judiciary, U.S. House of Representatives, October 38, 30, Nov. 8, 1985, and February 19 and 27, 1986. The BATF was an agency of the Treasury Department until 2003.

⁴ Cal. Gov’t Code § 53701.

when it comes to regulating firearms, local governments are well advised to tread lightly.”

Should the proposed ordinance be adopted, prompting a legal challenge, and should the challengers prevail, San Francisco will be liable for the challengers’ costs and attorneys’ fees, which can be significant. Recall, that the *Fiscal* case cost the city roughly \$600,000.00 to defend, in addition to the \$380,000.00 it paid to the NRA to reimburse it for its attorney’s fees. The City of Chicago recently paid \$125,000 to a plaintiff who challenged the constitutionality of that city’s ordinance banning people with certain non-violent misdemeanor convictions from possessing firearms in their homes for self-defense in the case of *Gowder v. Chicago*, 11 C 1304 WL 2325826 (N.D. Ill. June 19, 2012). That was following Chicago’s payment of approximately \$1.4 million dollars to the NRA and \$400,000 to the Second Amendment Foundation for the *McDonald* case. And the District of Columbia had to pay \$1.1 million to Mr. Heller.⁵

III. CONCLUSION

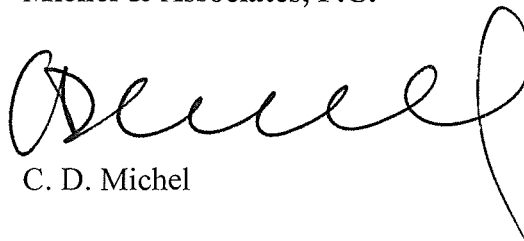
The new area of Second Amendment civil rights jurisprudence is evolving rapidly in the wake of the Supreme Court recognizing that the Second Amendment protects an individual right. The city would be wise to refrain from adopting the proposed ordinance while this new field of law continues to develop.

In light of the foregoing, we urge you to vote “no” on the ordinance. Our clients understand the need to fight the criminal misuse of firearms, and they have a variety of effective programs available to you upon request – ones that do not infringe the rights of your residents.

If you have any questions or concerns concerning the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,

Michel & Associates, P.C.



C. D. Michel

CDM/amb

⁵ It is also worth noting that when Alameda County’s ban on firearm sales on its property – was challenged, twelve years of litigation and hundreds of thousands of dollars in costs later, Alameda County ultimately interpreted its ordinance to allow gun shows on its property before the Ninth Circuit ruled on the law, mooted the controversy and ending the case. While the court did not award fees to the challengers because it did not rule on the merits, had it ruled in the challengers’ favor, they would have sought over \$1 million. *See Nordyke v. King*, 681 F.3d 1041 (9th Cir. 2012) (en banc).

Ms. Cavillo
March 4, 2013
Page 5 of 5

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IMMEDIATE ATTENTION REQUESTED

FAX TRANSMITTAL SHEET

TO: Angela Cavillo, Clerk of the Board & Board of Supervisors

FIRM: CITY AND COUNTY OF SAN FRANCISCO

FAX NO.: (415) 554-5163

TEL. NO. (415) 554-5184

FROM: C. D. Michel

DATE: March 4, 2013

RE: BOS File No. 130039: Police Code - Reporting Ammunition Sales of 500 or More Rounds –
OPPOSITION

THIS FAX CONTAINS COVER PAGE PLUS 5 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

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