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Councilmember Mitchell Englander, Chair
Councilmember Joe Buscaino
Councilmember Mike Bonin
Councilmember Mitch O'Farrell
Councilmember Nury Martinez
LOS ANGELES PUBLIC SAFETY COMMITTEE
200 N Spring St., Room 1010
Los Angeles, CA 90012
VIA FAX & EMAIL

Re: Council File No. 14-1553: Proper Storage of Firearms - OPPOSITION

Honorable Members of the Los Angeles Public Safety Committee:

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 of Los Angeles.

We respectfully oppose Council File No. 14-1553 ("the Proposed Ordinance"), the adoption of which would amend the Los Angeles Municipal Code to require handguns located in a residence to be kept in a locked container or disabled with a trigger lock. Specifically, the Proposed Ordinance provides that "[n]o person shall keep a handgun within a residence owned or controlled by that person unless" (1) "the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice" or (2) "[t]he handgun is carried on the person of an individual over the age of 18" or "under the control of a person who is a peace officer under [California] Penal Code Section 830." The law applies across the board, regardless of whether children are present in the home.

For the reasons discussed below, our clients must oppose the Proposed Ordinance.

I. THE PROPOSED ORDINANCE VIOLATES THE SECOND AMENDMENT

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. *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). At issue in *Heller* was a

District of Columbia ordinance substantially similar to the Proposed Ordinance, requiring residents to keep lawfully owned firearms “unloaded and disassembled or bound by a trigger lock or similar device.” *Id.* at 575. But because of the importance of self-defense in the home, the Supreme Court expressly held “any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” *Id.* at 635. Given the substantial similarity, the Proposed Ordinance is completely at odds with *Heller* and violates the Second Amendment.

Although true that the Ninth Circuit recently reviewed a similar ordinance from San Francisco, it is important to understand the limitations of that review. In *Jackson v. City and County of San Francisco*, the Ninth Circuit heard an appeal for a denial of a motion for preliminary injunction, not a final decision on the merits. 746 F.3d 953 (2014). *Jackson* is not over. Any action by Los Angeles at this time would be premature if based solely on the Ninth Circuit’s decision to uphold the denial of motion for preliminary injunction in *Jackson*.

The fact the United States Supreme Court declined to review *Jackson* likewise should not be read as tacit approval of the ordinance. Quite the opposite, as two of the Supreme Court Justices stated in no uncertain terms that the San Francisco ordinance was clearly unconstitutional by noting the Ninth Circuit’s decision to be in “serious tension with *Heller*.” *Jackson v. City & County of San Francisco*, cert. denied, 2015 WL 3537821, at *2 (U.S. June 8, 2015) (No. 14-704). This dissent, authored by Justice Clarence Thomas and joined by Justice Antonin Scalia (the author of the *Heller* opinion), is the first written clarification from the Supreme Court since the *Heller* and *McDonald* decisions were handed down. Although a number of Second Amendment cases have been presented to the Supreme Court for potential review, until now the Supreme Court had refrained from issuing any dissenting opinions. The dissent sends a strong message to lower courts that the analytical framework for reviewing Second Amendment challenges cannot be overly deferential to governmental interests. It also suggests that the Court may be waiting for a better vehicle to provide further clarification of the proper scope and application of the Second Amendment. A storage law like the one proposed by the City is unlikely to survive a future Second Amendment challenge once the Court has so clarified the right.

Finally, an en banc panel of the Ninth Circuit is currently deliberating in *Peruta v. County of San Diego*. The outcome of that case could change the analytical framework that served as the basis on which *Jackson* was decided. As such, an ordinance similar to the one in *Jackson* is not guaranteed to withstand a Second Amendment challenge. On the contrary, enacting a similar ordinance could quickly prompt costly litigation similar to *Jackson*.

II. THE PROPOSED ORDINANCE 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*, 158 Cal. App. 4th 895, 903-04 (2008). Dictating the manner in which residents keep their firearms within their own homes, and requiring that they keep their handguns in a locked container or disabled with a trigger lock unless carried on their person, runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area of law that is fully occupied by state law.

A. The Proposed Ordinance Contradicts State Law

A local law “*contradicts* state law when it is inimical to or cannot be reconciled with state law.” *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1068 (2007). The Proposed Ordinance is preempted as contradictory 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 accesses a firearm and uses that firearm to cause death or bodily injury or carries it to a public place. Cal. Penal Code §§ 25100-25135, 25200-25225. Liability for such is subject to an equally comprehensive set of exceptions. *Id.* at §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

Specifically, state law exempts one from liability under Penal Code sections 25100 and 25200 whenever the firearm is kept in a locked container or the firearm is kept in a location a reasonable person would believe to be secure or the firearm is carried on one’s person or the firearm is kept in close enough proximity to the person to be retrieved and used as if it were carried on one’s person or the firearm is locked by a locking device. *Id.* By its express terms, the Proposed Ordinance strips from ordinary Los Angeles residents the right to engage in behavior specifically deemed lawful by the state. For it flatly denies individuals two options explicitly authorized by state law—i.e., to keep their firearms in a secure location (locked or not) or to keep the firearm under their immediate control—thereby contradicting state law.

B. The Proposed Ordinance Improperly Enters an Area of Law that Is Fully Occupied by State Law

Similarly, the Proposed Ordinance is impliedly preempted by state law. A local ordinance that encroaches on an area of law impliedly occupied by the Legislature will be stricken as unconstitutional. State law impliedly preempts local regulation when:

(1) [T]he subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; *or* (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

Id. at 904 (emphasis added).

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 discussed earlier, California mandates that any firearm sold by a licensed dealer must include a firearm safety device. Cal. Penal Code § 23635(a). Additionally, whenever an individual purchases a long gun in

California they must sign an affidavit stating ownership of a gun safe or lock box.¹ Such safety devices must meet rigorous safety standards as determined by the California Attorney General so that they “significantly reduce the right of firearm-related injuries to children 17 years of age and younger.” *Id.* at § 23650(a). There are also several firearm storage requirements when one lives with another individual who is prohibited by state or federal law from owning firearms. *Id.* at § 25135. Because the state’s firearm storage scheme is so comprehensive, any local interference with that scheme (except that which was expressly authorized) is preempted.

Further, because the Proposed Ordinance applies to residences simply “owned or controlled” by an individual, such as hotel rooms and other temporary residences, it will have a detrimental effect on law-abiding gun owners who travel or otherwise pass through Los Angeles with their firearm. If local governments are permitted to enact further criminal restrictions on 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.

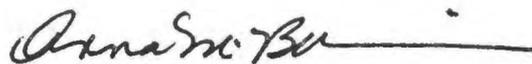
For the foregoing reasons, state law impliedly preempts the local regulation of firearm storage and Council File No. 14-1553 is invalid.

III. CONCLUSION

In sum, we strongly urge you to reject the Proposed Ordinance. Adoption of such unconstitutional provisions will result in immediate litigation against the City to enjoin enforcement and have it declared invalid.

Should you require further guidance, our office is available to discuss in further detail the nuances of the constitutional issues raised by this proposal and analyzed in this correspondence.

Sincerely,
Michel & Associates, P.C.



Anna M. Barvir

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¹ See State of California, Bureau of Firearms Form 978 (Rev. 01/2013), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof_978.pdf