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April 14, 2015

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**Re: Report to the City Council No: 15-035; Police Department Proposed  
Fiscal Year 2016 User Fees – Licensed Firearm Dealers**

Honorable Committee Members:

Per this Committee's most recent agenda, issued on April 15, 2015, it will be reviewing a staff recommendation to raise two city imposed fees for operating a firearm business. We write on behalf of our clients the National Rifle Association (NRA) and the California Rifle and Pistol Association (CRPA), as well as their many individual and business members in California, including those who operate firearm businesses in the City of San Diego, to urge the Committee to oppose the proposed fee hikes. They are not only unfair and counterproductive, but also likely illegal.

Though it is true cities have some authority to regulate firearm vendors, and even to charge them regulatory fees, that authority is not unlimited. To the contrary, both state and federal law place limitations on such regulatory fees.

First, California law makes clear that local regulatory fees are permissible, as long as they are reasonable and equitable, i.e., commensurate with the actual costs incurred by the local government in conducting the regulation, and are not merely revenue generating. *United Business Com. v. City of San Diego*, (1979) 91 Cal. App.3d 156, 165.) Those fees are also subject to the criteria set forth in Proposition 26, Cal. Const. art. XIII C, §1(e), which places the burden on the city to prove "the amount [of the fee] is no

more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.”

Likewise, the federal constitution demands that when constitutionally protected activity is being regulated, the government only impose a fee “as a regulatory measure and calculated to defray the expenses of policing the activities in question.” *Murdock v. Com. of Pennsylvania*, (1943) 319 U.S. 105, 116.) And the right to keep and bear arms necessarily encompasses the right to *obtain* arms as well. That much is clear from the Ninth Circuit’s decision in *Jackson v. City and County of San Francisco*, which held that “ ‘the right to possess firearms for protection implies a corresponding right’ to obtain the bullets necessary to use them.” (9th Cir. 2014) 746 F.3d 953, 967(citing *Ezell v. City of Chicago*, 651 F.3d 684, 704 (2011)); *see also Andrews v. State*, 50 Tenn. 165, 178 (1871), cited with approval, *District of Columbia v. Heller*, 554 U.S. 570, 614 (2008). Firearm vendors are therefore the purveyors of this right to acquire firearms. As such, any fee imposed on their operation is subject to the limitations announced in *Murdock*. Our clients are currently litigating this very issue with the State of California. *See Bauer v. Harris*, No. 11-01440, 2015 WL 881515 (E.D. Cal. March 2, 2015), appeal docketed, No. 15-15428 (9th Cir. March 9, 2015).

Respectfully, we find it hard to believe it costs the City of San Diego over \$1,800 to legitimately regulate a lawfully licensed firearm vendor. The California DOJ only charges firearm vendors a \$115 fee for inspection costs, and that includes that agency’s costs in maintaining a list of all current California firearm vendors. (*See California Penal Code section 26720*). Most California cities that we are aware of having such regulatory fees for firearm vendors only charge approximately \$500. Thus, the proposed fee of almost four times that amount appears suspiciously excessive and likely unlawful by any standard. In any event, the City must prove that its costs are \$1,857 but has failed to provide evidence substantiating that amount thus far.

In regards to the City’s increasing its fee for FFL employee licenses, not only is quadrupling the current amount simply unreasonable, it is our understanding that California law prohibits such a fee in any amount. (*See Pen. Code, §26915(d)*), providing that nothing precludes a “local jurisdiction from conducting an additional background check . . . provided however, that the local jurisdiction may not charge a fee for the additional criminal history check.”) This fee appears to be nothing more than an additional background check fee masqueraded as something else. There is no reasonable regulatory costs associated with an FFL employee beyond a background check, especially not \$254 worth. Thus, rather than increasing THAT FEE, THE City should—and legally must—act to eliminate this fee as preempted by state law.

For the foregoing reasons, we ask that the Committee recommend that the City Council reject the proposed raising of the FFL license fee and repeal the FFL employee fee altogether. 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.**



Sean A. Brady