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Hon. Gavin Newsom, Mayor  
Hon. Dennis J. Herrera, City Attorney  
Hon. Supervisors, Board of Supervisors  
CITY AND COUNTY OF SAN FRANCISCO  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
VIA OVERNIGHT MAIL

**Re: Pre-Litigation Demand  
To Repeal "Ultracompact Handgun" Ordinance**

Hon. Mayor, City Attorney, and Supervisors:

San Francisco Municipal Code (SFMC) section 613.10-2 et. seq., bans the sale of "ultracompact" (small- and medium-sized) handguns. We write on behalf of a coalition of our clients, the National Rifle Association (NRA), the California Rifle and Pistol Association (CRPA), the California Association of Firearm Retailers (CAFR), the Second Amendment Foundation, San Francisco-based gun retailers, and several firearm manufacturers who make small- and medium-sized handguns firearms, to demand that the ordinance be repealed in light of recent case law.

Since you will soon be considering several new, proposed gun-control ordinances, you have the convenient opportunity to consider this demand simultaneously.

**The Ordinance Is Ineffective**

Our clients have no interest in defending criminals who misuse firearms, or in making firearms available to those criminals. To the contrary, they are leaders in advocating for effective crime-fighting legislation and gun-safety measures. Our clients are however interested in, and in fact dedicated to, defending the rights of their law-abiding members to participate in the shooting sports and to choose to own a gun to defend themselves and their families. Preliminarily, we note that the ordinances have done nothing to reduce violence in San Francisco. There was, and still is, no credible evidence that the banned firearms are misused in crime more often than the varieties of handguns that the ordinance leaves un-banned, or that the banned handguns are used less in crimes since the ordinances were passed.

The ordinances were originally justified, at least in part, by the use of gun-trace data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Since the ordinance was passed, the bipartisan Congressional Research Service and the ATF, itself, have both clearly stated that tracing data is not statistically appropriate for determining the proportion of any type of firearm being used in crime relative to any other type of firearm, or to the total set of firearms used in crime. In addition, the ATF data used in justifying the San Francisco "ultracompact" handgun ordinance showed that the firearms it banned, although they were listed among the top ten firearms used in crime, only comprised about 7% of all firearms used in crime.

### **The UCH Ordinance Discriminates Against the Disabled**

Our clients, their members and their customers include individuals who are small in stature (most often women) or disabled, and for whom a larger firearm is particularly inappropriate, impractical and unsafe. For those individuals who choose to own a firearm for self-defense or target shooting, the ordinance makes it impossible for them to purchase a firearm appropriate for their needs in the city.

The shooting sports are of the most accessible sports and recreation activities for citizens with a physical disability. A person with strength or agility limitations is often precluded from participating in sports; however, with equipment that is adapted to compensate for a specific disability, these people are able to gain a rewarding experience while practicing discipline, responsibility, concentration and safety. In fact, out of all the wheelchair sports, rifle and pistol shooting accommodates the highest levels of disability. The second is archery.

Many people are not aware that there is a United States Disabled Shooting Team. The team has amassed a remarkable record of 240 medals and set seven World and 16 Pan-Am Records, while representing this nation in international shooting competitions. Shooting events are among the most popular of the many sports offered by Wheelchair Sports USA, at the many wheelchair games they stage around the nation every year. The shooting competitions also have, by far, the best safety record of all wheelchair sports, including basketball, weightlifting and track and field. The variety of equipment available opens the door of opportunity for disabled citizens to gain a meaningful experience in the shooting sports, right up to the Paralympic level. Small pistols, in particular, are necessary for some people with disabilities to participate in the shooting sports. Paralysis, diminished hand agility or strength, small physical features, missing limbs, psycho-motor impairment, and a variety of other disabilities make these smaller handguns the *only* safe firearm for many people with disabilities to use.

The ability to be able to defend oneself also takes on heightened importance when mobility impairment is involved, because a person with this type of disability cannot enjoy the luxury of being able to rapidly flee a dangerous situation, as most able-bodied citizens can. People with disabilities must defend themselves and their loved ones on the spot. In many cases, the mobility impairment

even precludes them from being able to run to a telephone to call for help. It certainly places them at a severe disadvantage in physically resisting an attack. For this reason, a small handgun is often the only option for these individuals.

Americans with disabilities deserve, and by law are entitled to, the same right to participate in the shooting sports and to protect themselves as all citizens.

### **The Ordinance Infringes on the Fundamental Constitutional Right to Self-Defense**

As you are no doubt aware, the United States Supreme Court recently confirmed that the Second Amendment of the United States Constitution protects a fundamental, individual right to keep and bear arms for self defense. *District of Columbia vs. Heller*, decided June 26, 2008; No. 07-290. The ordinance infringes on that fundamental individual constitutional right.

### **The Ordinance Is Preempted by State Law**

As a recent Court of Appeals decision (confirmed by the California Supreme Court) makes clear, cities cannot ban the sale of firearms that are approved for sale within the state by the California Department of Justice (DOJ). In *Fiscal v. City and County of San Francisco*,<sup>1</sup> the court carefully analyzed the law regarding the preemption of local firearms ordinances and the scope of local government authority to regulate firearms in general. In particular, the *Fiscal* court analyzed the provisions of the "Unsafe Handgun Act" (UHA) and ruled that any gun authorized for sale under the UHA could not be prohibited from sale by local governments.

The UHA is contained in Penal Code section 12125-12133 et. seq. San Francisco's ordinances ban handgun sales according to size criteria or caliber. However the UHA's ban of handgun sales is also based on a size criteria or caliber, amongst other features, and requires the safety testing of handguns before they can be sold in the state. Under the UHA, a number of handguns specifically tested and approved for sale by the state are prohibited from sale by San Francisco's "ultracompact" handgun ordinance. A list of state-approved handguns is available through the California DOJ website. We have identified at least 40 firearms on the approved-for-sale list that are prohibited under the "ultracompact" handgun ordinance.<sup>2</sup>

As to the effect of the UHA on local ordinances, the legislature recognized that: "This bill would appear to preempt any such local ordinance, both those already in existence and any proposed locally in the future." *Senate Public Safety Committee Report on SB15, at p. 9*. Recognizing this, multiple cities seeking to maintain their (supposed) local power to ban subclasses of handguns asked

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<sup>1</sup> *Fiscal v. City and County of San Francisco* (2008) 158 Cal. App. 4<sup>th</sup> 895 [70 Cal.Rptr.3d 324]

<sup>2</sup> Interestingly, ALL of the revolvers from Smith & Wesson, Sturm Ruger, Rossi and Taurus that have a less than 2 ½ inch barrel are prohibited. These short barreled revolvers are, as they have been for more than 30 years, the overwhelming choice of peace officers for back-up firearms while working or off duty carry, and are generally safer for use by a person who is an infrequent user of their firearm.

the Legislature to amend a non-preemption provision into SB15 (See e.g., April 1, 1999 city of San Jose Newsletter to Senate Public Safety Committee Chairman Vasconcellos, and the proposed amendment. Copy available upon request.). The Legislature did not adopt the language, or any other language recognizing or continuing local power to ban handgun sales.<sup>3</sup> The *Fiscal* court took note of this. Additionally, since a local ordinance that duplicates a state law is also preempted, to the extent that the ordinances prohibit the sale of firearms that already cannot be sold under state law, it is preempted by state law in that regard as well (and useless, since it is redundant).


### Conclusion

The ordinance should be repealed so that expensive litigation can be avoided. We hope that San Francisco will not waste taxpayer funds defending this useless, counterproductive ordinance in court. Our clients and their members urge San Francisco to repeal these ordinances and avoid litigation. Unless the repeal process is initiated within the next 30 days we will file suit to have the ordinance invalidated.

If you are interested, our clients have a variety of firearm education and safety materials available to local officials, free of charge.

Sincerely,

**TRUTANICH • MICHEL, LLP**



C. D. Michel

CDM/ca

cc: Wayne Snodgrass  
Deputy City Attorney

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<sup>3</sup> Where specific proposed language would have accomplished a specific result, the Legislature's failure to incorporate that language in the Act is probative of a contrary intent. *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 520. As to the value and admissibility of such legislative history see: *People v. Ledesma* (1997) 16 Cal.4th 90, 98, 100 (committee reports and analyses) and *Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. (same); *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 917, 926 (letters by proponents of the bill urging its enactment); *Moradi-Shalal v. Fireman's Fund Ins. Co.* (1988) 32 Cal.3d 211, 219, fn. 9 ("undated memo in Assemblyman Lockyer's files, furnished by the Legislative Intent Service").