

SENIOR PARTNER

[REDACTED]

ASSOCIATES

[REDACTED]

PARTNERS

[REDACTED]



OF COUNSEL

[REDACTED]

[REDACTED]

writer's

[REDACTED]

June 27, 2022

**VIA E-MAIL & U.S. MAIL**

San Jose Police Department  
Permits Unit  
201 W. Mission Street  
San Jose, CA 95110  
[Fax and/or Email]

/cc

[REDACTED]

**Re: Cease & Desist – [REDACTED] Firearm Dealer License Application  
Family Background Check Requirements**

To whom it may concern:

We write on behalf of our client, [REDACTED] who recently applied for a firearm dealers license to the City of San Jose (the "City"). It is our understanding that, in connection with his application, the City is requiring [REDACTED] to obtain photo IDs for his wife, [REDACTED], and his mother and father, [REDACTED] and [REDACTED]. What's more, the City is requiring [REDACTED] to have his family members sign and return a form used by the state of California to process applications for a license to carry a concealed weapon ("CCW"). For the following reasons, we demand that the City cease and desist with these requirements and proceed immediately with processing [REDACTED] application.

Chapter 6.90 of the San Jose Municipal Code sets forth the requirements for firearm-related business licenses. Yet it imposes no required background checks for members of the applicant's family. [REDACTED] certificate of eligibility means he is already certified by the California Department of Justice to be lawfully able to own and possess firearms. Section 6.02.120 states that "[t]he chief of police shall conduct a criminal background investigation on

any person applying for a permit or license under this title.” In other words, the City only has authority to conduct its own investigation into the applicant themselves—*not* the applicant’s family that will have no control over the business for which the license is sought.

██████████ was instructed that the City has “authority within the code to conduct backgrounds; it is integral that we complete all due diligence/backgrounds on any potential incoming firearms dealer wishing to sell firearms within our City.” We do not see any such authority for the City to require background checks on applicant family members. What’s more, grounds for denial of an application as outlined in Section 6.90.250 and 6.02.120 make no mention of third-party background checks. Nor do these sections list any grounds for denial based on the results of a third-party background check. And as applied here, none of ██████████ family members hold any ownership interest in his business.

Setting aside the question of the City’s authority to conduct background checks on third-party family members, the use of a state-mandated form for CCW applications is wholly inappropriate. Presumably, the purpose of the City requiring this form is to allow access to the California Law Enforcement Telecommunications System (“CLETS”) to conduct a background check on ██████████ family.

The California Department of Justice (“CA DOJ”) published an information bulletin in 2018 to all California law enforcement agencies, stating misuse of CLETS is defined as “CLETS information that is obtained or provided outside the court of official business; as “right to know” and the “need to know” must be established.”<sup>1</sup> This bulletin goes on to state that “right to know” is “authorized access to such records by statute.” As discussed above, there is no statutory authority for the City to require background checks on an applicant’s family.

What’s more, CA DOJ defines “need to know” to mean “the information is required for the performance of official duties or functions.” There can be no possible need for the City to conduct a background investigation on ██████████ family. Indeed, the City’s own reasons for the denial of a license make no mention of a family member’s criminal or personal history. Such information is therefore not required for the performance of official duties or functions. In addition, other firearm dealer applicants may not have any living family members or have the means of communicating with them. Application of the City’s requirement in such circumstances would be impossible.

For the above reasons, ██████████ will not be providing the City with information regarding his family, whom have no interest or control over his business for which he seeks to obtain a license. We insist the City immediately proceed with the processing of ██████████ application. And should the City deny ██████████ applications for failing to provide the

---

<sup>1</sup> Information Bulletin No. 18-07-CJIS (April 17, 2018).

Cease & Desist

[Date]

Page 3 of 3

requested information, we insist the City provide our client with a written notification of the denial citing the appropriate authority for doing so.

Should you have any questions regarding the above or wish to discuss the matter further, please contact our office at your convenience.

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

A solid black rectangular redaction box covering the signature area.