

National Rifle Association ILA Members Council of Sonoma County

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Santa Rosa City Council
100 Santa Rosa Avenue
Santa Rosa, CA 95401

Dear Councilmembers:

I am writing this letter on behalf of the National Rifle Association Members Council of Sonoma County, of which I am vice president. I have received a copy of the draft "Department Policy Regulating Firearms in Public Facilities" and cover memorandum sent by Chuck Rust, Director of Recreation and Parks to Kenneth R. Blackman, City Manager. This letter is a request for you to abandon this attempt at preventing gun shows from happening in city-owned facilities in the future. It is also a warning that you have made an irremediable mistake in the attempt – one that will almost certainly cause Santa Rosa to lose in court should you attempt to implement this policy. Don't you have better uses for Santa Rosa's money than wasting it losing such a suit?

Your draft policy § 3.1 claims, "Prohibiting the possession of firearms in Recreation and Parks Department facilities will promote the public health and safety by contributing to the reduction of gunshot fatalities and injuries in the City." What evidence do you have for this claim? How many fatalities and injuries have occurred in Santa Rosa because of guns purchased at gun shows in Santa Rosa? Because of guns purchased at gun shows elsewhere? Keep in mind that data from other states concerning gun show sales has no applicability to California, nor do incidents from before 1991, since California for the last eight years has prohibited transfers of nearly all firearms, except through licensed dealers, with a background check and a waiting period.¹ The existing state law is much more stringent on gun transfers than your proposed policy.

On the other side of the "public health and safety" equation, how many fatalities and injuries in Santa Rosa have been *prevented* because of guns purchased at gun shows? The most recent research on the subject indicates that there are hundreds of thousands to perhaps more than a million civilian defensive gun uses a year in the U.S. A survey taken specifically to demolish the Kleck and Gertz estimate of 2.45 million per year also produced an estimate of more than a million defensive gun uses per year.²

Policy § 3.1 also claims, "It is the general intent of this policy to provide guidelines to ensure the safety of our customers at events that are held in Recreation and Parks Department facilities." This is a much more narrowly focused concern than "fatalities and injuries in the City." How many gun

¹ Cal. Penal Code § 12076.

² Philip J. Cook and Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, (Washington: National Institute of Justice, 1997), 8-9.

injuries or deaths have taken place at gun shows? Keep in mind that nearly all gun shows require that weapons coming in must be checked to verify that they are unloaded, and loose ammunition is not allowed on the tables. Existing state law prohibits nearly all possession of loaded firearms in public in cities – and this provision would certainly apply to a gun show in a City-owned facility.³ Your claim of concern about “safety of our customers” is misguided, at best.

The reason that the City Council has asked for this draft policy is, according to the memorandum, “Council concern over the regulation of gun shows or sales in City facilities.” Here is where you have made a fatal mistake. *Nordyke v. Santa Clara County*, 110 F.3d 707 (9th Cir. 1997) found that gun shows are constitutionally protected commercial free speech. This is the reason that a number of county and city governments have passed regulations such as the one you propose – to get around the *Nordyke* decision, by prohibiting all firearms on city property. Your problem, should you decide to enact this regulation, is that the memorandum and newspaper coverage of your decision to pursue this policy clearly establishes that your goal is to sneak around the right of commercial free speech.

You may find it instructive to consider the U.S. Supreme Court decision *Wallace v. Jaffree*, 472 U.S. 38 (1985). In that case, the Supreme Court struck down an Alabama law that provided for a minute of silence at the beginning of each school day “for meditation or voluntary prayer.” Among the pieces of evidence considered by the trial court, and discussed by the U.S. Supreme Court, was the stated intent of the legislators “that the legislation was an ‘effort to return voluntary prayer’ to the public schools.”⁴ Not surprisingly, the Court used this as evidence that the law was an attempt at an end-run around the existing precedents that prohibit an establishment of religion.

We have a similar situation here. The *Nordyke* decision found that gun shows were a constitutionally protected form of commercial free speech. As the decision in *Nordyke* observed, quoting *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980):

For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

The *Nordyke* decision went on to strike down Santa Clara County’s ban on gun shows because the measure was more extensive than necessary to serve a legitimate governmental interest: “It curtails commercial speech, rather than attempting to impose by proper legislative acts such restrictions on the sale of guns at gun shows not otherwise provided by, but consistent with, the applicable federal and state law.” Your draft goes even further than curtailing commercial speech – it would prohibit some non-commercial free speech as well. Could a historian presenting a lecture in a City-owned facility on the history of firearms regulation in the United States include, as part of his presentation, an exhibit containing firearms of various periods? Clearly not. What about a hunter safety program, which does involve the use of unloaded firearms as teaching aids? Clearly not. (That there is a right to appeal to the City Council for permission doesn’t fix the problem – then it becomes an equal protection suit if you are at all selective or arbitrary as to which uses you allow.)

Finally, your willingness to take action to prohibit commercial free speech at gun shows while ignoring the firearms classified ads in the Santa Rosa *Press-Democrat* – effectively the same thing as a gun show, and with just as much potential for criminal transfers – might be used as evidence that the City Council is more concerned with suppressing particular forms of political advocacy (such as is

³ Cal. Penal Code § 12031.

⁴ *Wallace v. Jaffree*, 472 U.S. 38, 58 (1985).

common at gun shows) than with stopping unlawful gun sales. Are there any *Press-Democrat* news racks on City-owned property? Why is it okay for them to provide a forum for gun sales between potentially anonymous strangers, but not okay for a gun show? Of course, if you believe that there are illegal sales taking place at a gun show, it's quite efficient to send undercover police officers to the show, and arrest violators. It would be much more expensive to make the same effort with the daily *Press-Democrat* "gun show."

If you want to do something about violent crime and murder (as opposed to the much narrower concern about gunshot fatalities and injuries), there are actions that you could take. Directing the police chief to issue concealed weapon permits to all qualified applicants, regardless of race, sex, or economic status, would certainly be one area of improvement. (The policy of police chiefs in Sonoma County, the last time that I saw a printed copy of it, provided for issuance of concealed weapon permits to protect business assets – but self-defense was not a good enough reason.) The most complete research on this topic, done by Professor John R. Lott, Jr., of the University of Chicago, demonstrates that such widespread issuance of permits produces a small but statistically significant reduction in rates of murder, rape, robbery, and aggravated assault.⁵

We look forward to the City Council dropping this ill-considered proposal.

Very Truly Yours,

Clayton E. Cramer
Vice President, NRA Members Council of Sonoma County

⁵ John R. Lott, Jr. and David B. Mustard, "Crime, Deterrence, and Right-To-Carry Concealed Handguns", *Journal of Legal Studies* 26 [January 1997] 1-68.