

And the fear of prosecution will encourage those who miss the 48-hour window not to report the loss at all. In light of these liabilities, gun rights groups and the criminal defense bar have begun advising gun owners -- who would ordinarily be happy to assist law enforcement with their investigation -- that they need a lawyer if they are contacted by police. Under any of these circumstances gun owners should remain silent, get a lawyer and seek immunity before risking self-incrimination.

As the city documents and City Council meeting videos posted at www.calnra.com show, in 2006 the Sacramento Police Department discovered these ordinances are unused in the cities that have them. Police and district attorneys in Oakland, San Francisco, Berkeley and Alameda were completely unaware the ordinances existed, and reported that no investigations, arrests or convictions related to the ordinances had taken place. A San Francisco assistant district attorney said, "I do not believe it will expand my ability to prosecute crime."

Even Sacramento City Councilwoman Lauren Hammond conceded at the Dec. 5 City Council meeting when the ordinance was first considered that "... on top of an ordinance that sounds really good, it hasn't done anything.

"Although I do support the concept, we've had an opportunity to see what it's done in other jurisdictions, and it hasn't done a darned thing," she said. "I'm really in a quandary right now about why (we should) ask the city attorney to bother to write an ordinance that no one uses and has had no effect in the jurisdictions that have it."

Good question.

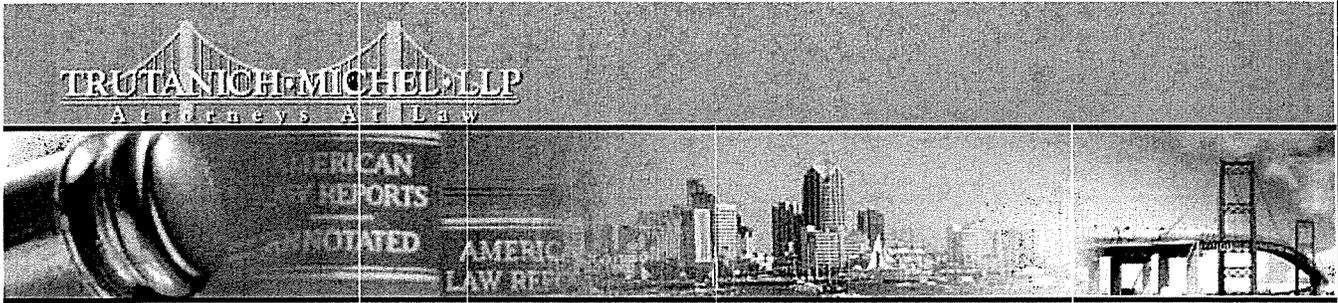
Regrettably, the City Council didn't bother to answer that question before passing the counterproductive ordinance.

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TMLAW4



C.D. MICHEL: City gun ordinance is worse than a waste of effort

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Sacramento recently passed an ordinance requiring gun owners to report the loss or theft of their firearms within 48 hours of when the owner knew or "should have known" the gun was missing.

Gun control advocacy groups, having learned from public relations professionals how to spin their anti-gun-owner proposals as benign, disingenuously claimed the proposed ordinance will prevent unlawful sales of firearms by "straw purchasers" who buy a gun legally, intending to resell it illegally on the black market.

These straw purchasers may falsely claim that a crime gun traced back to them was stolen or lost.

Gun owners typically report stolen firearms anyway. This law will only further victimize theft victims and impede criminal prosecutions.

Ironically, the ordinance cannot be used against the real bad guys. No law can compel lawbreakers to report themselves. So a straw purchaser who legally buys a gun cannot be compelled to report that he resold it illegally. And since it wasn't actually lost or stolen, he hasn't violated the ordinance.

Similarly, if a felon prohibited from possessing a gun illegally possesses one anyway, and it is lost or stolen, he cannot be prosecuted for failing to incriminate himself by reporting the loss.

Enforcement of these ordinances places prosecutors in a precarious legal and ethical position.

Say a straw purchaser's gun is recovered at a crime scene and traced back to him. If he lies to police claiming his gun was "stolen" when he really sold it on the black market, will we nonetheless prosecute him for something he did not do (fail to report the "stolen" gun -- which wasn't actually stolen) but to which he "confessed"?

Ethics and legality aside, securing a dubious misdemeanor conviction for failing to report a theft (that never occurred) likely prohibits prosecuting the straw purchaser for the more serious felony black market sale or for making a false statement to police.

Effectively, this ordinance places legitimate gun owners in jeopardy of prosecution for becoming a victim of a crime. If the gun owner failed to report the loss at all, or within 48 hours of when she "should have known" the gun was missing, she faces possible criminal prosecution if she cooperates with police investigating the gun recovered at a crime scene. Proponents and some prosecutors unrealistically contend that "responsible" gun owners "should know" a gun is gone instantaneously.



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