

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
JOSEPH A. SILVOSO, III
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
TIFFANY D. CHEUVRONT
MATTHEW D. CUBEIRO
ALEXANDER A. FRANK
JENNIFER F. HOOSHMAND
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

OF COUNSEL
SCOTT M. FRANKLIN
CLINT B. MONFORT
ERIC M. NAKASU
MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA



WRITER'S DIRECT CONTACT:
562-216-4444
MCUBEIRO@MICHELLAWYERS.COM

March 5, 2018

Supervisor Mike Wasserman
Supervisor Cindy Chavez
Supervisor Dave Cortese
Supervisor Ken Yeager
Supervisor Joe Simitian
SANTA CLARA COUNTY BOARD OF SUPERVISORS

Board of Supervisors' Chambers
70 West Hedding Street
San Jose, CA 95110
Email: BoardOperations@cob.sccgov.org
Via EMAIL and FAX: (408) 938-4525

Re: Board Referral Item Regarding Possession and Sale of Firearms

Honorable Board Members,

We write on behalf of our clients, the National Rifle Association of America ("NRA"), and the California Rifle & Pistol Association, Incorporated ("CRPA"), as well as the hundreds of thousands of their members in California, including their members residing in Santa Clara County. It is our understanding that the Santa Clara County Board of Supervisors will be discussing a referral item from Supervisor Yeager on Tuesday, March 6, regarding the possession and sale of firearms on County property.

NRA and CRPA understand the interest in combatting the criminal misuse of firearms and the prevention of accidental injuries. To that end, they have offered to make a number of programs available to the County upon request.¹ These include firearm safety training,² the Eddie Eagle GunSafe® Program,³ the National School Shield Program,⁴ and youth-specific programs designed to

¹ <https://explore.nra.org/interests/safety-and-education/>.

² <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

teach firearm safety and responsibility.⁵ Each of these programs are proven to reduce accidental gun deaths and promote public safety without restricting the rights of law-abiding citizens.

Our clients would like to take this opportunity to address Supervisor Yeager's referral item by providing the Board with information regarding California's restrictions on gun shows, as well as California's broader restrictions regarding the carrying and possession of firearms in public. Currently, these restrictions make it illegal to carry a firearm concealed or openly, loaded or unloaded, in any "public place" or on any "public street" in an incorporated city or prohibited area of unincorporated territory.⁶ Contrary to Supervisor Yeager's suggestion, such areas are *not* limited to public buildings and public meetings, rather *all* areas of Santa Clara County.

Further, firearm transfers are prohibited from taking place at gun shows absent very limited exceptions generally applicable to law enforcement.⁷ As a result, any ordinance prohibiting the sale or transfer of firearms at a gun show or on Santa Clara County property would be superfluous. Nevertheless, below we have summarized all of the requirements gun show promoters and vendors must abide by. We respectfully request the Board to consider these restrictions prior to taking any action.

I. GENERAL REQUIREMENTS FOR ALL GUN SHOW PRODUCERS AND VENDORS

All gun show producers must possess a valid certificate of eligibility issued by the California Department of Justice, and must:

- Certify that they are familiar with all California laws regarding gun shows;
- Possess a minimum of \$1,000,000 liability insurance;
- Provide an annual list of shows or events to be held to the California Department of Justice; and,

³ <https://eddieeagle.nra.org/>. The Eddie Eagle GunSafe® program is a gun accident prevention program that seeks to help parents, law enforcement, community groups and educators navigate a topic paramount to our children's safety, teaching children when they see a gun to "Stop! Don't touch! Leave the Area, and tell an adult."

⁴ <https://www.nationalschoolshield.org/>. The National School Shield program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy.

⁵ <http://youth.nra.org/>.

⁶ See Cal. Penal Code § 25400 (crime of carrying concealed firearm); Cal. Penal Code § 25850 (crime of carrying a loaded firearm); Cal. Penal Code § 26350 (crime of openly carrying an unloaded handgun); Cal. Penal Code § (crime of openly carrying an unloaded firearm that is not a handgun); Cal. Penal Code § 17030 (defining the term "prohibited area" as "any place where it is unlawful to discharge a weapon").

⁷ See Cal. Penal Code § 27310 (requiring all firearm transfers at gun shows to comply with state and federal law); Cal. Penal Code § 26805 (prohibiting the sale or transfer of a firearm by a licensed dealer at any location other than the dealer's premises as listed on their license, but allowing dealers to prepare documents at a gun show in preparation for sale at the dealer's premises); Cal. Penal Code § 27545 (requiring all firearm transactions to be processed through a licensed dealer when neither party is a licensed firearms dealer).

- Notify the California Department of Justice no later than 30 days prior to the gun show or event of any changes to the above.⁸

Producers must make available to law enforcement a complete and accurate list of all vendors that will participate in the show for the purpose of selling, leasing, or transferring firearms.⁹

Producers must prepare an annual event and security plan and schedule to the California Department of Justice and any local law enforcement agency. The plan must include:

- The type of show or event;
- The estimated number of vendors offering firearms for sale or display;
- The estimated number of attendees;
- The number of entrances and exits at the event;
- The location, dates, and times of the event;
- The contact person and telephone number for both the producer and the facility;
- The number of sworn peace officers employed by the producer or facility's manager who will be present at the event; and,
- The number of non-sworn security personnel employed by the producer of the facility's manager who will be present at the event.¹⁰

Producers must inform prospective vendors of all California laws regarding gun shows.¹¹

Producers must submit a list of all prospective vendors and designated firearm transfer agents who are licensed firearms dealers to the California Department of Justice no later than seven days prior to the event for the purpose of determining whether the vendors possess a valid license and are thus eligible to participate in the event.¹² If it is determined that a vendor does not possess a valid license, the California Department of Justice will notify the producer prior to the commencement of the event, who will then prohibit the vendor from participating in the event.¹³

If a licensed firearms dealer fails to cooperate with a producer, or fails to comply with all applicable California laws, that dealer will be prohibited from participating in the event.¹⁴

If a producer fails to inform all prospective vendors of California's laws, or fails to submit a list of all prospective vendors to the California Department of Justice, the event cannot commence.¹⁵

⁸ Cal. Penal Code § 27200.

⁹ Cal. Penal Code § 27205.

¹⁰ Cal. Penal Code § 27210.

¹¹ Cal. Penal Code § 27215.

¹² Cal. Penal Code § 27220.

¹³ *Id.*

¹⁴ Cal. Penal Code § 27225.

¹⁵ Cal. Penal Code § 27230.

All producers must have written contracts with each vendor selling firearms at the event.¹⁶

Producers must post signs in a readily visible location at each public entrance to the event that includes all of the following notices:

- “This gun show follows all federal, state, and local firearms and weapons laws, without exception.
- Any firearm carried onto the premises by any member of the public will be checked, cleared of any ammunition, and secured in a manner that prevents it from being operated, and an identification tag or sticker will be attached to the firearm before the person is allowed admittance to the show.
- No member of the public under the age of 18 years shall be admitted to the show unless accompanied by a parent, grandparent, or legal guardian.
- All firearms transfers between private parties at the show shall be conducted through a licensed dealer in accordance with applicable state and federal laws.
- Persons possessing firearms at this facility must have in their immediate possession government-issued photo identification, and display it upon the request to any security officer or any peace officer, as defined in Section 830.”¹⁷

Producers must also post signs in a readily visible location at each entrance to the parking lot at the event stating:

- “The transfer of firearms on the parking lot of this facility is a crime.”¹⁸

A willful failure of a producer to comply with any of California’s applicable laws is considered a misdemeanor punishable with a fine of up to \$2,000 and will render the producer ineligible for a gun show producer’s license for one year.¹⁹ Subsequent offenses are grounds for suspension of a producer’s certificate of eligibility.²⁰

A willful failure of a producer to post the required signs is considered a misdemeanor punishable with a fine of up to \$1,000 for the first offense, and up to \$2,000 for subsequent offenses.²¹ Subsequent offenses will render the producer ineligible for a gun show producer license for one year.²²

II. THE GUN SHOW ENFORCEMENT AND SECURITY ACT OF 2000

All gun show vendors must certify in writing to the show’s producer that they:

¹⁶ Cal. Penal Code § 27235.

¹⁷ Cal. Penal Code § 27240(a).

¹⁸ Cal. Penal Code § 27240(b).

¹⁹ Cal. Penal Code § 27245(a).

²⁰ Cal. Penal Code § 27245(c).

²¹ Cal. Penal Code § 27245(b).

²² *Id.*

- Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited;
- Acknowledge that they are responsible for knowing and complying with all applicable federal, state, and local laws dealing with the possession and transfer of firearms;
- Will not engage in activities that incite or encourage hate crimes;
- Will process all transfers of firearms through licensed firearms dealers as required by state law;
- Will verify that all firearms in their possession will be unloaded, and that the firearms will be secured in a manner that prevents them from being operated except for brief periods when the mechanical condition of the firearm is being demonstrated to a prospective buyer;
- Have provided all required information to the producer under Penal Code section 27320; and,
- Will not display or possess black powder, or offer it for sale.²³

All firearms transfers at gun shows must be processed in accordance with all applicable state and federal laws.²⁴

Ammunition may only be displayed in closed original factory boxes or other closed containers, with the only exception for showing the ammunition to a prospective buyer.²⁵

Before participating in an event, every vendor who intends to sell firearms must provide the producer with all of the following information relative to the vendor, the vendor's employees, and other persons, compensated or not, who will be working or otherwise providing services to the public at the vendor's display space:

- The person's complete name;
- The person's driver's license or state-issued identification card number; and,
- The person's date of birth.²⁶

The producer must keep all vendor information at the onsite headquarters of the event and regular place of business for two weeks after the conclusion of the event, and make available the information to any peace officer upon request.²⁷

All vendors and their employees must wear a name tag indicating their first and last name.²⁸

No person other than security personnel or law enforcement are allowed to possess both a firearm and ammunition for that firearm at the same time, with the exception of vendors who are selling both.²⁹

²³ Cal. Penal Code § 27305.

²⁴ Cal. Penal Code § 27310.

²⁵ Cal. Penal Code § 27315.

²⁶ Cal. Penal Code § 27320(a).

²⁷ Cal. Penal Code § 27320(b).

²⁸ Cal. Penal Code § 27325.

No member of the public under 18 years of age may enter the event or be permitted to remain unless accompanied by a parent or legal guardian.³⁰

Anyone other than security or law enforcement who brings a firearm into the event must have the firearm checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and have a tag or sticker attached to the firearm prior to being allowed admittance.³¹ The tag or sticker must state that all firearm transfers must be conducted through a licensed dealer in accordance with all applicable state and federal laws, and must also include the owner's signature, printed name, and identification number from the owner's government-issued identification.³²

Any person who possess a firearm at a gun show or event must have a government-issued photo identification in their immediate possession, and must display it upon request to any security personnel or peace officer.³³

Any unintentional first-time violations of the Gun Show Enforcement and Security Act of 2000 are considered infractions.³⁴ However, willful violations and subsequent offenses are considered misdemeanors.³⁵

III. CONCLUSION

To date, we are unaware of a single instance of violence or injury occurring at a gun show on Santa Clara County property. Considering the aforementioned restrictions, there is no "gun show loophole" in California because the transfer of a firearm is prohibited from occurring at a gun show. As a result, any argument that California gun shows are under-regulated lacks any factual support and is without merit. Should the Board have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

²⁹ Cal. Penal Code § 27330.

³⁰ Cal. Penal Code § 27335.

³¹ Cal. Penal Code § 27340. *See also Gun Show Safety and Security Responsibilities: ADDITIONAL REMINDER*, California Department of Justice, FIREARMS DIVISION, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/0402.pdf>? (May 26, 2004).

³² Cal. Penal Code § 27340.

³³ Cal. Penal Code § 27345.

³⁴ Cal. Penal Code § 27350.

³⁵ *Id.*