

CITY OF GLENDALE, CALIFORNIA  
REPORT TO THE:

Joint  City Council  Housing Authority  Successor Agency  Oversight Board

January 22, 2013

**AGENDA ITEM**

Report: Discussion of Gun Shows on City Property.

- 1) Motion Directing the Director of Community Services and Parks to Terminate for Convenience the Civic Auditorium Rental Agreements for Gun Shows.
- 2) Intro. Of Urgency Ordinance Enacting a Moratorium on the Possession or Sale of Firearms and Ammunition on City-Owned Property
- 3) Motion Directing the City Attorney to Conduct Further Research on Options for an Ordinance Prohibiting Possession and/or Sales of Firearms on City-Owned Property.

**COUNCIL ACTION**

Public Hearing  Ordinance  Consent Calendar  Action Item  Report Only

Approved for Jan. 22 calendar

**ADMINISTRATIVE ACTION**

Submitted by:  
Michael J. Garcia, City Attorney

Signature



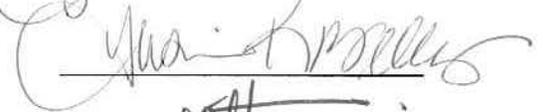
Prepared by:  
Michael Grant, Senior Assistant City Attorney

by 

Approved by:  
Scott Ochoa, City Manager



Reviewed by:  
Yasmin K. Beers, Assistant City Manager



Jess Duran, Director of Community Services and Parks



## **RECOMMENDATION**

---

This matter is for discussion and consideration of whether to continue renting the Civic Auditorium for gun shows, and whether to prohibit, temporarily or permanently, the possession and/or sales of firearms on city-owned property.

If the Council desires to prohibit firearm possession and/or sales on city-owned property by enacting an Ordinance, then the City Attorney recommends that the Council approve the second Motion, directing the City Attorney to conduct further research on the legal issues related to the Ordinance. The Council may enact an urgency ordinance temporarily banning firearm possession or sales on city-owned property while the City studies the legally available options.

## **BACKGROUND/ANALYSIS**

---

### **A. Gun Shows' History**

The gun shows started at the Civic Auditorium in 1992. Since then, approximately 70 gun shows have taken place at the Civic Auditorium, with three to four shows annually. In the last three years, the Civic Auditorium has generated approximately \$158,000 in revenue from the Glendale Gun Shows and expects an estimated \$57,000 in 2013.

Before 2005, Conrad La Grasta, a La Crescenta business owner and Eagle Rock resident, was the promoter of the gun shows. In 2005, Conrad La Grasta sold the show to Steve Friesen, a San Diego county resident and full time real estate agent. Mr. Friesen is the current promoter of the Glendale Gun Show. He is a licensed California Gun Show promoter and he has a certificate of eligibility through the California Department of Justice. According to Mr. Friesen, he operates the show with his father as a small family business.

Mr. Friesen states that the Glendale Gun Show "is more of a gun and accessories show." Although Parks staff contacted Mr. Friesen to find out exactly what types of guns and ammunition are at the show, he said that the show's merchandise ranges from Civil War antiques and collectibles to "modern firearms."

Besides the sale of guns and ammunition, the show has vendor booths with memorabilia; flash lights; collectors coins; sporting goods and clothing; a display booth by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and a California State military reserve display booth.

Persons who purchase a gun at the show do not pick up the guns until 10 days after the purchase date. Once the background check is cleared and the purchase is approved, the firearms are picked up at a designated gun store, as this procedure is a requirement of State law. All other merchandise is paid for and carried out of the gun show on the day of the purchase.

Staff estimates about 1,500 people attend the gun show daily at the Civic Auditorium. To Parks department staff's knowledge, no major incidents have been reported during the show.

### **B. Legal Considerations**

#### **Current Court Decisions:**

On February 28, 2006, City Attorney Scott H. Howard presented to the Council a report that discussed the option of introducing an ordinance prohibiting the possession or sale of firearms and ammunition on city property. The report contained a legal analysis, stating that "an ordinance which prohibits possession or sale of a firearm or ammunition on public property is constitutional, that such ordinances are not

preempted by state law, that a Second Amendment challenge (right to bear arms) does not provide protection for an individual's right to bear arms (*Hickman v. Block* 81 F.3d 98 (9<sup>th</sup> Cir.1996) and that exchanging money for sale of a gun is not 'speech'."

Since the 2006 Council report, new federal court decisions have appeared. Those court decisions have overturned *Hickman v. Block*, the Second Amendment case cited in the 2006 Council report. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court held that the Second Amendment in fact does protect an individual's right to keep and bear arms, especially in the home. The Supreme Court addressed the constitutionality of a Washington D.C. law (federal law) that completely banned handguns within Washington D.C.'s limits. The Court determined that the law was unconstitutional under the Second Amendment because it impermissibly targeted handgun possession in the home. The significance of that decision, and of other ones that have followed, is that while the courts used to uphold federal, state, and local laws regulating handgun possession against a Second Amendment challenge, those laws are now subject to closer Second Amendment scrutiny by the courts.

The 2006 Council report also mentioned the lawsuit against Alameda County, entitled, *Nordyke v. King*. In 1999, Alameda County had enacted an ordinance that prohibited bringing onto its property, or possessing on its property, firearms, whether loaded or unloaded. The effect of the county ordinance was to ban gun shows previously held on county fairgrounds.

After Alameda County had enacted that ordinance, the *Nordyke* lawsuit resulted in 6 decisions over 13 years by the U.S. Court of Appeals for the 9<sup>th</sup> Circuit. In June, 2012, the case finally ended and it was dismissed, after the County reversed its position and told the 9<sup>th</sup> Circuit that gun shows were allowed on its fairgrounds, as long as the gun show promoter complied with certain safety requirements for the display of firearms. However, the final court decision in *Nordyke v. King*, 681 F.3d 1041 (2012) (*Nordyke VI*) leaves open the question of what type of test (legal scrutiny) the courts will apply to a local law regulating gun possession on publicly-owned property when that law is challenged under the Second Amendment. Whether the government can ban gun possession, or sales, or both, on its property is now open to some legal debate.

#### Parks' Rental Agreements with Gun Show Operator:

On June 5, 2012, Mr. Friesen signed the City's facility rental agreement ("Facility Permit") to use the Civic Auditorium for his gun show, scheduled for March 1, 2013. Paragraph 46 of the agreement contains a "termination for convenience" clause that allows the City to terminate the facility rental, regardless of the reason or the cause, by giving him 30 days advance written notice. The notice becomes effective upon the City's mailing it with first class postage. After exercising the option, the City returns the funds that the gun show operator deposited for rental of the Civic Auditorium.

Termination for convenience clauses, first appearing at the end of the Civil War, have been routinely used in government agreements (as well as in contracts between private parties), and have been upheld by the courts. The clause enables a party to end an agreement without violating its other terms.

By signing the agreement and by not crossing out this provision, the gun show operator fully accepted the terms and conditions of the rental agreement, including the City's right to unilaterally terminate the agreement 30 days before his scheduled gun show. The City may do so, on or before January 29, without violating or breaching the agreement.

Since 2005, he has signed, without objection, the same or similar agreements with the termination for convenience clause. For upcoming gun shows in 2013 and 2014, he has signed the same agreement which contains the clause and allows the City to terminate the agreement 30 days before his gun show.

## **FISCAL IMPACT**

---

Possible loss of revenue at the Civic Auditorium from the gun shows. The loss from this year's show would total \$57,000.00 (See Exhibit 1: Gun Show Revenue At Civic Auditorium). Revenue loss from the 2014 show would be similar or in the range of past shows reflected in Exhibit 1. Some of the losses could be offset through fees for other users renting the facility.

## **ALTERNATIVES**

---

- Alternative 1: The Council may consider whether to direct staff to terminate the rental agreement with the owner of the existing gun show for use of the Civic Auditorium.
- Alternative 2: The Council may introduce and adopt an ordinance temporarily prohibiting the possession or sale of firearms and ammunition at City-owned property while the staff analyzes permanent options relative to the possession or sale of firearms and ammunition at City-owned property.
- Alternative 3: The City Council may direct staff to conduct further research on options for an Ordinance Prohibiting Possession and/or Sales of Firearms on City-Owned Property.
- Alternative 4: The City Council may direct staff to rent the Civic Auditorium for one or more of this year's gun shows, but to stop renting the facility after any other show this year.
- Alternative 5: The City Council may consider a combination of the above options or any other alternative not proposed by staff.

## **CAMPAIGN DISCLOSURE**

---

Not applicable.

## **EXHIBITS**

---

Exhibit 1: Gun Show Revenue History At Civic Auditorium.

**MOTION**

Moved by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, that the Council of the City of Glendale hereby directs the Director of Community Services and Parks to exercise the City's option in the Civic Auditorium rental agreements ("Facility Permits") of terminating for convenience (under paragraph No. 46) the Facility Permits with Mr. Steve Friesen for the Gun Shows scheduled this year and following years.

Vote as Follows:

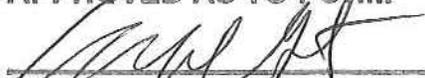
Ayes:

Noes:

Absent:

Abstain:

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Senior Assistant City Attorney

Date: 1-17-13

8 C 1



1 I. The United States Department of Justice, Bureau of Justice Statistics, under the category  
2 of Firearms and Crime Statistics, reports that in 2003, 449,150 victims of violent crimes stated that they  
3 faced an offender with a firearm and that 67 percent of the 16,503 murders in 2003 were committed with  
4 firearms; and

5 J. The toll taken on society by firearm violence is enormous, especially when it results from  
6 the improper acquisition and use of firearms. The availability of illegally obtained firearms is  
7 widespread, not only locally but across the country; and

8 K. The City Council has authority over the management and control of City property, and it  
9 may regulate, by ordinance, the manner in which the property of the City is accessed and used by  
10 members of the public; and

11 L. Prohibiting the possession or sale of firearms, or ammunition, or both, on City and  
12 property will:

- 13 1. Promote the public health and safety by contributing to the reduction in the  
14 presence of firearms and the potential for gunshot fatalities and injuries in the  
15 City; and
- 16 2. Increase the confidence of members of the public that they are not at risk of injury  
17 from firearms when they seek to use the property and facilities of the City. In  
18 particular, this Council finds that an enormous number of the general public uses  
19 the parks, playgrounds, buildings, and facilities of Glendale; and
- 20 3. Help to ensure the safety of the general public and specifically children who are  
21 among the most vulnerable in our society; and

22 M. The California Supreme Court has ruled that State law does not preempt local laws banning  
23 the possession and sale of firearms and ammunition on local government's property. In Nordyke v. King  
24 (2002) 27 Cal.4th 875, the Supreme Court upheld an Alameda County ordinance banning the possession  
25 of firearms and ammunition on county owned property and in Great Western Shows, Inc. v. County of Los  
26 Angeles (2002) 27 Cal.4th 853, the Supreme Court upheld a Los Angeles County ordinance prohibiting all  
27 sales of firearms and ammunition on county property. These rulings uphold the City Council's legal  
28 ability to ban the possession and sale of firearms and ammunition on City property; and

1 N. From March 1, 2013 to March 3, 2013, one or more persons possessing or carrying a  
2 firearm, or ammunition, or both, are scheduled to enter and remain on City property, at the Civic  
3 Auditorium, for a gun show in which firearms and ammunition, among other items, will be offered for  
4 sale; and

5 O. Because the possession or sale of firearms and ammunition is scheduled to occur on City  
6 property in a matter of days, the City Council finds and determines that a moratorium must be put in place  
7 immediately as a means of temporarily regulating the activity, in order for the immediate protection of the  
8 public peace, health, welfare, or safety. A temporary moratorium:

- 9 1. Will provide the City with time to study, draft, and adopt regulations, including,  
10 but not limited to: a prohibition on the possession, or sale, or both, of firearms  
11 and ammunition on city property that is consistent with state and federal laws and  
12 court decisions; and
- 13 2. Will enable the City to consider pending litigation in other jurisdictions  
14 concerning laws prohibiting the sale or possession of firearms and ammunition on  
15 government property; and
- 16 3. Does not burden the rights of persons to keep and bear arms, as it is temporary  
17 and does not otherwise prevent persons from purchasing firearms at retail outlets  
18 in the City and throughout the region.

19  
20 **SECTION 2. Legislative Intent.**

21 With the adoption of this interim urgency Ordinance, the City Council seeks to ensure that its  
22 property, buildings, and facilities are used in a manner consistent with promoting the health, safety, and  
23 welfare of all of its residents.

24 ///

25 ///

26 ///

27 ///

28 ///

1           **SECTION 3.     Definitions.**

2           For the purpose of this Ordinance, the following terms are defined as follows:

3           “Ammunition” means any ammunition as defined in Penal Code Section 12316(b)(2).

4           “City Property”:

5           1.       Means real property, including any buildings thereon, owned, leased, or subleased by the  
6                   City of Glendale (“City”) and in the City’s possession— or in the possession of a public  
7                   or private entity, corporation, or person under contract with the City to perform a public  
8                   purpose— including, but not limited to, the following property: parks, playgrounds,  
9                   plazas, community centers, facilities (including the Glendale Civic Auditorium, the  
10                  City’s Civic Center Complex, and City libraries), parking lots, and parking structures.

11          2.       Does not include:

12           a.       A “local public building” as defined in Penal Code Section 171b(c), where the  
13                   state regulates possession of firearms under Penal Code Section 171b.

14           b.       The public right-of-way owned by the City, including any area across, along, on,  
15                   over, upon, and within the dedicated public alleys, boulevards, courts, lanes,  
16                   roads, sidewalks, streets, and ways within the City or any property owned by the  
17                   City that is outside the territorial limits of the City.

18          “Firearm”:

19           a.       Means any gun, pistol, revolver, rifle, or any device, designed or modified to be  
20                   used as a weapon, from which is expelled through a barrel a projectile by the  
21                   force of an explosion or other form of combustion.

22           b.       Does not include imitation firearms or BB guns and air rifles as defined in  
23                   Government Code Section 53071.5.

24          “Sale” or “sell”:

25           a.       Means any transaction, with or without the exchange of consideration, which  
26                   transfers ownership, title, possession, or control of a firearm, or gives, loans,  
27                   leases, or delivers a firearm.

28           b.       Includes the act of placing an order for any of the aforementioned transfers.

1           **SECTION 4.     Moratorium—Prohibited Acts.**

2           No person shall:

3           A.     Bring onto or possess on City property:

- 4                     1.     A firearm, loaded or unloaded.  
5                     2.     Ammunition for a firearm.

6           B.     Sell on City property:

- 7                     1.     A firearm, loaded or unloaded.  
8                     2.     Ammunition for a firearm.

9  
10           **SECTION 5.     Exceptions—Ban on Possession.**

11           Section 4 of this Ordinance does not apply to the following:

12           A.     A peace officer, retired peace officer, or person assisting a peace officer when authorized  
13 to carry a concealed weapon under Penal Code Section 12027(a), or a loaded firearm under Penal Code  
14 Section 12031(b)(1) and under 18 U.S.C. § 926B or § 926C.

15           B.     A member of the armed forces when on duty, or other organizations when authorized to  
16 carry a concealed weapon under Penal Code Section 12027(c), or a loaded firearm under Penal Code  
17 Section 12031(b)(4).

18           C.     A military or civil organization carrying unloaded weapons while parading or when going  
19 to and from its organizational meetings, when authorized to carry a concealed weapon under Penal Code  
20 Section 12027(d).

21           D.     A guard or messenger of a common carrier, bank, or financial institution, when  
22 authorized to carry a concealed weapon under Penal Code Section 12027(e).

23           E.     An armored vehicle guard, when authorized to carry a loaded weapon under Penal Code  
24 Section 12031(b)(7).

25           F.     A person who is at a target range.

26           G.     An honorably retired Federal officer or agent of a Federal law enforcement agency, when  
27 authorized to carry a concealed weapon under Penal Code Section 12027(i), or a loaded weapon under  
28 Penal Code Section 12031(b)(8).

1 H. A patrol special police officer, animal control officer or zookeeper, or harbor police  
2 officer, when authorized to carry a loaded firearm under Penal Code Section 12031(c).

3 I. A security officer appointed by a sheriff or police chief for the protection of government  
4 property under Penal Code Section 831.4.

5 J. An officer authorized to transport prisoners under Penal Code Section 831.6.

6 K. A guard or messenger of a common carrier, bank or other financial institution; a guard of  
7 a contract carrier operating an armored vehicle; a licensed private investigator, a patrol operator or alarm  
8 company operator; a uniformed security guard or night watch person employed by a public agency; a  
9 uniformed security guard or uniformed alarm agent; a uniformed employee of private patrol operator or  
10 a private investigator, when any of these persons are authorized to carry a loaded firearm under Penal  
11 Code Section 12031(d).

12 L. A public administrator in the distribution of a private estate or to the sale of a firearm by  
13 the public administrator's auctioneer to fulfill an obligation under State law.

14 M. Any authorized participant in a motion picture, television, film or video production, or  
15 musical or theatrical production when the participant lawfully uses a firearm as part of that production.

16  
17 **SECTION 6. Exceptions—Ban on Sale.**

18 Section 4 of this Ordinance does not apply to the following:

19 A. Purchase or sale of a firearm or ammunition for a firearm by a Federal, State, or local law  
20 enforcement agency or by any other Federal, State or local governmental entity.

21 B. A public administrator in the distribution of a private estate or to the sale of a firearm by  
22 the public administrator's auctioneer to fulfill an obligation under State law.

23 C. Sale of ammunition at a target range for use at the target range.

24  
25 **SECTION 7. Penalty for Violation.**

26 A violation of this Ordinance is a misdemeanor punishable under Section 1.20.010(A) of the  
27 Glendale Municipal Code.

28 ///

1           **SECTION 8.     Duration of Moratorium.**

2           This Moratorium is imposed for a period of forty-five (45) days from the date of its adoption,  
3 except to the extent that it is further extended or further modified in the manner authorized by State law  
4 and the Glendale Municipal Code and the City's Charter.

5  
6           **SECTION 9.     Compliance with California Environmental Quality Act.**

7           The adoption of this interim measure is exempt from the California Environmental Quality Act  
8 (“CEQA”) because an environmental review is not required under Section 15060(c)(2) [the activity will  
9 not result in a direct or reasonably foreseeable indirect physical change in the environment]; Section  
10 15060(c)(3) [the activity is not a project as defined in Section 15378]; and Section 15061(b)(3)[no  
11 possibility exists that the activity in question may have a significant effect on the environment] of the  
12 CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.

13  
14           **SECTION 10.   Report.**

15           The City Attorney is directed to prepare and submit for the City Council’s consideration, at least  
16 ten (10) days before this Ordinance’s expiration, or any extension of it, a written report describing the  
17 measures taken to alleviate the conditions that led to this Ordinance’s adoption.

18  
19           **SECTION 11.   Certification.**

20           The City Clerk shall certify this Ordinance’s adoption and cause it to be published in the  
21 Glendale NewsPress consistent with the requirements of applicable State and local law.

22  
23           **SECTION 12.   Severability.**

24           This Ordinance’s provisions are severable. If any portion of this Ordinance or its application to  
25 any person or circumstance is held invalid or unconstitutional, that decision does not affect the validity  
26 of the Ordinance’s remaining portions and the Ordinance’s application to other persons and  
27 circumstances. The City Council declares that it would have passed the remainder of this Ordinance  
28 without the invalid or unconstitutional provision.

1 Adopted by the Council of the City of Glendale on the \_\_\_\_\_ day of \_\_\_\_\_  
2 2013.

3  
4 \_\_\_\_\_  
5 Mayor

6 ATTEST:

7 \_\_\_\_\_  
8 City Clerk

9 STATE OF CALIFORNIA )  
10 ) SS.  
11 COUNTY OF LOS ANGELES )

12 I, Ardashes Kassakhian, City Clerk of the City of Glendale, hereby certify that the foregoing  
13 Ordinance was adopted by the Council of the City of Glendale, California, at a regular meeting held on  
14 the \_\_\_\_\_ day of \_\_\_\_\_, 2013, and that the same was adopted by the following vote:

15 Ayes:

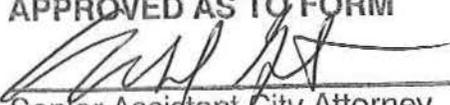
16 Noes:

17 Absent:

18 Abstain:

19 \_\_\_\_\_  
20 City Clerk

21  
22  
23  
24  
25 **APPROVED AS TO FORM**

26   
27 Senior Assistant City Attorney

28 Date: 1-18-13

**MOTION**

Moved by Council Member \_\_\_\_\_, seconded by  
Council Member \_\_\_\_\_, that the Council of the City of  
Glendale hereby directs the City Attorney to conduct further research on options for an ordinance  
prohibiting possession and/or sales of firearms on City-owned property.

Vote as Follows:

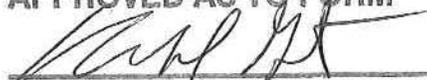
Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM



Senior Assistant City Attorney

Date: 1-17-13

8 C 3

EXHIBIT 1

**Gun Show Revenue History At Civic Auditorium**

❖ 2013	Scheduled three (3) events
Facilities:	Civic Auditorium, Upper & Lower Levels
Move-in:	Friday
Event Dates:	Saturday & Sunday
March 2 & 3	\$19,000.00 (estimated revenue)
August 10 & 11	\$19,000.00 (estimated revenue)
November 23 & 24	\$19,000.00 (estimated revenue)
<b>Total Revenue:</b>	<b>\$57,000.00</b>
❖ 2012	Three (3) events
Facilities:	Civic Auditorium, Upper & Lower Levels
Move-in:	Friday
Event Dates:	Saturday & Sunday
March 3 & 4	\$18,557.00
August 11 & 12	\$18,100.00
November 17 & 18	\$18,171.00
<b>Total Revenue:</b>	<b>\$54,828.00</b>
❖ 2011	Three (3) events
Facilities:	Civic Auditorium, Upper & Lower Levels
Move-in:	Friday
Event Dates:	Saturday & Sunday
March 5 & 6	\$17,721.00
August 13 & 14	\$19,911.00
November 19 & 20	\$17,931.00
<b>Total Revenue:</b>	<b>\$55,563.00</b>
❖ 2010	Three (3) events
Facilities:	Civic Auditorium, Upper & Lower Levels
Move-in:	Friday
Event Dates:	Saturday & Sunday
March 6 & 7	\$16,100.00
August 14 & 15	\$15,200.00
November 20 & 21	\$15,320.00
<b>Total Revenue:</b>	<b>\$46,620.00</b>