Taking Aim at Gun Dealers:

Contra Costa's Public Health Approach to Reducing Firearms in the Community

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Acknowledgements

This paper was prepared by PACT (Policy, Action, Collaboration and Training) for Violence Prevention, a Contra Costa County community coalition based in the West County communities of Richmond, North Richmond and San Pablo. The coalition, in partnership with the Contra Costa Health Services Department, conducts leadership training for African American, Laotian and Latino youth; researches and analyzes local intentional injury data; develops policies for regulating local firearms dealers; and coordinates multi-cultural forums and events. PACT receives funding from the U.S. Department of Health and Human Services' Office of Maternal and Child Health and Office of Minority Health. Additional support is provided by the Contra Costa County Health Services Department.

In 1994, the Contra Costa Health Services Prevention Program assisted the county Board of Supervisors in developing a countywide Action Plan for Violence Prevention which was placed before the voters. The plan was approved by 78.8 percent of voters, paving the way for the implementation of 25 recommendations including the establishment of a countywide task force appointed by the Board of Supervisors.

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In 1992, there were nearly twice as many firearm injury deaths as motor vehicle injury deaths in Contra Costa County. In addition to the human suffering, treating firearm injuries strains the resources of trauma centers and emergency rooms, and burdens the entire health care system.

Recent research suggests a significant connection between the availability of guns and rates of firearm injury. Firearm availability is directly related to the number of gun dealers in a community and the laws governing their activities. Reducing the number of dealers is one type of action endorsed by 78.8 percent of Contra Costa voters who, in November 1994, passed Measure C advocating the adoption of a Countywide Action Plan for Violence Prevention.

Federal law requires gun dealers to obtain a Federal Firearms License (FFL) from the Bureau of Alcohol, Tobacco and Firearms (ATF). According to the ATF, as of December 1994, there were 700 FFL holders in Contra Costa. California law requires that gun dealers in the state have a valid FFL, a local business license, a seller’s permit from the State Board of Equalization and a Certificate of Eligibility (COE) from the state Department of Justice. A COE is important because it requires gun dealers to make state-mandated background checks on prospective buyers during a 15-day waiting period.

According to a survey conducted by the Contra Costa County Health Services Department, of the county’s 700 gun dealers, only 238 had COEs. Furthermore, 573 gun dealers operated in residentially-zoned areas and 509 did not have local business licenses.

After discovering that a large number of gun dealers were out of compliance with state and local laws, and were operating in residential areas, Contra Costa lawmakers and community organizations became concerned about what could be done to regulate access to firearms and ammunition in their communities. California is one of 41 states with pre-emption laws which prohibit local jurisdictions from passing ordinances on gun sales and distribution that are stricter than state laws. However, despite California’s pre-emption laws, local zoning and business regulation of firearms dealers is permitted.

Communities seeking to regulate the gun dealers in their areas, therefore, are able to pursue the adoption of zoning, business permit, and conditional-use ordinances. These various forms of regulation may be used to bar gun dealers from operating in residential zones, require dealers to obtain local permits, and impose safety and security standards on gun dealers as a condition of doing business. Communities can also pass resolutions asking state legislators to rescind pre-emption laws or calling for a comprehensive, national gun policy.

As of publication, March 1995, five cities in Contra Costa had adopted ordinances regulating the operation and location of gun dealers under their jurisdiction. In addition to the municipalities (Antioch, Lafayette, Pinole, Richmond and San Pablo) that have passed ordinances, the county Board of Supervisors is currently developing an ordinance that will regulate dealers throughout the unincorporated regions of the county.

The development of meaningful policies restricting gun dealers sends a signal to state and federal legislators that the people of Contra Costa County want greater control over firearms sales in their community, and that they are willing to enact meaningful restrictions at the local level despite the existence of state pre-emption laws.
Reducing the Number of Dealers

Alarmed by rising levels of violence in the community, the Contra Costa Health Department collected and analyzed data which revealed that firearms were the primary source of injury death in the county. Responding to data and community concern, the PACT for Violence Prevention Coalition began to focus more on the problem of firearms. PACT, working closely with the Health Department's Prevention Program, determined that the regulation of gun dealers was a significant component of a multifaceted effort to decrease firearm injuries and death.

Since the summer of 1994, PACT and the Prevention Program have worked with local jurisdictions in the county to increase government regulation of gun dealers. A major contribution to the development of local ordinances was a survey of Contra Costa's gun dealers conducted by PACT in June 1994 and January 1995.

While data from the survey tends to bolster the need for stricter regulation and enforcement, local governments are currently prohibited by state pre-emption laws from passing gun-related legislation that is stronger than the state's. This paper incorporates findings from that survey with recommended local policy options that are not precluded by state pre-emption laws.

The survey assesses the level of gun dealer compliance with state law, reveals how many dealers operate in residentially zoned areas, and reports on the number of dealers operating without business licenses. Information compiled in this paper can be helpful to communities seeking to regulate the circulation of firearms in their areas.

To assess compliance, health department staff first investigated existing laws. This section examines Federal Firearm Licenses (FFLs), which all U.S. firearms dealers must possess, and California Penal Code 12071, which regulates firearms dealers in the state.

Existing Federal and State Firearms Dealer Laws

I. Federal Firearms Licenses

To obtain a Federal Firearms License from the Bureau of Alcohol, Tobacco and Firearms (ATF), an applicant must complete a two-page form. The applicant indicates which of seven types of federal firearms licenses he or she wishes to obtain and identifies any local zoning prohibitions or permit requirements. The applicant also certifies that he or she is not a felon or ex-felon, fugitive, drug addict, undocumented immigrant, under 21 years of age, mentally ill, or dishonorably discharged from the military—any of which automatically disqualifies the applicant. The ATF readily acknowledges that it is understaffed and relies upon the good faith of applicants to certify themselves; no proof is required.

Figure 2: The Spectrum of Prevention

Influencing Policy and Legislation
Changing Organizational Practices
Fostering Coalitions and Networks
Educating Providers
Promoting Community Education
Strengthening Individual Knowledge and Skills

The ATF currently has 240 inspectors assigned to process applications and monitor more than 197,532 FFL holders nationwide; in California, the ATF has a staff of 40-45 inspectors who are responsible for more than 16,000 California FFL holders (Bureau of Alcohol, Tobacco and Firearms, 1994).

II. California Gun Dealer Law

California Penal Code 12071 states that to be in compliance with state law, a California gun dealer must possess:

1. A valid Federal Firearms License.
2. Any regulatory or business license, or licenses, required by local government. Usually valid for one year, these licenses must state “Valid for Retail Sales of Firearms.” The license must be signed by the local authority, or may be substituted by a letter from the local authority stating that “no
The issue of non-compliance is often cited at public hearings as one of the primary reasons that localities need to begin developing and enforcing restrictions on dealers. (See Appendix A for a table of figures detailing the status of compliance of gun dealers with state law, for each Contra Costa County city and the unincorporated areas.)

Contra Costa Gun Dealers Located in Residential Areas or Operating Without Business Licenses

After checking the ATF lists against the state COE lists, the ATF lists were sent to the planning and business license departments of each municipality. Planning departments were asked to identify which addresses were located in residentially-zoned areas. The business license departments were asked to identify which of the addressers had licenses to operate a firearms business at the listed address.

The survey ascertained that 82 percent of gun dealers in the county operated in residentially-zoned areas and 73 percent did not possess the required business licenses (see Appendix A). The high number of dealers who have not paid for business licenses represents a significant loss of revenue to local governments.

Using the addresses supplied by gun dealers in their FFL applications, this survey also developed maps of Contra Costa County cities and unincorporated areas showing the location of local gun dealers and their proximity to the schools in each area (for an example, see Appendices B and C).

Local Jurisdictions Consider Policy Options

In Contra Costa County, public officials and concerned residents sought public policy avenues that would allow them to regulate availability and access to firearms and ammunition in their communities. This impetus led to an examination of two key legal issues, the Second Amendment of the U.S. Constitution and state pre-emption.

In United States jurisprudential history, the Cruikshank (1876) and the Presser (1886) decisions established that the language of the Second Amendment defines the limitations of the federal government in restricting a state’s rights to maintain a “well regulated militia.” As a result of the National Guard Act of 1902, all state militias were formalized under the authority of the National Guard in each state.

The Miller (1939) decision confirmed that the Second Amendment does not guarantee an individual the right to bear arms, but only a collective right through a reasonable relationship to a state militia. The case of Quilici v. Morton Grove (1982) established that the Second Amendment permits the passage of firearms restrictions by local communities, as long as they are not prohibited by the state from doing so.

In response to the Quilici v. Morton Grove decision, the National Rifle Association (NRA) promoted a policy initiative of its own: state preemption laws. The efforts of NRA lobbyists resulted in the adoption of state pre-emption in California and 40 other states. California’s firearms pre-emption laws prohibit local jurisdictions, i.e. cities and counties, from imposing laws or regulations regarding possession, sale, manufacture, or distribution of firearms that are stricter than state laws.

In exploring what can be done at the local level, a number of municipalities have successfully adopted zoning and business license ordinances to restrict where and how firearms dealers can operate. Some examples of the types of requirements set forth in local legislation include: fees to recover business license processing costs, requirements for liability insurance, limitations on the operation’s proximity to sensitive areas, banning operation in residential neighborhoods, issuance of special gun dealer permits from the police, and safe storage and firearm safety training requirements.

Some local initiatives have been designed with the intent of ultimately limiting the number of gun dealers in communities. In Oakland, such restrictions resulted in a reduction from 117 to 8 dealers. In the San Francisco Bay Area, such ordinances have been pursued and adopted through the persistence of individual elected representatives, community coalitions, and, more recently, health department staff. To date, none of the ordinances has encountered any significant legal opposition.

Local Jurisdiction Powers: Specific Strategies

As stated above, local jurisdictions can regulate gun dealers through their local zoning and business licensing authorities. The following is a list of local regulations that have been adopted or are being considered by a number of Contra Costa cities. Additionally, of course, local jurisdictions are at liberty to pass advisory resolutions directed at state and federal lawmakers.
B. Pass a resolution requesting the state legislature to permit local jurisdictions to collect ammunition surcharges.

On November 8, 1994, Contra Costa voters approved an advisory measure calling on the state legislature to impose a state surcharge on ammunition and gun sales. The measure passed with 70 percent of the vote.

Revenues from such surcharges could be used to support violence prevention and domestic violence prevention programs. The surcharges could also reduce the amount of ammunition that individuals might purchase.

III. Additional Local Ordinance Options

A. Pass a firearms discharge ordinance.

This type of ordinance could include language that holds parents responsible if their children discharge firearms, bans discharge of firearms in public places, and increases penalties for the discharge of firearms in places where children are likely to be present. Additionally, any firearm discharged in violation of the ordinance could be declared a nuisance, thereby compelling the surrender and destruction of the firearm.

B. Pass an ordinance banning or regulating gun shows in the area.

Restricting or banning public gun shows would utilize the same process as passing zoning, business and conditional-use ordinances that currently regulate gun dealers.

IV. Additional Resolution Options

A. Pass a resolution calling for the state legislature to change the penalty for carrying a loaded, concealed firearm without a permit from misdemeanor to felony.

B. Pass a resolution asking the state legislature to increase government regulation on the manufacture and sale of Saturday Night Specials.

C. Pass a resolution calling for the development and implementation of a comprehensive national gun policy.

Organizations such as the Violence Policy Center and Handgun Control, Inc. have proposed national gun policies. Based on their proposals, a comprehensive national gun policy could include

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Model Gun Dealer Ordinances

For most Contra Costa communities, strengthening local gun dealer regulations involves adopting a set of ordinances that include some combination of the following:

I. Amend existing zoning ordinances, by:

A. Prohibiting gun dealers from locating within \( x \) number of feet of a residentially-zoned district,

B. Prohibiting gun dealers from locating within \( x \) number of feet of a school or daycare center, public park or playground, or other recreational area where children are likely to gather and,

C. Prohibiting gun dealers from locating within \( x \) number of feet of another gun dealer, a place that sells or serves alcohol, or a place of worship.

II. Amend existing conditional-use permit ordinances, by requiring that gun dealers:

A. Be at least 21 years old,

B. Operate in compliance with federal, state and local laws,

C. Have no prior criminal convictions, especially of violence-related or firearm-related crimes,

D. Have an adequate security system for business premises,

E. Have adequate lighting inside and outside business premises,

F. Have safe and secure storage for firearms,

G. Maintain at least $1 million liability insurance,

H. Sell a trigger lock with each handgun,

I. Sell ammunition only for the type of weapon sold,

J. Sell no exploding or expanding bullets,

K. Sell no clips that hold more than 6 bullets.

III. Establish a gun dealer permit, that requires:

A. Gun dealer to be in compliance with local ordinances.

B. Permits to be issued by the Chief of Police of that particular jurisdiction.

C. A permit fee that would help defray the cost of enforcement, including paying for the time of the Fire Department, Police Department, Building Inspectors, etc.

*Among Bay Area communities that have enacted zoning regulations, this number ranges from 250 to 1500 feet.

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the following:

1. Restrictions on Gun Possession. These include a waiting period of at least seven days for firearms buyers, background and fingerprint checks and safety training for license applicants, registration
when appropriate (such as when products present an unreasonable risk of death or injury, and no feasible safety standard would adequately reduce the risk). ATF would be empowered under such agency status with the authority to stop the sale and distribution of firearms or firearm products found to be "imminent hazards."

Conclusions and Recommendations

In Contra Costa County there is a high degree of non-compliance with state and local gun laws. The fact that there are 462 gun dealers who are unknown to the state, and therefore not reporting sales to the state, indicates a great potential for illegal sales in the county. The high percentage of FFL licensees not possessing business permits, as the survey of Contra Costa County gun dealers reveals, indicates another potential source of criminal gun sales.

Like most counties and cities in the state, in the past Contra Costa law enforcement has placed a low priority on policing FFL licensees and their widespread failure to comply with firearms laws. The researchers found a general lack of knowledge and understanding of the pertinent laws, and no clear imperative for various departments to enforce the laws. A collaborative effort, therefore, on the part of law enforcement, city planning, and licensing departments would produce a safer, more efficient and responsible system of regulation.

The Prevention Program and the PACT for Violence Prevention Coalition have been working with county government and the cities throughout the county to pass ordinances that prohibit gun dealerships in residential areas and require the possession of local gun dealer permits. PACT recommends that municipalities use their business licensing powers to impose more stringent conditions on applicants for permits. Additionally, resolutions regarding state pre-emption and national gun policy could be passed by the county Board of Supervisors and the various municipalities of Contra Costa County.

In combination, these actions send a signal to state and federal legislators that the people of Contra Costa want greater control over firearm sales in their communities, and that they are willing to enact meaningful restrictions at the local level despite the existence of state pre-emption laws.◆

References


Appendix A

Survey of Gun Dealers in Contra Costa County

The following data show the number of gun dealers in each city, and in the county unincorporated areas, who have Certificates of Eligibility, local business licenses, or who operate in residential areas. These were obtained and analyzed by the Contra Costa County Health Services Prevention Program and the PACT for Violence Prevention Coalition.

<table>
<thead>
<tr>
<th>City</th>
<th># of FFLs</th>
<th># w/ COE</th>
<th># w/ bus. lic.</th>
<th># in Res. area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antioch</td>
<td>62</td>
<td>25 (40.3%)</td>
<td>21 (33.9%)</td>
<td>50 (80.6%)</td>
</tr>
<tr>
<td>Brentwood</td>
<td>09</td>
<td>04 (44.5%)</td>
<td>02 (22.2%)</td>
<td>09 (100%)</td>
</tr>
<tr>
<td>Clayton</td>
<td>05</td>
<td>03 (60%)</td>
<td>00 (0%)</td>
<td>05 (100%)</td>
</tr>
<tr>
<td>Concord</td>
<td>95</td>
<td>25 (26.3%)</td>
<td>28 (29.5%)</td>
<td>80 (84.2%)</td>
</tr>
<tr>
<td>Danville</td>
<td>26</td>
<td>14 (53.8%)</td>
<td>03 (11.5%)</td>
<td>22 (84.6%)</td>
</tr>
<tr>
<td>El Cerrito</td>
<td>15</td>
<td>04 (26.7%)</td>
<td>04 (26.7%)</td>
<td>08 (53.3%)</td>
</tr>
<tr>
<td>Hercules</td>
<td>10</td>
<td>04 (40%)</td>
<td>02 (20%)</td>
<td>10 (100%)</td>
</tr>
<tr>
<td>Lafayette</td>
<td>21</td>
<td>04 (19%)</td>
<td>01 (4.8%)</td>
<td>13 (62%)</td>
</tr>
<tr>
<td>Martinez</td>
<td>35</td>
<td>26 (74.3%)</td>
<td>07 (20%)</td>
<td>30 (85.7%)</td>
</tr>
<tr>
<td>Moraga</td>
<td>05</td>
<td>01 (20%)</td>
<td>00 (0%)</td>
<td>05 (100%)</td>
</tr>
<tr>
<td>Orinda</td>
<td>19</td>
<td>05 (26.3%)</td>
<td>00 (0%)</td>
<td>11 (57.9%)</td>
</tr>
<tr>
<td>Pinole</td>
<td>15</td>
<td>03 (20%)</td>
<td>01 (6.7%)</td>
<td>15 (100%)</td>
</tr>
<tr>
<td>Pittsburg</td>
<td>40</td>
<td>10 (25%)</td>
<td>05 (12.5%)</td>
<td>34 (85%)</td>
</tr>
<tr>
<td>Pleasant Hill</td>
<td>26</td>
<td>10 (38.5%)</td>
<td>08 (30.8%)</td>
<td>22 (84.6%)</td>
</tr>
<tr>
<td>Richmond</td>
<td>37</td>
<td>11 (29.7%)</td>
<td>02 (5.4%)</td>
<td>36 (97.3%)</td>
</tr>
<tr>
<td>San Pablo</td>
<td>19</td>
<td>14 (73.7%)</td>
<td>06 (31.6%)</td>
<td>11 (57.9%)</td>
</tr>
<tr>
<td>San Ramon</td>
<td>29</td>
<td>09 (31%)</td>
<td>05 (17.2%)</td>
<td>20 (69%)</td>
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<tr>
<td>Walnut Creek</td>
<td>42</td>
<td>22 (52.3%)</td>
<td>22 (52.3%)</td>
<td>29 (69%)</td>
</tr>
<tr>
<td><strong>Incorporated Areas</strong></td>
<td>510</td>
<td>194 (38%)</td>
<td>117 (22.9%)</td>
<td>410 (80.1%)</td>
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<tr>
<td><strong>Unincorporated Areas</strong></td>
<td>190</td>
<td>44 (23.2%)</td>
<td>74 (39%)</td>
<td>163 (85.8)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>700</strong></td>
<td><strong>238 (34%)</strong></td>
<td><strong>191 (27.3%)</strong></td>
<td><strong>573 (81.8%)</strong></td>
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