

# **CFSA INSURANCE ALERT**

**TO:** CFSA MEMBER FAIRS

**FROM:** Charlie Mitchell, Risk Manager

**SUBJECT:** Fairground Dress Codes - Update

**DATE:** November 9, 2007

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This Alert has been issued because dress codes at California fairs continue to be challenged on a constitutional basis. CFSA member fairs should consider the risk management recommendation below prior to adopting a dress code. If your fair already has a dress code in place, the dress code should be reviewed and evaluated on an annual basis using these recommendations.

The 2002 decision in *Gatto v. County of Sonoma* is still controlling California law regarding dress codes at California fairgrounds. The court in *Gatto* found the following dress code language to be unconstitutionally vague and overbroad: "No apparel or accessories intended to provoke, offend or intimidate others will be tolerated, including offensive slogans, insignia or gang colors." However, the court also stated that a fair may prohibit the wearing of distinctive insignia unique to a discernable group where the fair reasonably believes such insignia is likely to provoke violence or which might lead to a substantial disruption of, or material interference with, the event.

CFSA recommendations are as follows:

- Review your fair's policies, rules and regulations (including codes of conduct) to determine if they contain elements of a dress code. Any general language prohibiting types of dress or banning certain groups from the fairgrounds should be deleted. Of course, it is still acceptable to prohibit indecent exposure and to require shoes for safety purposes.
- A fair's code of conduct should always be a separate, stand-alone document. A

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code of conduct addresses actions or behavior, rather than clothing or appearance. Behavior typically prohibited by a code of conduct includes physical or verbal threats, obscene language or gestures, interference with the flow of pedestrian traffic, possession of weapons, defacement of property and any other unlawful behavior or activity.

- Engage in a discussion with local law enforcement, requesting any facts and circumstances in your community involving specific types of clothing or accessories they reasonably believe would lead to a substantial disruption of, or material interference with the fair. If there are no such facts and circumstances, you do not need a separate dress code. Your code of conduct, and enforcement of that code by fair security and law enforcement, should be sufficient.
- If law enforcement advises you of specific facts and circumstances indicating a reasonable probability of substantial disruption of, or material interference with, the fair based upon the wearing of specific types of clothing or accessories, consider the adoption of a separate dress code. Do not simply adopt a “standard” dress code provided to you by law enforcement or any other outside source. Work with your fair’s legal counsel to draft a dress code based on the information provided by law enforcement and your fair’s unique circumstances.
- Law enforcement concerns based upon the wearing of specific types of clothing or accessories should be documented and retained in the event of litigation. If possible, obtain a letter or a memo from law enforcement outlining the facts and their concerns. If this is not possible, fair personnel should immediately document conversations held with law enforcement, including the name and title of the individual officer(s) along with the content of the conversation.
- Dress codes, along with codes of conduct, should be posted outside fair entry gates to give the public adequate notice. Patrons wearing clothing or accessories prohibited by the dress code should first be requested to remove the item. If the patron refuses, the fair may -- in consultation with law enforcement -- ban entrance to the fair or eject an already admitted patron. Caution should be given to ensure the consistent enforcement of any dress code.
- Your fair’s code of conduct, dress code (if any), and procedures for handling violators should be clearly communicated to every level of security and entry personnel.
- Dress codes should be reviewed and updated regularly (at least annually) based on the most up-to-date information from local law enforcement and any recent court rulings.

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While this information should be helpful for you, we can't stress enough how important it is for you to work with your fair's legal counsel on any matter related to your need for a dress code policy.

cc: Mike Treacy  
Jerry Blair

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