

Kentucky City – March/April 2012



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Showdown At City Hall?

Laura Ross

Scenario: A city (let's call it Tombstone) has a problem with a citizen (let's call her Annie), who likes to show up at council meetings with a gun strapped to her hip like she's ready for a showdown at the O. K. Corral. Can the Tombstone City Council stop this from happening? Believe it or not, Annie gets her gun. If this comes as a surprise, keep reading for more information about city gun regulation.

On a federal level, it is clear that the right to "keep and bear arms" is an inviolable personal right protected by the Second Amendment. And, on a state level, Kentucky law contains preemptions that significantly limit the ability of cities to regulate firearms within the city without approval by the General Assembly. Anything other than what is allowed by the General Assembly is in violation of the Kentucky Constitution, which, like the U.S. Constitution, declares that citizens have "the right to bear arms." Section 1 of the Kentucky Constitution clarifies that this right is "subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons." Notice the use of the word "concealed" — neither the state General Assembly nor local legislative bodies can prevent citizens from the lawful open (unconcealed) carrying of deadly weapons.

In 1984, the General Assembly enacted KRS 65.870, which completely prohibited cities from "regulation of the transfer, ownership, possession, carrying or transportation of firearms, ammunition, or components of firearms or combination thereof."

Then, in 1996, and subsequently amended in 2005, the General Assembly enacted KRS 237.115, which allows a city to enact ordinances that prohibit the carrying of concealed deadly weapons by persons licensed to carry "in that portion of a building owned, leased or controlled by that unit of government." The Kentucky attorney general has interpreted this statute to mean that a city, without otherwise violating the statutory prohibition contained in KRS 65.870, may prohibit or limit the carrying of concealed deadly weapons in buildings or portions of buildings owned, leased or controlled by that city, such as council chambers or city hall. Important to note is that this statute only applies to buildings. For example, a city could prohibit concealed deadly weapons in a building on city park grounds but not on the park grounds themselves. And, remember, under no circumstances is a city allowed to prohibit citizens from the open carrying of deadly weapons anywhere on city property. So Annie gets to keep her gun strapped to her hip for everyone to see, but the city, through an appropriate ordinance, could stop her from walking into city hall with a gun hidden in her saddlebag.

KRS 237.115 also states that the ordinance prohibiting concealed weapons cannot contain criminal penalties but can contain penalties stating that any person violating the ordinance could be denied entrance to or ordered to leave the building. The ordinance can also contain a provision stating that city employees who violate the ordinance are subject to disciplinary measures. When a city enacts an

ordinance, the city is required by statute to post clearly identified signs at the entrance to the restricted area stating that carrying of concealed deadly weapons is prohibited or limited.

In addition to the prevention of carrying concealed deadly weapons in city buildings, the city can also enact ordinances that include regulation of the discharge of firearms within the city limits. Although there are no state statutes that speak to the discharge of firearms, the courts have ruled that cities can regulate this by ordinance. The courts have found that this area of regulation is not an unconstitutional infringement on a citizen's right to bear arms.

On the other hand, cities are prevented from using zoning ordinances to prohibit certain federally licensed firearms businesses from locating within the city. In 2004, the Kentucky Legislature enacted KRS 100.325, which provides that local governments may not "utilize the zoning process to prohibit a federally licensed

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firearms manufacturer, importer or dealer from locating at any place within the jurisdiction at which any other business may locate," nor adopt any regulations that "could be reasonably construed to solely affect federally licensed firearms manufacturers, importers or dealers."

Finally, a city needs to be aware that pursuant to KRS 237.104, the city does not have the right to "revoke, suspend, limit the use of or otherwise impair the validity of the right of any person to purchase, transfer, loan, own, possess, carry or use a firearm, firearm part, ammunition, ammunition component, or any deadly weapon or dangerous instrument," even in times of disaster or emergency. A city is also prohibited from seizing weapons during disasters or emergencies, or at any other time.

While the concern for safety is at the forefront of the minds of elected officials, especially in light of recent tragedies, the right to bear arms is highly protected. It is very important to be aware of legal limitations before pulling the trigger on gun regulation.

For more information or for sample ordinances that comply with state law, contact the KLC Legal Department at 800. 876.4552.

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