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Legal Opinion 2020-017

TO: Mayor John Engen, City Council, Dale Bickell, Jaeson White, Scott Hoffman, Mike Colyer, Richard Stepper, Jake Rosling, Laurie Clark, Marty Rehbein, Kirsten Hands

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE December 10, 2020

RE: Statewide voter approved Legislative Referendum No. 130 (LR-130) regulating Montana local government regulation of carrying of firearms

Facts:

During the November 3, 2020 statewide general election in Montana, statewide Montana voters approved adoption of Legislative Referendum No. 130(LR-130) entitled AN ACT REVISING FIREARMS LAWS TO SECURE THE RIGHT TO KEEP AND BEAR ARMS AND TO PREVENT A PATCHWORK OF RESTRICTIONS BY LOCAL GOVERNMENTS ACROSS THE STATE AND PROVIDING THAT LOCAL GOVERNMENTS MAY NOT REGULATE THE CARRYING OF CONCEALED WEAPONS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA, AMENDING SECTIONS 7-1-111 AND 45-8-351 MCA AND PROVIDING AN EFFECTIVE DATE. LR-130(2020) necessitates that the Missoula City Council review the provisions of sections 8.58.010 and 8.58.020 Missoula Municipal Code.

ISSUE:

- (1) What is the effective date of the revised Montana state laws pursuant to LR-130(2020)?
- (2) What should city police enforce after the effective date of LR-130(2020) until Missoula Municipal Code sections 8.58.010 and 8.58.020 MMC are reviewed by the city council?

CONCLUSION:

- (1) LR-130(2020) IS EFFECTIVE January 1, 2021.
- (2) City law enforcement must be aware of the new potential local government restrictions on local government pursuant to LR-130(2020) and should take into account those new state

law restrictions until the Missoula City Council has had an opportunity to review current Missoula Municipal Code sections 8.58.010 and 8.58.020.

LEGAL DISCUSSION:

LR-130(2020) Amends two provisions of Montana state law pertaining to Montana local governments pertaining to local government regulation of firearms.

Subsection 7-1-111(9) MCA was amended by LR-130(2020) so that as of January 1, 2021 it states:

“7-1-111/ POWERS DENIED. A local government unit with self-government powers is prohibited from exercising the following: . . . (9) any power that applies to or affects the right to keep or bear arms.”

Effective January 1, 2021 the words “except that a local government has the power to regulate the carrying of concealed weapons” is deleted pursuant to LR-130(2020)

As a Montana law comparison, Article II, section 12 of the Montana Constitution entitled “RIGHT TO BEAR ARMS” states:

“Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.”

Subsection 45-8-351(2)(a) MCA was also amended by LR-130(2020). Effective January 1, 2021 subsection 45-8-351(2) MCA will state:

“(2)(a) For public safety purposes a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government or other local government unit has power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons to a publicly owned and occupied building under its jurisdiction.”

LR-130(2020) deletes the following words from parts of the provisions of subsection 45-8-351(2)(a):

- (1) After the phrase unconcealed weapons the words “public assembly”, “park” and “or school” are deleted in parts of the phrase;
- (2) The final clause of subsection 45-8-351(2)(a) MCA starting with “or school” stating “or school and the possession of firearms by convicted felons adjudicated mental incompetents, illegal aliens and minors”. Is deleted.

The words “unpermitted”; “weapons” “the carrying of” and “and occupied” were words that were added to subsection 45-8-351(2)(a) MCA.

It is also important to note and emphasize that another Montana state criminal law; section 45-8-328 MCA entitled “CARRYING CONCEALED WEAPON IN PROHIBITED PLACE-PENALTY; includes in part a provision in subsection 45-8-328(1)(a) MCA that a person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in: (a) portions of a building used for state or local government offices and related areas in the building that have been restricted.”

This provision is important for the City of Missoula with respect to buildings that it leases, rather than owns. As revised pursuant to LR-130(2020) the revised language effective January 1, 2021 is limited to “publicly owned and occupied building”. Depending how that statutory phrase is interpreted; subsection 45-8-328(1)(a) MCA is important for local government authority with respect to buildings it leases.

CONCLUSION:

- (1) LR-130(2020) IS EFFECTIVE January 1, 2021.
- (2) City law enforcement must be aware of the new potential local government restrictions on local government pursuant to LR-130(2020) and should take into account those new state law restrictions until the Missoula City Council has had an opportunity to review current Missoula Municipal Code sections 8.58.010 and 8.58.020.

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/s/ Jim Nugent

Jim Nugent, City Attorney

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