

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2014-026

TO: Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Jason Diehl; Jeff Brandt; and Chad Nicholson

CC: Mayor John Engen; City Council; Bruce Bender; Dale Bickell; and Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE October 24, 2014

RE: City Ordinance Restrictions for Bow and Arrow Shooting, Firing, or other Discharge within the City Limits.

FACTS:

City Law Enforcement desires clarification concerning the application of section 9.62.050 Missoula Municipal Code pertaining to bow and arrow shooting, firing, or other discharge inside the Missoula City limits.

ISSUE(S):

Does the City of Missoula regulate or restrict the shooting, firing, or other discharge of bows and arrows?

CONCLUSION:

Yes, pursuant to Section 9.62.050 Missoula Municipal Code, the City of Missoula regulates and restricts the shooting, firing or discharge of bows and arrows within the City limits.

LEGAL DISCUSSION:

Section 9.62.050 Missoula Municipal Code (MMC) establishes restrictions pertaining to the shooting, firing, or other discharge of arrows from bow and arrow usage. Section 9.62.050 provides:

9.62.050. BOW AND ARROW RESTRICTIONS.

A. No person shall shoot, fire, or otherwise discharge any arrow or projectile through the use of a bow or other device within the city limits, EXCEPT when done in lawful defense of the person, property or family or when done either AT AN ORGANIZED AND ESTABLISHED PUBLIC OR PRIVATE ARCHERY SHOOTING RANGE OR GALLERY, OR WHEN DONE AT AN ARCHERY SHOOTING TARGET AREA ON PRIVATE GROUNDS OR PREMISES UNDER CIRCUMSTANCES AND IN SUCH MANNER WHERE ANY SHOOTING, FIRING OR OTHER DISCHARGE OF AN ARROW OR PROJECTILE CAN BE AND IS BEING PERFORMED IN A MANNER SO AS NOT TO ENDANGER PERSON, PROPERTY, ANIMAL OR FOWL, AND ALSO PERFORMED IN SUCH A MANNER AS TO PREVENT AN ARROW OR PROJECTILE FROM TRAVERSING ANY GROUNDS OR AIR SPACE OUTSIDE THE ESTABLISHED BOUNDARIES OR LIMITS OF ANY ARCHERY SHOOTING RANGE, GALLERY OR ARCHERY SHOOTING TARGET AREA ON PRIVATE GROUNDS OR PREMISES.

B. No person who is less than fifteen years of age shall shoot, fire or otherwise discharge any arrow or projectile through the use of a bow or other device except when done in the lawful defense of the person, property or family, or when done while being supervised by an adult, as that term is defined in Montana state law. (emphasis added)

Pursuant to Montana state law, Section 7-1-4123 MCA, Montana Municipalities hold the legislative powers to preserve peace and order and secure freedom from dangerous activities as well as secure and promote the general public safety, health and welfare.

It appears that the bow and arrow target shooting that is the current subject of discussion is occurring at a location on public owned property. If the location is on publicly owned property, unless the complained about target area is a public organized and established shooting range or gallery, it is not an authorized exception within section 9.62.050 MMC quoted above.

Pursuant to Section 7-1-4124 MCA a municipality has powers to act in the public interest for public purposes. Bow and arrow shooting ranges, galleries and target areas are clearly and obviously a significant public safety, health and general welfare concern to the public. The restriction of the use of bows and arrows in certain areas for human safety as well as animal safety purposes is a common sense public safety measure. Not allowing bow and arrow shooting at or near university student housing and/or on urban public property within the city limits that is not organized and established as a public shooting range or gallery is commonsense as well.

Pursuant to the exceptions identified within the city ordinance provisions of section 9.62.050 MMC, specific factual circumstances may need to be determined by law enforcement on a case by case basis. The section 9.62.050 MMC ordinance exceptions are limited to the three (3) following factual circumstances:

- (1) Lawful defense of person, property or family;
- (2) Organized and established public or private shooting ranges or galleries;
- (3) "When done at an archery shooting target area on private grounds or premises under circumstances AND in such manner where any shooting, firing or other

discharge of an arrow or projectile can be AND IS BEING PERFORMED IN A MANNER SO AS TO PREVENT an arrow or projectile from traversing any grounds or air space outside the established boundaries or limits of any archery shooting range, gallery or archery shooting target area on private grounds or premises". (emphasis added)

Montana state criminal law has generally regulated/prohibited the discharge of firearms within a city or town limits since 1873, except for authorized self-defense and at approved shooting ranges.. See section 45-8-343 MCA. Likewise it is a common sense public safety, health and general welfare measure for a Montana municipality to prohibit the shooting, firing or other discharge of bows and arrows within the city limits as well. The Montana Constitution mandates that the powers of incorporated cities and towns "SHALL BE LIBERALLY CONSTRUED". (emphasis added). See Article XI, section 4(2) of the 1972 Montana Constitution.

A general review of municipal powers to regulate discharge of weapons may be useful for law enforcement. Section 45-8-343, MCA of the Montana State Criminal law provides that:

45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding \$25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.
(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.
(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1. (Emphasis added)

Section 45-8-351 MCA also provides that a municipality may for public safety purposes regulate the discharge of firearms. Section 45-8-351, MCA provides:

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.
(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 concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.
(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to

prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317. (Emphasis added)

The City of Missoula regulates firearms in public buildings pursuant to Title 8, Chapter 8.58 Missoula Municipal Code as well as regulates the discharge of weapons pursuant to Title 9, Chapter 9.62 of the Missoula Municipal Code.

Montana's Constitution mandates that the powers of Montana local governments "shall be liberally construed". Article XI, Section 4 of Montana's 1972 Constitution Provides:

Section 4. General Powers. (1) A local government unit without self-government powers has the following general powers:

- (a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.
- (b) A county has legislative, administrative, and other powers provided or implied by law.
- (c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.
(Emphasis added)

The Montana Supreme Court has indicated that Article XI, Section 4(2) of the 1972 Montana Constitution constitutes a Montana Constitutional mandate that the powers of Montana municipalities "shall be liberally construed." See Tipco Corp. Inc. v. City of Billings (1982) 197 Mont. 339, 642 P2d 1074; Stevens v. City of Missoula (1983) 205 Mont. 274, 280, 667 P2d 440, 444 1983 Mont. LEXIS 779, Town of Ennis v. Stewart (1991) 247 Mont. 355, 807 P 2d 179, 1991 Mont. LEXIS 57 and Associated Students University of Montana v. City of Missoula (1993) 862 P 2d 380, 382, 1993 Mont. LEXIS 304.

Pursuant to a City elector adopted City of Missoula local government charter the Missoula voters adopted a self-government form of local government. Pursuant to Montana State Law there also exists a statutory directive that the powers of local governments with self government shall be liberally construed. Section 7-1-106, MCA provides:

7-1-106 Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power of authority shall be resolved in favor of the existence of that power or authority. (Emphasis added)

CONCLUSION(S):

Yes, pursuant to Section 9.62.050 Missoula Municipal Code, the City of Missoula regulates and restricts the shooting, firing or discharge of bows and arrows within the City limits.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:tfa