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MUNICIPAL REGULATION OF FIREARMS IN COLORADO

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IN VIEW OF THE CURRENT discussion and debate concerning firearms regulation, the purpose of this analysis is to provide a general introduction to national, state, and local regulation of guns for Colorado municipal officials and staff. It is not intended as an exhaustive legal analysis, and it should not serve as a substitute for advice from the municipal attorney.

United States Constitution

The Second Amendment to the United States Constitution protects the right to keep and bear arms as part of The Bill of Rights. In 2008 and 2010, the United States Supreme Court issued two decisions impacting this right. In *District of Columbia v. Heller* the Court ruled that the Second Amendment protects an individual's right to possess a firearm unconnected to service in a militia and to use that firearm for traditionally lawful purposes, such as self-defense within the home. In *McDonald v. Chicago* the Court ruled that the Second Amendment limits state and local government regulation of firearms to the same extent that it limits the federal government.

District of Columbia v. Heller

In *Heller*, the Supreme Court of the United States, in a 5–4 decision, held for the first time that the Second Amendment to the United States Constitution protects an *individual* right to keep and bear arms for traditionally lawful purposes, not just a collective right to bear arms as part of a “well regulated militia.” The Court struck down provisions of the Firearms Control Regulations Act of 1975 as unconstitutional, determined that handguns are “arms” for the purposes

of the Second Amendment, found that the D.C. regulation was an unconstitutional prohibition, and struck down the portion of the regulation's act that required all firearms, including rifles and shotguns, to be kept “unloaded and disassembled or bound by a trigger lock”. The D.C. Regulation had also restricted residents from owning handguns unless they had been registered prior to 1975.

The D.C. decision did not address the question of whether the Second Amendment extends beyond the federal government to the states; that issue was addressed in 2010 by the Court in the *McDonald v. Chicago* case.

McDonald v. Chicago

The Court in *McDonald* determined that the Second Amendment right of an individual to “keep and bear arms” is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to states. The decision cleared up the uncertainty left by the *Heller* decision as to the scope of gun rights.

The Court of Appeals for the Seventh Circuit upheld a Chicago ordinance banning the possession of handguns, as well as other gun regulations affecting rifles and shotguns. The Supreme Court, reversing the lower court's decision, held that the Second Amendment was incorporated under the Fourteenth Amendment, thus protecting those rights from interference by local governments. It then remanded the case back to Seventh Circuit to resolve conflicts between certain Chicago gun restrictions and the Second Amendment.

The Court in both cases stopped short of saying the right to bear arms is

“fundamental” — which would subject any local regulation to strict scrutiny by the Court — but it indicated that a “heightened standard” beyond a rational basis would be applied in subsequent challenges to firearm regulations. Both decisions mention that conventional restrictions on firearms, such as licensing schemes, concealed carry laws, safe storage bans, and restrictions on assault weapons are compliant with the Second Amendment.

Colorado Constitution

Despite the national publicity, the impact of these decisions on Colorado was minimal because the Colorado Constitution clearly provides for the *individual* right to bear arms as follows: “The right of no person to keep and bear arms in defense of his home, person, and property, or in aid of the civil power when thereto legally summoned, shall be called in question but nothing herein contained shall be construed to justify the practice of carrying concealed weapons” (Colo. Const. Art. II, Sec. 13); No Colorado local government had or has any regulation that goes as far as those at issue in *Heller* and *McDonald*, which virtually banned all handguns, even those in a person's own home.

Lakewood v. Pillow

In fact, Colorado courts addressed local regulation of firearms before the U.S. Supreme Court did. In *Lakewood v. Pillow*, 501P.2d 744 (Colo. 1972), the defendant appealed a conviction in municipal court of violating a city ordinance making it unlawful to possess a dangerous or deadly weapon. Similar to the *Heller* case, the Colorado Supreme Court held that the ordinance was

unconstitutionally overbroad because it would prohibit gunsmiths, pawnbrokers, and sporting goods stores from carrying on a substantial part of their business. The ordinance appeared to prohibit individuals from transporting guns to and from such places of business, and it made it unlawful for a person to possess firearms in a vehicle or in a place of business for the purpose of self-defense. Many activities were constitutionally protected and, depending upon circumstances, might be entirely free of criminal culpability.

Colorado Statutes

In the 2003 legislative session, the General Assembly passed Senate Bills 24 and 25 (codified at C.R.S. §§ 18-12-101 *et seq.*, and §§ 18-12-201 *et seq.*), which limit the discretion and authority of cities, towns, and counties in Colorado to regulate the carry and transport of firearms within their jurisdictions. The statute contains sweeping legislative declarations that identify control of firearms as a matter of state interest and seek to preempt conflicting local laws. Senate Bill 24 primarily addressed a standardized system for issuing permits for carrying concealed handguns, while Senate Bill 25 addressed other aspects of firearms regulation. The stated purpose of both laws is to resolve confusion over the sale, possession, and carry of firearms in the state.

Concealed Carry Weapons are a Matter of Statewide Concern

Senate Bill 03-024 (S.B. 24) (codified at C.R.S. § 18-12-101, *et seq.*) revised Colorado's concealed carry weapons statute by specifying the criteria for permit issuance, including administration of background checks. County sheriffs have the authority to approve permits to carry concealed handguns, although the county sheriff may consult with the police chief on issuance of such permits to municipal residents. Once an individual is issued a concealed carry permit, the statute allows the permit holder to carry a concealed weapon anywhere in Colorado except where prohibited. The only areas of the state where permit holders may not carry a concealed weapon are: areas

prohibited by federal law; school district real property generally (note exceptions for concealed handguns in vehicles on school property and for school employees, (C.R.S. § 18-12-214 (3)); public buildings that have screening devices at each public entrance with appropriate security personnel (C.R.S. § 18-12-214 (4)); and any private property or business in which the individual or owner prohibits weapons (C.R.S. § 18-12-214(5)). Cities and counties are prohibited from adopting ordinances or regulations that would expand the areas beyond those listed in the statute where concealed weapons are prohibited.

Preemption of Local Regulations on Sale, Purchase, or Possession of Firearms

Senate Bill 03-025 (S.B. 25) (codified at C.R.S. § 18-12-201, *et seq.*) takes aim at the issue of local governments' rights to regulate firearms. Declaring that widespread inconsistency among local jurisdictions with respect to firearms regulations is problematic, the statute prohibits any local government from adopting an ordinance or regulation that is more restrictive than state gun laws regarding an individual's right to purchase, sell, or possess a firearm. S.B. 25 declares the regulation of firearms to be a matter of statewide concern, thus expressing the General Assembly's intent to prohibit any city, town, or county in the state from enacting regulations relating to the sale, purchase, or possession of firearms that are more restrictive than state or federal law. S.B. 25 prohibits the use of certain local police department firearms databases that track purchases, exchanges, transfers, or descriptions of the firearms in question. Municipal ordinances that prohibit the sale, purchase, or possession of a firearm that a person may otherwise sell, purchase, or possess under state or federal law are specifically preempted and deemed void and unenforceable.

S.B. 25 also expands the right of individuals to transport weapons in private automobiles to intra-jurisdictional travel. Under prior state law, although local municipalities could not restrict the transport of weapons in private automobiles traveling into or

through their local jurisdictions, cities, towns, and counties were free to adopt ordinances that restricted inter-jurisdictional traveling of a weapon in a private automobile traveling wholly within the local jurisdiction. The statute invalidates these local regulations and ordinances. Individuals are permitted a largely unrestricted right to carry a weapon, whether concealed or not, in their private automobiles while traveling anywhere in the state.

Not all local firearm ordinances are preempted under the state law. S.B. 25 preempts only local laws that regulate the sale, purchase, or possession of a firearm if such laws are more restrictive than state or federal law. In other words, local laws that are less or as restrictive as state gun laws are not preempted.

The statute also provides for an "open-carry" ordinance exception, which allows such municipal ordinances in a building or specific area of the municipality's jurisdiction so long as there is a posting at public entrances. For example, a building owned by a city can ban the open carry of a firearm on the premises only if the city posts signs notifying individuals of the ban. If the city wants to ban the carry of concealed weapons in that same building, state statute requires the city to have security personnel at the site who electronically screen visitors entering the building. Therefore, if a city wishes to adopt a blanket ban on all weapons in public buildings, the city must invest not only in signs notifying visitors and employees that no guns are allowed on the premises, but also in security personnel and screening technology at the entrances to the building.

Denver v. State

The Denver District Court issued a declaratory judgment in *City and County of Denver v. State of Colorado*, 03CV3809 (2004)¹, that Denver's firearm ordinances and regulations had to be examined and analyzed individually to determine whether each was a matter of purely local, purely state, or mixed concern under the home rule jurisprudence of Colorado.

¹ Aff'd, 139 P.3d 635 (Colo. 2006).

The legitimacy of the City's firearm ordinances and regulations were decided as five separate issues, with the result that: concealed handguns/firearms in vehicles ordinances are preempted; open carrying of firearms ordinances are valid and enforceable; the ban on assault weapons/Saturday night specials is not preempted; safe storage ordinances are not preempted, while the ordinance on furnishing firearms to juveniles is preempted; and firearms in city parks may be regulated so long as they do not extend to concealed handguns with a permit.

CU Regents v. Students for Concealed Carry on Campus

In the most recent gun case, the Colorado Supreme Court held in *Regents of the University of Colorado v. Students for Concealed Carry on Campus*, 271 P.3d 496 (2012), that the Concealed Carry Act's comprehensive statewide purpose, broad language, and narrow exclusions demonstrate that the General Assembly intended to divest the Board of its authority to regulate concealed handgun possession on campus.

Despite the publicity the United States and Colorado Supreme Court decisions received, they have had very little practical impact on the regulation of firearms in Colorado's cities and towns because the Colorado Constitution clearly confers an individual right to bear arms on Colorado citizens and no municipal regulation goes as far as those at issue in the cases.

Permissible Local Regulations

Local laws that are less or as restrictive as state gun laws are allowed, but these options are limited because the state statutes are quite broad. For example, state statutes do not preempt local regulations relating to the discharge, flourishing, of firearms; thus, a local ordinance prohibiting gun owners from firing their weapons within the city limits except at firing ranges or in self-defense in a private residence is lawful. Similarly, a local ordinance regulating the possession of a firearm by an intoxicated person is permitted. A local ordinance enacting a safe

storage² or assault weapons regulation is presumably allowed in home rule municipalities, but the authority is less clear for statutory cities and towns.

While some conventional restrictions on firearms, such as licensing schemes and concealed carry laws, are compliant with the Second Amendment, Colorado statutes prohibit local regulation that is more restrictive than state law regarding an individual's right to purchase, sell, or possess a firearm. State statutes preempt Colorado local governments from regulating concealed carry weapons and the sale, purchase, and possession of firearms. State law further requires that restrictions on open carry must be posted at public entrances.

Special circumstances like regulation of firearms in airports, in public parks (by persons who do not have a concealed carry permit) and by security guards remain valid and enforceable. While the state statutes do not specifically preempt the employer–employee relationship, courts have yet to address whether public employers may restrict employees from carrying firearms in the workplace especially if the employee has a concealed carry permit.

² Safe storage bans prohibit storage of a firearm on premises where a minor is likely to gain possession and does in fact gain possession typically with exceptions if possession is gained by trespass.



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