

FIREARMS INDUSTRY CONSULTING GROUP

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December 17, 2018

Pittsburgh City Council
510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

RE: Proposed Firearm Ordinances

Dear Mayor Peduto and Members of City Council,

I have been retained by Allegheny County Sportsmen's League (ACSL) and Firearm Owners Against Crime (FOAC) regarding the three illegal firearm proposals that were announced on Friday, December 14, 2018 and which are scheduled to be formally introduced during the City Council meeting on Tuesday, December 18, 2018.

As you are acutely aware, based upon your statements during the press conference on December 14th, 18 Pa.C.S. § 6120 provided, in relevant part,

(a) General rule. No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

Pursuant to 18 Pa.C.S. § 6119, "an offense under this subchapter constitutes a misdemeanor of the first degree," which, pursuant to 18 Pa.C.S. § 106(b)(6), provides for a maximum of sentence of five (5) years. Furthermore, pursuant to 18 Pa.C.S. § 5301, any City official who "impedes another in

the exercise or enjoyment of any right or privilege" is guilty of official oppression, which is a misdemeanor of the second degree.

As you are likely aware, I litigated the matter of *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014), where the Commonwealth Court struck down the City of Erie's ordinance, *inter alia*, prohibiting individuals from possessing and discharging firearms in city parks. More recently, I litigated the matter of *FOAC v. Lower Merion Township*, 151 A.3d 1172 (Pa. Cmwlth. Ct. 2016) (*petition for allocatur denied July 11, 2017*), where the Commonwealth Court struck down, *inter alia*, Lower Merion Township's discharge ordinance.

Further, in interpreting Section 6120, the Pennsylvania Supreme Court has been "crystal clear" that only the General Assembly can regulate firearms, as the entire field is preempted. *See, Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 82 (Pa. Cmwlth. 2009). The Court stated in *Ortiz v. Commonwealth* that "[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. . . . [T]he General Assembly, not city councils, is the proper forum for the imposition of such regulation." 681 A.2d 152, 156 (Pa. 1996). (Emphasis added). Continuing, the *Ortiz* Court stated that:

. . . the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or transportation of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion, unless there is more, is that the municipalities' attempt to ban the possession of certain types of firearms is constitutionally infirm.

The Court continued: "Although we agree with [the municipalities] that the General Assembly may negate ordinances enacted by home rule municipalities only when the General Assembly's conflicting statute concerns substantive matters of statewide concern, this does not help municipal appellants, for the matters at issue in this case [municipal regulation of firearms] are substantive matters of statewide concern."

Likewise, the Commonwealth Court has invariably held that Section 6120 and the *Ortiz* decision prohibit the regulation of firearms and ammunition. *See, National Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009) (holding that a Straw Purchaser Ordinance and an Assault Weapons Ordinance were preempted by § 6120); *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014) (holding that the prohibition on possession of firearms in city parks violates Section 6120); *Clarke v. House of Rep. of Commonwealth*, 957 A.2d 361, 365 (Pa. Cmwlth. 2008) (holding that "practical considerations do not alter the clear preemption imposed by the legislature"); *Ortiz v. Commonwealth*, 655 A.2d 194 (Pa. Cmwlth. 1995) (holding municipal assault weapons ban invalid and unenforceable); *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978) (holding that municipal regulations on the acquisition and transfer of

firearms was preempted by § 6120). Even this City acknowledged the unlawfulness of its prior, almost identical, assault weapon ban, when it entered into a stipulation in relation to a prior court challenge, which was approved by Allegheny County Judge Strassburger on February 27, 2015.

In addition to the statutes and case law, on August 24, 2009, then-Attorney General Tom Corbett issued a letter to the Adams County Office of the District Attorney regarding the issue of Section 6120's preemption and informing District Attorney Wagner that local municipalities are precluded from enacting ordinances regarding firearms.

As a result of the case law and determinations, numerous municipalities have found themselves in violation of these legal protections and have taken immediate corrective action, especially in light of the fact that numerous insurance carriers have contacted their municipal clients and demanded that they immediately rescind, repeal or preclude enactment of any firearms-related ordinances.

1. In August of 2007, District Township, Berks County, wanted to consider enacting restrictions on the carrying of firearms in the township building. Ed Overberger, Supervisors Chairman, was quoted as saying, "Our solicitor, the state police and the state association of township supervisors all have told us that we can't adopt an ordinance regulating firearms." <http://readingeagle.com/article.aspx?id=53999>.
2. In September of 2012, Centre Township was considering passing a firearms discharge ordinance, which would have precluded the discharge of firearms in the township; however, when presented with the above-listed statutes and holdings, the Township opted to enact a discharge protection ordinance, declaring, "It shall be lawful for any person to discharge a firearm within the Township, except if discharged in violation of all local, state and federal laws, rules and regulations, including but not limited to the Air Rifles Law, Game Commission Rules and Regulations and the Game Law." Ordinance 145-2012, November 12, 2012.
<http://www.centretownship.com/wp-content/uploads/2012/11/Firearms-Ordinance.pdf>.
3. In 2012, both Chestnut Hill Township, Monroe County, and Lower Saucon Township, Northampton County, adjusted their ordinances to comply with the preemption of Section 6120.
<http://www.nbcphiladelphia.com/news/politics/Pa-Towns-Repeal-Gun-Bans-as-Philly-Forges-Ahead-201097011.html>.
4. In October of 2012, in Washington Township, Berks County, PA, the Township Board, in addition to refusing to move forward on Firearm/Archery Ordinance, unanimously voted to strike Ordinance 76-5(B) (relating to the possession of firearms in the parks) and repeal Ordinance 79-3 (relating to carrying firearms in the township buildings without a license to carry firearms). See, <http://blog.princelaw.com/2012/11/16/washington-township-decides-to-tablefirearmsarchery-ordinance-and-modify-existing-ordinances>.
5. In April of 2013, the Borough of Quakertown, PA was made aware of its illegal ordinance precluding individuals from possessing firearms on its public lands and repealed its

ordinance. <http://www.nbcphiladelphia.com/news/politics/Pa-Towns-Repeal-Gun-Bans-as-Philly-Forges-Ahead-201097011.html>.

6. Additionally, on April 16, 2013, East Rockhill Township, Montgomery County, removed its prohibition on the possession of firearms in parks and township-owned property, because of Section 6120. http://www.montgomerynews.com/articles/2013/0/22/perkasie_news_herald/news/doc5175802b6e10b5
7. On May 12, 2013, in Morrisville, Pennsylvania, Chief Thomas Herron of the Morrisville Police Department, in relation to a similar pro-gun rally, where firearms were present in Morrisville's Williamson Park, was quoted as saying, "Though a borough ordinance forbids firearms in the park, state law allows citizens the right to carry firearms and state law supersedes the borough ordinance." http://www.phillyburbs.com/my_town/falls/rally-for-gun-safety-drawshundreds/article_2775a9b5-a509-5f6f-8049-29c0883f61b2.html.
8. On May 12, 2013, in Morrisville, Pennsylvania, Chief Thomas Herron of the Morrisville Police Department, in relation to a similar pro-gun rally, where firearms were present in Morrisville's Williamson Park, was quoted as saying, "Though a borough ordinance forbids firearms in the park, state law allows citizens the right to carry firearms and state law supersedes the borough ordinance." http://www.phillyburbs.com/my_town/falls/rally-for-gun-safety-drawshundreds/article_2775a9b5-a509-5f6f-8049-29c0883f61b2.html.
9. South Heidelberg Township was considering passing a no-discharge ordinance in relation to a resident's complaint about gunfire. On September 12, 2013, the Board elected not to proceed with the discharge ordinance when presented with information regarding Section 6120 and the residents' outrage. <http://readingeagle.com/article.aspx?id=510781>.
10. On December 10, 2014, the Borough of Doylestown Public Safety Committee unanimously voted to rescind all of its ordinances regarding firearms and ammunition, including its firearm discharge and possession ordinances, after its insurance carrier demanded it take such action. <http://www.wfmz.com/news/news-regional-southeasternpa/doylestown-borough-plans-torepeal-gun-law/30171960>.
11. On January 13, 2015, Chalfont Borough repealed its discharge ordinance. http://www.theintell.com/news/local/chalfont-repeals-gun-dischargeordinance/article_eb256296-5b85-5add-b459-08c74220cac4.html.
12. On June 23, 2016, Lehigh County District Attorney James Martin sent a letter to the City of Allentown, after learning of its intent to re-enact firearm ordinances that it had repealed as a result of Act 192, wherein he specifically stated that any such enactments would be unlawful. As a result, the City of Allentown removed the proposals from consideration.

These are but a few recent instances in which local municipalities have taken corrective action in light of the aforementioned Constitutional and legislative protections, as well as, the potential civil and criminal ramifications.

It bears mentioning that neither an ordinance nor a statute providing for a felony conviction has precluded criminals from entertaining and committing criminal acts. At best, an ordinance only duplicates charging, which is already provided by the Crimes Code; at worst, a law-abiding citizen is undeservingly and unknowingly charged with a crime for which he/she never intended

to commit and had no knowledge that he/she was committing. A patchwork of laws across the Commonwealth serves no purpose but to ensnare those, who have no intention of violating the law but who unwarily find themselves in a jurisdiction, which imposes restrictions on their rights that the Commonwealth otherwise allows.

In the event Pittsburgh enacts these proposed unlawful ordinances, ACSL and FOAC are prepared to take legal action against the City, which will result in substantial additional burdens on the taxpayers. Clearly, it is in the best of interest of all of those involved that the proposals not be enacted. Accordingly, I am respectfully requesting that the proposal neither be offered nor enacted. In the event the City enacts these proposals, please let me know whether you will accept service of the Complaint or require service by the Sheriff.

Thanking you for your time and consideration in this matter, I am

Yours truly,
Firearms Industry Consulting Group



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jgp/web
Matter no. 10655

Distribution

The Honorable William Peduto
Pittsburgh City Council

cc: Firearm Owners Against Crime by mail
Allegheny County Sportsmen's League by mail

That Try Men's Souls