



TO: Mayor and Members of City Council
FROM: Lori Grigg Bluhm , City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: March 9, 2012
SUBJECT: Chapter 98 Firearm Regulations

We have been asked to review Sections 98.13.01 and 98.13.02 of Chapter 98 (Criminal Code), to determine if those sections comport with state law. Sections 98.13.01 and 98.13.02 provide:

98.13.01 Transport or Possess Firearms. No person shall transport or possess a firearm in a vehicle unless the firearm is unloaded in both barrel and magazine and carried in the luggage compartment of the vehicle. A person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$500, or both.

Exception: This section does not apply to persons authorized by federal or state law to transport or possess firearms.

98.13.02 Firearms in Public. No person shall carry a firearm in any public place unless it is unloaded in both barrel and magazine and in a case. A person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$500, or both.

Exception: This section does not apply to persons authorized by federal or state law to carry firearms.

Our office reviewed the foregoing provisions a few years ago at request of the Police Department when they were challenged by residents advocating the right to openly carry firearms in public. Those challenges were based on MCL 123.1102.

MCL 123.1102 places limitations on the authority of a local unit of government to regulate the ownership, registration, purchase, sale, transfer, transport or possession of pistols or other firearms. Essentially, under that statute, a municipality cannot impose firearm regulations unless it is allowed to do so by state or federal law. However, under MCL 123.1103, a local unit of government does have the authority to prohibit or regulate conduct with a pistol or other firearm that is a criminal offense under state law. Thus, as long as an ordinance does not prohibit what is allowed by state law, a city ordinance regulating pistols and firearms is valid.

Under state law (MCL 750.227d), it is illegal to transport or possess a firearm, other than a pistol, unless the firearm is unloaded, taken down, enclosed in a case, carried in the trunk of the vehicle, and inaccessible from the interior of the vehicle. Section 98.13.01 of Chapter 98 of the Troy City Code is substantially similar to this state law, with the exception that it does not specifically indicate a pistol is not subject to this regulation. However, the ordinance does contain a specific exception stating it is not applicable to persons authorized by state or federal law to transport or possess firearms. Thus, the ordinance does not prohibit a

person who lawfully possesses a pistol from transporting a loaded pistol in a motor vehicle because such persons are authorized to do so under state law. Therefore, based on the exception set forth in the ordinance, the ordinance does not prohibit what is allowed by state law.

Likewise, Section 98.13.02, based on the exception set forth in that section, does not prohibit possession of a firearm in public by any person authorized to possess the firearm under state law. We have previously advised the Police Department there is no current state law prohibiting a person from openly carrying a firearm in public (except in gun free zones) as long as the person is authorized to possess the firearm. Thus, Section 98.13.02 does not prohibit a person from openly carrying a firearm in public if the person is authorized to do so under state law. Accordingly, the ordinance does not prohibit conduct that is allowed under state law.

The foregoing ordinance provisions may, however, be enforced against persons who possess firearms in public who are not authorized to do so under state law. For example, a person may not possess a pistol under state law (MCL 28.422) unless they have a license for the pistol, a license to carry a concealed pistol, or they fall within one of the other exceptions set forth in the statute. Thus, a person in possession of a pistol who does not have a license for the pistol or a concealed pistol license may be prosecuted under the City ordinance. Additionally, the ordinance may also be enforced against a person who possesses a firearm that is prohibited by state law. Some of the many firearms prohibited by state law include short-barreled shotguns (MCL 750.224b), machine guns (MCL 750.224(1)[a]), and weapons with a silencer or a muffler (MCL 750.224(1)[b]). The City ordinance may also be enforced against a person who is not allowed to possess a weapon because of a criminal conviction, a bond condition, or a condition of probation.

Thus, Sections 98.13.01 and 98.13.02 of Chapter 98 of the Troy City Code, when read together with the exception clauses, only prohibit conduct that is prohibited by state law. Therefore, the ordinance provisions are not preempted by state law.