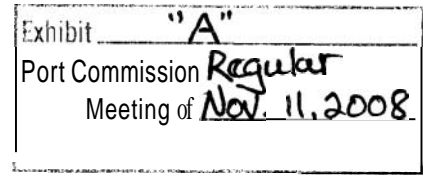


LAW OFFICE OF MARK KNAPP

May 22, 2008



Mr. Aaron Walls, Deputy City Attorney
City of Federal Way
PO Box 9718
Federal Way, WA 98063-9718

Re: Federal Way City Code Firearms provisions

Dear Mr. Walls:

We have reviewed the correspondence between the City of Federal Way and our client. Your letter to Mr. Beasley dated February 26, 2008 misstates the state preemption law. Your statement that **RCW 9.41.290 "only applies to the regulation of firearms themselves"** and **"excludes regulations that only secondarily affect firearms... that do not embody a punitive regulation"** ignores the broad language of the state preemption statute:

"The State of Washington hereby fully occupies and preempts the *entire* field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and **reloader** components."

Emphasis added.

The fact that the above referenced statute references RCW 9.41.300 raises the issue of why the legislature has specifically delineated certain areas as restricted while prohibiting restriction in other areas that are clearly under the control of municipalities:

"a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public..."

RCW 9.41.300 (1)(a)

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The language indicating that *restricted access areas do not include common areas of egress or ingress open to the general public* clearly relates to common areas that are used by the public to access municipal facilities of a jail or law enforcement facility. Nevertheless, "municipalities may enact only those laws and ordinances relating to firearms that are *specifically* authorized by state law." Therefore the public cannot be prohibited from carrying firearms in parks and other areas that are under the control of a municipality unless such areas are enumerated within **RCW 9.41.300**.

You reference **Cherry v Municipality of Metropolitan Seattle**, a case that only deals with the application of RCW 9.41.290 to municipal employees:

There is no question that in amending **RCW 9.41.290** the Legislature expressly intended to preempt municipal "laws and ordinances" enacted on the subject of firearms regulation. Our inquiry concerns the intended reach or scope of that preemption and whether it extends to cover public employment work rules.

Cherry v Metropolitan Seattle, 116 Wn.2d 794,808 P.2d 746 (1991).

Pacific Northwest Shooting Park Association v Sequim is a case that extends the holding in **Cherry** to municipalities' contractual relations with third parties where a city enters into a business relationship with a specific party and therefore does not apply to the present analysis involving laws and policy relating to the general public and public safety. Thus, **Pacific Northwest** stands for the *"general proposition that when a municipality acts in a capacity that is comparable to that of a private party, the preemption clause does not apply."* See **Pacific Northwest Shooting Park Association v City of Sequim**, 158 Wash.2d 342 (2006). *"The authority to regulate sales of firearms flowed from (the City of Sequim's) authority to regulate possession of firearms (in its convention center) under RCW 9.41.300."* Thus, the laws that apply to public parks and public meetings are not analogous to restrictions imposed on private parties per a city's contractual relations with said private parties.

To conclude as you have, that the city has the *right "to decide as an owner how its property is used"* would render the preemption statute meaningless. Even public transit operators in Washington have promulgated regulations that recognize that firearms, lawfully carried, cannot be prohibited on buses and other public transportation that operate under the jurisdiction of Washington state law.

We are hereby notifying the City of Federal Way that, in the event civil litigation becomes necessary, the Plaintiffs attorney's fees could be very high and would likely be compensable. Under certain circumstances, the City could become liable pursuant to **42 USC 1983** and/or **18 USC 242**. There are several jurisdictions within the State of Washington that are not complying with the preemption law and firearms owners like Mr. **Beasley** are becoming very concerned that such callous indifference to state law may endanger the lives of Washington citizens *in direct contravention of legislative intent!* The City of Federal Way should amend the relevant statutes and change the **signage** in Federal Way to indicate that weapons are prohibited where not otherwise lawful.

The best defense for the citizens of Federal Way, all of whom are vulnerable to random shootings and street violence is to limit the number of “*gun free*” zones that are available to deranged individuals seeking publicity by mass shootings. Almost all such shootings have occurred in areas where honest citizens have been rendered defenseless by laws or policies like FWCC 11-72 and 6-139(a)(5).

Please consider the issues discussed above very carefully. Our client has extensive experience working with law enforcement in various jurisdictions and we are addressing these matters as public safety issues. Please consider discussing this matter with Kyle Sumpter, FWPD Commander. Commander Sumpter is known to us as a very knowledgeable resource on the subject of firearms laws and should be consulted if you have not already done so.

Sincerely,

MARK S. KNAPP, ATTORNEY