



A Guide to Local Government Regulation of Firearms in Oregon

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Introduction

With each new incident of violence involving a firearm, questions are raised about the possibility of imposing restrictions or prohibitions on a person's ability to obtain, possess, and use firearms. Discussions are held, oftentimes in council meetings, wherein locally elected public officials are forced to answer two equally difficult questions. First, what are the policy implications on enacting, or in failing to enact, firearm regulations? Second, to what extent can cities legally enact local firearm regulations?

The first question is one that can only be answered by each community. The purpose of this guide is to help local elected and appointed officials understand the law pertaining to what cities can and cannot do with respect to firearm regulation. This guide provides a summary of the relevant constitutional provisions, a discussion of areas which the state has preempted local governments from enacting regulation, and an exploration of those areas in which local governments may regulate, should they decide to do so.

Disclaimer

This guide is not a substitute for legal advice. The law is constantly evolving and the guidance given in this publication is general in nature. City councils should seek the assistance of their city attorney to obtain the most up-to-date information and to receive advice that is specifically tailored to their circumstances and goals.

Constitutional Provisions

The right to bear arms is protected by both the United States Constitution and the Oregon Constitution.

A. United States Constitution

The right to maintain firearms is found in the Second Amendment to the U.S. Constitution, which provides, in part, that:

“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

The U.S. Supreme Court has interpreted this Amendment to guarantee citizens the right to possess a firearm in their homes for protection.¹ However, the Supreme Court has noted that federal and/or state regulations which prohibit felons and the mentally ill from possessing firearms are constitutional, as are other types of restrictions that pertain to possession of firearms outside of the home.²

B. Oregon Constitution

Oregon’s constitution also provides a right to bear arms. Article 1, Section 27, of the Oregon Constitution states:

“The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power.”

The Oregon Supreme Court has held this provision provides citizens the right to bear arms collectively through a militia (the Oregon National Guard), and individually for personal protection in their homes.³ Despite this general rule, the court has additionally held that 1) convicted felons can be prohibited from possessing firearms, and 2) local ordinances can prohibit persons who lack a concealed carry permit from carrying a loaded firearm in a public place.⁴

These constitutional protections are only the beginning of any discussion on the ability of governments to regulate the rights of persons to possess, carry and discharge firearms in Oregon.

¹ *District of Columbia v. Heller*, 554 US 570 (2008) and *McDonald v. City of Chicago*, 130 S Ct 3020 (2010).

² *Id.*

³ *State v. Kessler*, 289 Or 359 (1980).

⁴ *State v. Hirsch/Friend*, 338 Or 622 (2005) (overruled by *State v. Christian*, 354 Or. 22 (2013)) and *State v. Christian*, 354 Or 22 (2013).

State and Federal Regulation of Firearms

A. *Who May Own and Possess Firearms*

The determination of who may own and possess firearms in Oregon is determined by the state and the federal government. State regulations are generally located in ORS Chapter 166 and the federal regulations of barreled rifles and machine guns are found in U.S. Code, Title 18, Section 922.

a. *Oregon's Regulations*

The state has determined, and outlined in ORS 166.250 and ORS 166.255, the following persons who are prohibited from possessing a firearm:

- A person who is under the age of 18 and has been convicted in the last four years by a juvenile court for having committed any of the following crimes: assault in the fourth degree; strangulation; menacing; recklessly endangering another person; and/or intimidation because of race, religion, sexual orientation, disability or national origin;⁵
- A person who has been convicted of a felony;
- A person who was committed to the Oregon Health Authority pursuant to a court order;
- A person who was found to have a mental illness pursuant to a court order;
- A person who is presently subject to a court order requiring outpatient treatment, with the order prohibiting the person from purchasing or possessing a firearm;
- A person who has been found guilty of a felony, except for insanity; and
- A person who is the subject of a court order that pertains to the crime of stalking.

Furthermore, the state prohibits individuals from carrying a concealed handgun unless the person has been issued a concealed carry permit.⁶ A handgun which is openly carried in a belt holster is not considered to be concealed.⁷

Concealed carry permits for handguns must be obtained from a county sheriff.⁸ In order to obtain a license to carry concealed, a person must first meet the following requirements:

⁵ ORS 166.250(1)(c) and ORS 166.470.

⁶ ORS 166.250(1)(a) and ORS 166.291.

⁷ ORS 166.250(3).

⁸ ORS 166.291(1).

- Is a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing that they seek to obtain U.S. citizenship;
- Is at least 21 years of age;
- Is a resident of the county⁹ wherein the license is being sought;
- Has no outstanding warrants for arrest;
- Is not free on any form of pretrial release;
- Demonstrates competence with a handgun via an approved method;¹⁰
- Is able to possess a firearm as previously described herein;
- Has not been convicted of an offense involving a controlled substance (however, there are certain exceptions for marijuana-related offenses);
- Has not received a dishonorable discharge from the armed services; and
- Is not required to register as a sex offender in any state.¹¹

If a person has a concealed carry permit, they are required to carry that permit on their person each time they wish to carry a handgun in a concealed manner.¹²

b. United States Regulations

For purposes of this guide, the regulations imposed by the United States for firearms will only address barreled rifles and machine guns. While the regulations described herein are those of the

⁹ The sheriff may waive the county residency requirement for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need. ORS 166.291(8).

¹⁰ Approved methods include the following: completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or similar agency if handgun safety was a component of the course; completion of any NRA firearms safety or training course if handgun safety was a component of the course; completion of any firearms safety course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the NRA or a law enforcement agency if handgun safety was a component of the course; completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course; evidence of equivalent experience with a handgun through participation in an organized shooting competition or military service; a current or past license to carry a firearm in this state, unless the license has been revoked; or completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the NRA if handgun safety was a component of the course.

¹¹ ORS 166.291(1).

¹² ORS 166.292(1).

United States, it is noted that ORS 166.272 also criminalizes the possession of barreled rifles and machine guns if the possession is not in compliance with federal regulations.

Pursuant to federal law, only those persons licensed to be an importer, manufacturer, dealer or collector are permitted to transport machine guns, short-barreled shotguns, and short-barreled rifles.¹³ Furthermore, it is equally unlawful under federal law for any licensed importer, manufacturer, dealer or collector to sell or deliver any machine gun, short-barreled shotgun or short-barreled rifle unless specifically authorized to do so by the attorney general.¹⁴

As discussed further below, local units of government in Oregon are wholly preempted from rendering any determination about who may or may not possess any type of firearm. Such decision-making authority lies solely with the state and federal governments.

B. Possession of Firearms in Public Buildings (But Not Court Facilities)

With a few limited exceptions, any person intentionally possessing a firearm, whether loaded or unloaded, in a public building is guilty of a Class C felony.^{15,16} A public building is defined as any: hospital; capitol building; public or private school; college or university; city; residence of any state official elected by the state at large; and any portion of a building occupied by an agency of the state or a municipal corporation.¹⁷ The term public building does not include a court facility.¹⁸

In the event a person is convicted of intentionally possessing a firearm in a public building, the court has the authority to order the firearm in question to be forfeited.¹⁹ If a forfeiture order is rendered, the firearm in question is given to the law enforcement agency that effectuated the original arrest and confiscated the weapon.²⁰ The law enforcement agency has the discretion to use the firearm in question, sell the weapon, or have the firearm destroyed.²¹

Certain individuals are permitted to possess both loaded and unloaded firearms in public buildings. The persons permitted to possess firearms in public buildings include:

- A police or reserve officer;
- A parole or probation officer, provided they are acting within the scope of their employment;

¹³ 18 U.S. § 922(a).

¹⁴ 18 U.S. § 922(b).

¹⁵ Pursuant to ORS 161.605(3) a Class C felony is punishable by no more than a five-year imprisonment. Pursuant to ORS 161.625(1)(d), the same felony is also punishable by payment of no more than a \$125,000 fine.

¹⁶ ORS 166.370(1).

¹⁷ ORS 166.360(9).

¹⁸ *Id.*

¹⁹ ORS 166.370(6).

²⁰ ORS 166.279.

²¹ *Id.*

- A federal officer who is empowered to effect an arrest, with or without a warrant, for violations of the United States Code and who is further authorized to carry firearms in the performance of his/her duty;
- A corrections officer;
- A person summoned to assist any of the following persons in effectuating an arrest or preserving the peace: police officer; reserve officer; parole officer; probation officer; federal officer; or corrections officer;
- An honorably retired law enforcement officer;
- An active or reserve member of the military, provided they are engaged in the performance of their duty;
- A person who is licensed to carry a concealed handgun;
- A person who is authorized by the officer or agency that controls the public building to possess a firearm in said building; and
- An employee of the U.S. Department of Agriculture who is acting within the scope of their employment.²²

Also, individuals are permitted to possess *unloaded* firearms on school property.²³ However, the firearms must be located in a locked motor vehicle.²⁴ Additionally, the person having control of the motor vehicle must be a person who is not otherwise prohibited from possessing a firearm.²⁵

Law enforcement officers are provided the right to examine a firearm possessed by virtually anyone who is carrying one in a public building.²⁶ The purpose of this examination is for the officer to determine if the firearm is loaded or unloaded.²⁷ If a person has a license to carry a concealed handgun, they may choose to present a copy of their license to the officer instead of having the officer examine the firearm.²⁸

C. *Possession of Firearms in Court Facilities*

In addition to restricting the possession of firearms in public buildings, the Oregon Legislature has also restricted the possession of firearms in court facilities. A court facility is a courthouse or any portion of a building that is occupied by a circuit court, the Oregon Court of Appeals, the

²² ORS 166.370(3).

²³ ORS 166.370(3)(j).

²⁴ *Id.*

²⁵ *Id.*

²⁶ ORS 166.380(1).

²⁷ *Id.*

²⁸ ORS 166.380(2).

Oregon Supreme Court or the Oregon Tax Court.²⁹ If the personnel associated with any of these courts are located in a different building than the court itself, that separate personnel building is also considered a court facility.³⁰

In any court facility, aside from a local court facility,³¹ it is a Class C felony to intentionally possess a firearm.³² If a person is found to have a firearm in a court facility, the person is required to surrender the firearm to a law enforcement officer.³³ In order for individuals to be prohibited from intentionally possessing firearms in a local court facility, the presiding judge shall first enter an order prohibiting firearms in the area in which the court conducts its business.³⁴

The prohibition of possessing firearms in court facilities is generally not applicable to peace officers³⁵ or federal officers³⁶ if said officers meet certain conditions.³⁷ If the officer meets the following conditions, possession of a firearm in a court facility is typically permitted:

- They are acting in an official capacity and is officially on duty;
- They are carrying a firearm that their employing agency has authorized the officer to carry; and
- They are in compliance with any security procedures established by the court's presiding judge.³⁸

Presiding judges are permitted to prohibit peace and federal officers from carrying firearms in their court facilities provided they have posted a notice of such a prohibition on the entrance of the courtroom.³⁹ In addition to the ability of a presiding judge to prohibit firearms in their courtroom, the judge may also establish procedures regulating how peace and federal officers may carry firearms in their court.⁴⁰ If a presiding judge establishes procedures for how peace and federal officers carry firearms in his/her court, the following criteria must first be met:

²⁹ ORS 166.360(2).

³⁰ *Id.*

³¹ "The portion of a building in which a justice court, a municipal court, a probate court or a juvenile court conducts business, during the hours in which the court operates." ORS 166.360(7).

³² ORS 166.370(2).

³³ *Id.*

³⁴ OS 166.370(2)(C).

³⁵ Peace officers include: state police officer; sheriff; constable; marshal; city police officer; reserve officer; university police officer; investigator with the Criminal Justice Division of the Oregon Department of Justice; investigator with a district attorney's office; humane special agent who enforces animal welfare laws; regulatory specialist with the Oregon Liquor Control Commission; and tribal police officer. ORS 161.015.

³⁶ A federal officer is a special agent or law enforcement officer employed by a federal agency who is empowered to effect an arrest, with or without a warrant, for violations of the U.S. Code and who is further authorized to carry a firearm in the performance of his/her duties. ORS 133.005.

³⁷ ORS 166.373(1).

³⁸ *Id.*

³⁹ ORS 166.373(2).

⁴⁰ ORS 166.373(3).

- The procedures are established via a plan for court security improvement, emergency preparedness and business continuation pursuant to ORS 1.177 or ORS 1.180;
- The procedures only prohibit the possession of a firearm within the area in which the court conducts its business and only during those hours when the court actually operates; and
- Notice of the procedures shall be posted at the entrance to the courtroom (or any separate entrance made available to peace and federal officers) and at a security checkpoint if one is provided.⁴¹

D. *Discharging Firearms*

The state has established certain rules regarding the discharge of firearms. There are six locations wherein the state has prohibited or regulated the discharge of firearms: highways; ocean shore recreation areas; public utility facilities; airport operational surfaces; schools; and cemeteries.

Persons are prohibited from discharging, or attempting to discharge, a firearm upon or across any highway, railroad right of way, or other public road in the state of Oregon.⁴² This same prohibition applies to the ocean shore, which is the “land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.777 or the line of established upland shore vegetation, whichever is farther inland.”⁴³ Also, no person is permitted to discharge, or attempt to discharge, a firearm at any public utility.⁴⁴ A public utility includes: electric; communication; petroleum; natural gas; telecommunications; or railroad facilities.⁴⁵

Aside from the above prohibitions, persons who knowingly or recklessly discharge a firearm upon or across any airport operational surface commit a Class A misdemeanor.⁴⁶ The operational surface of an airport is “any surface of land or water developed, posted or marked so as to give an observer reasonable notice that the surface is developed for the purpose of storage, parking, taxing or operating aircraft, or any surface of land or water when actually being used for such purpose.”⁴⁷

If a person is convicted of discharging a firearm over or on a highway, ocean shore recreation area, public utility facility or airport operational surface, the person’s firearm may be confiscated by the court.⁴⁸ Should a firearm be confiscated and forfeited because it was discharged over or on an airport operational surface, the proceeds received by the state from its subsequent sale shall

⁴¹ *Id.*

⁴² ORS 166.630(1)(a).

⁴³ *Id.* and ORS 390.605.

⁴⁴ ORS 166.630(1)(a).

⁴⁵ *Id.*

⁴⁶ A Class A misdemeanor is punishable by no more than one year in prison and by a fine of no more than \$6,250.00. ORS 161.615(1) and 161.635(1)(a).

⁴⁷ ORS 161.638(2).

⁴⁸ ORS 161.630(2) and 161.638(1).

be deposited with the state treasury into the Common School Fund.⁴⁹ When the state confiscates a firearm for any of the violations described herein, it is only permitted to confiscate the weapon used to commit the crime; the state has no authority to confiscate any other firearms owned by the person convicted of the violation.⁵⁰

Persons are further prohibited by state law from knowingly, or with reckless disregard for the safety of another, discharging, or attempting to discharge, a firearm at a school.⁵¹ A violation of this nature is a Class C felony.⁵² This prohibition is not applicable if the firearm is discharged as part of a program approved by the school.⁵³

As the sport of hunting can often involve the discharge of a firearm, it requires noting that hunting in cemeteries is prohibited by ORS 166.645. A person convicted of hunting in a cemetery is guilty of a misdemeanor offense.⁵⁴

Finally, the prohibitions of firearm discharges noted within this section are not generally applicable to the following persons under these specified conditions:

- A peace officer in the performance of their duty;
- A military person if done so within the confines of a military reservation;
- An employee of the U.S. Department of Agriculture who is acting within the scope of their employment; and
- In the case of a discharge in or on airport surface, lawful hunting or wildlife control with the consent of the airport manager is permissible.⁵⁵

⁴⁹ ORS 161.638(1).

⁵⁰ *See generally, State v. Wilson*, 105 Or App 20 (1990).

⁵¹ ORS 166.370(5).

⁵² *See infra* n. 47.

⁵³ *Id.*

⁵⁴ ORS 166.645(3).

⁵⁵ *Generally*, ORS 166.370(5)(b); ORS 166.630(2); and ORS 166.638(3).

State Preemption and the Scope of Local Regulation of Firearms

Historically, local units of government were given broad authority from the federal and state governments in their regulation of firearms.⁵⁶ After a handgun ban was passed in an Illinois city in 1981, states across the country began preempting local units of government from regulating firearms.⁵⁷ Today, over 40 states have preempted local governments from regulating a person's ability to obtain, possess and use firearms.⁵⁸ Despite the fact that Oregon is a home rule state, the state Legislature, via ORS 166.170, is one of the 40 states to preempt its cities from regulating firearms, unless done so in a manner specifically permitted by state law.

As a home rule state, Article XI, Section 2,⁵⁹ of the Oregon Constitution allows the “people of the locality to decide upon the organization of their government and the scope of its powers under its charter without having to obtain statutory authorization from the Legislature.”⁶⁰ Home rule cities possess authority to enact substantive policies, even in areas also regulated by state law, so long as the local ordinance is not “incompatible” with state law, “either because both cannot operate concurrently or because the Legislature meant its law to be exclusive.”⁶¹ In Oregon, the law presumes the state Legislature did not mean to displace local ordinances, unless that intention is apparent.⁶² Thus, the courts “will not determine a local ordinance to be preempted by implication—the legislative preemptive intent must be apparent—that is, ‘clear and unequivocal.’”⁶³

A. General Preemption

The state of Oregon, in ORS 166.170(1), has unequivocally stated that the Legislature is the sole entity in Oregon which is vested with the “authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms.” The preemption is further articulated in ORS 166.170(2):

Except as expressly authorized by state statute, no county, city or municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void.

⁵⁶ Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 133 (2013).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ “The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon.”

⁶⁰ *La Grande/Astoria v. PERB*, 281 Or 137, 142, 576 P2d 1204, *aff'd on reh'g* 284 Or 173, 586 P2d 765 (1978).

⁶¹ *Id.* at 281 Or 148 to 149.

⁶² See, e.g., *State ex rel Haley v. City of Troutdale*, 281 Or 203, 576 P2d 1238 (1978).

⁶³ *Rogue Valley Sewer Services v. City of Phoenix*, 262 Or App 183, 192, 329 P3d 1, 6 (2014).

Because the state’s intent to preempt cities from regulating firearms is clear and unequivocal, the only types of firearm regulations a city may enact are those regulations specifically authorized by the Legislature.

B. Scope of Authority to Regulate the Possession of Firearms

The Legislature’s preemption leaves cities with limited authority to regulate the possession of firearms in public places. A public place, generally, is a place to which the “general public has access.”⁶⁴ Cities are permitted to adopt ordinances which regulate, restrict and even prohibit the possession of *loaded* firearms in public places.⁶⁵ A city does not have the authority to regulate *unloaded* firearms in public places.⁶⁶

Any city ordinance which seeks to regulate, restrict or prohibit the possession of loaded firearms in public places is not legally applicable to any of the following persons:

- A law enforcement officer;⁶⁷
- A member⁶⁸ of the military in the performance of official duties;
- A person licensed to carry a concealed handgun;
- A person authorized to possess a loaded firearm while in or on a court facility if the presiding judge or municipal court has issued an order authorizing said possession;⁶⁹
- A parole or probation officer who is acting within the scope of his/her employment;
- Any person summoned by a law enforcement officer to assist the officer in making an arrest or preserving the peace;
- Any person authorized by the person or governing body that controls the public place to possess a firearm in the public place; and
- An employee of the United States Department of Agriculture who is acting within the scope of their employment.⁷⁰

⁶⁴ ORS 161.015. Examples of public places per this ORS provision include: hallways; lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence; and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

⁶⁵ *Id.*

⁶⁶ However, per ORS 166.173(2)(d) and ORS 166.370, if a person wishes to possess an unloaded firearm on school property, the firearm shall be stored in a locked motor vehicle instead of being carried on the person.

⁶⁷ Includes both a reserve officer and an honorably retired officer.

⁶⁸ Includes both active and reserve members.

⁶⁹ If the facility in question is a shared court facility, the presiding judge of a municipal court is prohibited from entering an order regarding firearms that conflicts with an order entered by a presiding judge of the circuit court.

⁷⁰ ORS 166.173(2)(d) and ORS 166.370.

The Oregon Court of Appeals has had two occasions upon which to discuss and interpret the intent and meaning of ORS 166.173. In both instances, the court's ruling was favorable to local units of government. The first decision was rendered in 2004 and addressed a city's ability to lease a public place to a private party wherein the private party elected to restrict handguns carried by individuals in possession of a concealed carry permit. A second decision was issued in 2008 and concerned the legitimacy of an ordinance which prohibits the possession of loaded firearms in personal vehicles on public streets.

In *Starrett v. City of Portland*, the Court of Appeals was asked to determine whether ORS 166.173 was violated when a private enterprise leased public property from the city of Portland to host a public party and then refused to allow Mr. Starrett, a person with a concealed carry permit, entry into the party because he was in possession of a loaded handgun.⁷¹ Mr. Starrett sued the city of Portland alleging that since ORS 166.174 prohibits the city from refusing him entry onto public property with a handgun when he is in possession of a concealed carry permit, any entity renting the public property from the city is also prohibited from denying him entry because he possesses a loaded handgun.⁷²

The Court of Appeals found in favor of the city of Portland. In its holding the court noted that ORS 166.173 prohibits cities from regulating the possession of handguns by persons holding a concealed carry permit in public places.⁷³ A private entity in sole possession of a public place may regulate the possession of handguns by persons holding concealed carry permit.⁷⁴ The court specifically stated, "By declining to dictate who must be allowed onto leased property or who must be allowed to participate in a private event hosted on the leased property while the property is under the control of the lessee, the city does nothing more affirmative than decline to interfere with the property rights of a private lessee."⁷⁵

In *State v. Ward*, the parties asked the Court of Appeals to determine whether ORS 166.173 allowed cities to prohibit, and punish, a person who possessed a loaded firearm in his personal vehicle when the vehicle was located on a public street.⁷⁶ A Portland police officer pulled Mr. Ward over for a traffic violation and, discovering that Mr. Ward was uninsured,⁷⁷ the officer had the vehicle towed.⁷⁸ As part of the vehicle being towed, Mr. Ward consented to the officer searching the vehicle.⁷⁹ During the vehicle search the officer uncovered a loaded firearm and subsequently arrested Mr. Ward for violating a Portland ordinance which prohibits individuals from possessing loaded firearms in public places.⁸⁰

Mr. Ward challenged his arrest for violating the Portland ordinance on the grounds that because he had a reasonable expectation of privacy in his personal motor vehicle, the motor vehicle was

⁷¹ 196 Or App 534 (2004).

⁷² *Id.*

⁷³ *Id.* At 542-543, 733.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ 224 Or App 421 (2008).

⁷⁷ *Id.* At 423, 444.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

not a public place within the meaning of ORS 161.173.⁸¹ Portland’s ordinance withstood Mr. Ward’s challenge, with the Court of Appeals concluding that the Legislature intended to allow Portland “to regulate the possession of loaded firearms on their streets and highways, even if such a firearm is kept in a place to which the general public has no access.”⁸²

Generally, cities are permitted to regulate a person’s possession of loaded firearms in public places. This authority extends to allowing private entities to lease public spaces and refuse entry to persons possessing concealed carry permits who wish to bring a loaded handgun to the event.⁸³ It also extends to prohibiting individuals from driving vehicles on public streets if the vehicle contains a loaded firearm. But, mindfulness must be paid to the eight individuals and/or instances upon which such a local regulation is not lawful or valid.

C. Scope of Authority to Regulate the Discharge of Firearms

The Legislature’s preemption leaves cities with limited authority to regulate the discharge of firearms in limited instances and under certain specified perimeters. Generally, ORS 166.172 allows a city to adopt an ordinance which regulates, restricts and even prohibits “the discharge of firearms within the city’s boundaries.” A city’s regulation, however, is not permitted to apply to or affect any of the following:

- A person discharging a firearm in the lawful defense of person or property;
- A person discharging a firearm on a public or private shooting range; and
- An employee of the U.S. Department of Agriculture acting within the scope of his/her employment.

In December of 2013, the Oregon Court of Appeals, in *Conrady v. Lincoln County*, found that requiring a conditional use permit for a shooting range to locate on a particular piece of property did not run afoul of ORS 166.172.⁸⁴ The Conrady family owned property in Lincoln County that was zoned for timber conservation.⁸⁵ Pursuant to the county’s code, a conditional use permit was required before the family could operate a lawful shooting range on the property.⁸⁶ The Conrady family filed a lawsuit against the county alleging the conditional use permit violated the restrictions imposed on the county by ORS 166.172.⁸⁷

In its opinion the court noted that the case was one inquiring as to whether or not the Legislature, in enacting ORS 166.172, intended to preempt county zoning ordinances that necessitate a

⁸¹ *Id.* at 424, 444.

⁸² *Id.* at 424, 445.

⁸³ According to ORS 166.174, a city is not permitted to adopt an ordinance that regulates, restricts or prohibits the possession of or sale of a firearm in a public building that is rented or leased. In other words, the city’s tenant can, on its own, decide to limit or prohibit its guests from carrying firearms in the public building, but the city cannot mandate the tenant take such an action.

⁸⁴ 260 Or App 115, 316 P3d 413 (2013).

⁸⁵ *Id.* at 117, 413.

⁸⁶ *Id.* at 117, 413-414.

⁸⁷ *Id.* at 118, 414.

conditional use permit before land can be used as a shooting range.⁸⁸ The court found that the county's ordinance was not preempted by ORS 166.172 because the ordinance did not regulate, restrict or prohibit "the discharge of firearms *on* a shooting range or *in* a shooting gallery."⁸⁹ It was the court's opinion that ORS 166.172 prohibits cities, and counties, from regulating the discharge of firearms on or in shooting ranges, not that the statute prohibits cities, and counties, from determining where shooting ranges can be located.

Provided a city is cognizant of the three instances in which it is prohibited from regulating the discharge of firearms in its jurisdiction, Oregon law allows cities to do the following: (1) *regulate* how, where and when firearms can be discharged in the city limits; (2) *restrict* how, where and when firearms can be discharged in the city limits; and/or (3) outright *prohibit* the discharging of a firearm in the city limits.

D. Scope of Authority to Regulate the Purchase of Used Firearms

While ORS 166.170 generally notes that the sale of firearms is a matter to be strictly regulated by state law, ORS 166.175 permits two instances wherein cities may regulate this action. Cities are permitted to regulate the purchase of used firearms by pawn shops and secondhand stores.⁹⁰ A secondhand store is one "whose primary source of revenue is the sale of used merchandise."⁹¹ It is important to note that this statute only permits cities to regulate the purchase of *used* firearms; it is not applicable to *new* firearms.

⁸⁸ *Id.* at 119, 415.

⁸⁹ *Id.* at 133, 422.

⁹⁰ ORS 166.175(1).

⁹¹ ORS 166.175(2).

Additional Special Circumstances Relating to Firearm Regulation

A. Seizure of Firearms During Declared Emergencies

Cities, and all other governmental entities, are prohibited from seizing a firearm from a person who lawfully possesses the weapon during a declared state of emergency.⁹² If a city unlawfully seizes a person's firearm during a declared state of emergency, the owner of the firearm is entitled to receive all costs they incur in recovering the firearm from the city.⁹³ The costs can include attorney fees, court costs, and any other related expenditures.⁹⁴

B. Firearms Donated to Law Enforcement Agencies

In the event a law enforcement agency of a city receives a firearm as a donation, the city is permitted to sell the firearm.⁹⁵ However, any proceeds generated from the sale (minus costs incurred in facilitating the sale) shall be deposited into an account of the law enforcement agency with said funds being used for "public safety, law enforcement and crime prevention and detection."⁹⁶

C. Firearm Possession by Non-Law Enforcement Public Employees in the Workplace

In addition to being government actors, cities are also employers. Just like their counterparts in the private sector, cities regularly adopt personnel manuals or employee handbooks which establish a set of rules and regulations that employees must follow. A common regulation found in city personnel manuals across the state is to prohibit non-law enforcement employees from possessing firearms while on duty.⁹⁷

Prohibiting employees from possessing firearms while on duty has been deemed permissible by the Oregon Court of Appeals. In *Doe v. Medford School District*, a public school teacher who possessed an Oregon license to carry a concealed handgun challenged a district rule that prohibited her from carrying said handgun on school property while she was working.⁹⁸ The teacher argued that ORS 166.170 preempted the district's rule.

ORS 166.170 provides two key things. First, it notes that the authority to regulate the possession of firearms is vested solely in the Oregon Legislature. Second, it provides that local governments are not permitted to enact "civil or criminal ordinances" which restrict the possession of firearms. The teacher argued that the language of ORS 166.170 should be broadly

⁹² ORS 401.198(1)(2).

⁹³ ORS 401.198(3).

⁹⁴ *Id.*

⁹⁵ ORS 166.282.

⁹⁶ *Id.*

⁹⁷ Cities like Eugene (<https://www.eugene-or.gov/DocumentCenter/View/5588>) and Portland (<https://www.portlandoregon.gov/citycode/article/12246>) prohibit non-law enforcement employees from possessing firearms while on duty.

⁹⁸ 232 Or App 38 (2009).

interpreted to prohibit local units of government from regulating whether or not their employees could carry firearms on their person during working hours.

The Oregon Court of Appeals disagreed with the teacher's assertion, instead concluding that ORS 166.170 is not applicable to internal employment policies rendered by local government officials.⁹⁹ The court noted that ORS 166.170 only applies to laws adopted by local government entities, not internal personnel policies.¹⁰⁰

Conclusion

Regulating the possession and discharge of firearms at the local level involves a firm understanding of constitutional limitations and statutory preemptions. This guide is meant to introduce readers to the myriad of regulations and limitations placed upon a city's ability to regulate firearms. The guide and the two models provided herein are meant to serve as a starting point in a municipality's discussion about local gun regulation. Each city will need to decide what regulations and policies, if any, are right for their respective jurisdictions.

⁹⁹ *Id.* at 61.

¹⁰⁰ *Id.*

Appendix A: Model Ordinance Regulating Loaded Firearms in Public Places

AN ORDINANCE OF THE CITY OF [NAME] REGULATING LOADED FIREARMS IN PUBLIC PLACES

WHEREAS, under Oregon state law, a municipality is specifically authorized to regulate the possession of loaded firearms in public places;

WHEREAS, under Oregon state law, a municipality is specifically authorized to regulate the discharge of firearms in public places under certain conditions; and

WHEREAS, the city seeks to promote the health, safety, and welfare of its citizens with the adoption of this ordinance.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Chapter [insert chapter number} is hereby added to the [insert name of City] municipal code as follows:

Section 1: DEFINITIONS.

- A. **Firearm** means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder.
- B. **Handgun** means any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired other than from the shoulder.
- C. **Public place** means a place to which the general public has access.

Section 2: UNLAWFUL POSSESSION.

- A. It is unlawful for any person to knowingly possess or carry a loaded firearm in or upon a public place, including while in a vehicle in a public place.
- B. The following are exceptions to the general prohibition of persons possessing a loaded firearm and constitute affirmative defenses to a violation of this chapter:
 - 1. A law enforcement officer, whether active, reserve or honorably discharged;
 - 2. A member of the military in the performance of official duty;
 - 3. A person licensed to carry a concealed handgun;

4. A person authorized to possess a loaded firearm while in or on a court facility if the presiding judge or municipal court has issued an order authorizing said possession;
5. A government employee authorized or required by his or her employment or office to carry firearms;
6. Any person summoned by a law enforcement officer to assist the officer in making an arrest or preserving the peace;
7. Any person authorized by the person or governing body that controls the public place to possess a firearm in the public place;
8. A merchant who possesses or is engaged in lawfully transporting unloaded firearms as merchandise;
9. Organizations which are by law authorized to purchase or receive weapons from the United States or the State of Oregon;
10. Duly authorized military or civil organizations while parading; and
11. A security guard employed at a financial institution insured by the Federal Deposit Insurance Corporation while the security guard is on duty.¹⁰¹

Section 3: UNLAWFUL DISCHARGE.

- A. It is unlawful for any person to discharge a firearm in the city or upon its boundary.
- B. The following are exceptions to the general prohibition of discharging a firearm and constitute affirmative defenses to a violation of this chapter:
 1. A person discharging a firearm in the lawful defense of person or property;
 2. A person discharging a firearm on a public or private shooting range;
 3. An employee of the U.S. Department of Agriculture acting within the scope of his or her employment;
 4. A person participating in an athletic contest who fires blank ammunition toward the sky or a designated target;

¹⁰¹ You may also wish to consider exempting individuals traveling to and from a shooting range and/or individuals who are traveling to and from a hunting or fishing expedition.

5. A person authorized to fire blank ammunition as part of military or law enforcement ceremonies;
6. A person participating in a hunter safety or firearms safety training course that is properly recognized by the state of Oregon; and
7. A law enforcement officer in the performance of official duty.¹⁰²

Section 4: INSPECTION BY LAW ENFORCEMENT OFFICER.

- A. It is unlawful for any person who possesses a firearm in or upon a public place, or while in a vehicle in a public place, to refuse to permit a law enforcement officer to inspect that firearm after the law enforcement officer has identified him or herself as a law enforcement officer. The purpose of the law enforcement officer's examination is to determine if the firearm is loaded or unloaded.
- B. Subsection (A) above does not apply to the following:
 1. A law enforcement officer or member of the military engaged in the performance of official duties;
 2. Persons who have permission to carry a loaded firearm in or on a public building; and
 3. Persons in possession of a valid concealed handgun permit. When utilizing this exception, the person is required to produce his or her concealed handgun permit to the requesting law enforcement officer.

Section 5: PENALTY.

A violation of this chapter may result in a sentence of up to [insert time duration] imprisonment and a fine not to exceed [insert dollar amount].

¹⁰² You may also wish to consider allowing the chief of police to provide discretionary approval under certain conditions.

Appendix B: Model Personnel Policy Prohibiting Non-Law Enforcement Employees from Possessing Weapons in the Workplace

Rule/Regulation [insert identifying number] is hereby added to the [insert name of City] personnel manual as follows:

Weapons Policy

The city of [insert name of City] is committed to providing a safe working environment for all city employees. In order to meet this goal, no employee shall possess any loaded or unloaded firearm or any other instrument used as a dangerous weapon while on duty, including those times an employee is at a job site, off-site meeting, or in a vehicle owned or maintained by the city.

A. Definitions.

1. **Dangerous weapon** means any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury.
2. **Firearm** means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder.
3. **Possess** means to have physical possession or otherwise to exercise dominion or control over the firearm or dangerous weapon.

B. Precedence. This rule takes precedence over an employee's permit to carry a concealed handgun.

C. Applicability. This rule applies to all city employees except those having specific statutory and agency authority to possess a firearm and/or dangerous weapon in the performance of their job duties.

D. Discipline. A violation of this rule may subject an employee to discipline, up to and including termination.