

Gun Regulation—Local Government

Introduction

According to Michigan law, a local unit of government (city, village, township, or county) is not permitted to enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state (MCL 123.1102).

By state statute on “concealed” carry, and because of the absence of a statute on “open” possession of a firearm, a firearm may be carried anywhere in the state with certain premises excepted, not including municipal buildings, with particular rules for concealed versus open carry of a firearm.

Open Carry

Open carry is legal in Michigan. There is no statute that addresses “open” possession of a gun. Therefore, a person, with or without a CPL (Concealed Pistol License), may open carry in a public place as long as the person is carrying with a lawful intent and the firearm is not concealed, except on certain premises (MCL 28.425o). Per MCL 750.234d, the list of premises where **a firearm may not be openly carried** includes: a depository financial institution/subsidiary or affiliate of a depository financial institution; a church or other house of religious worship; a court; a theatre; a sports arena; a day care center; a hospital; and an establishment licensed under the Michigan Liquor Control Act.

Concealed Carry

A person with a concealed pistol license (CPL) may carry a concealed pistol anywhere in this state except on certain premises (MCL 28.425o). The list of premises where **a concealed pistol may not be carried** (“pistol-free zone”) includes: schools or school property; day care centers or child placing agencies; sports arenas/stadiums; bar/tavern; churches/other places of worship; entertainment facility; hospitals; dormitories and classrooms of community colleges/colleges/universities; and casinos.

Parking lots of these “pistol free zones” are not considered part of the “pistol free zones.” MCL 28.425o(3). A municipal outdoor recreation park is not an entertainment facility, according to the Michigan Attorney General (OAG 7120).

Permissible Local Government Prohibition/Regulation

A local unit of government may adopt a policy (not an ordinance) that prohibits possession of weapons by municipal employees in the course of their employment (MCL 123.1103).

A **city or a charter township** may prohibit the discharge of a pistol or other firearm within the jurisdiction of that city or charter township (MCL 123.1104).

Municipal Buildings

Because the open carry list of excepted premises does not include municipal buildings (except for courts), a member of the public, with or without a CPL, may open carry in any municipal building.

GUN REGULATION

BY LOCAL GOVERNMENT

By Kim Cekola



Senate Bills 584 and 586 would allow people to carry concealed, loaded handguns on Michigan elementary, middle, and high schools' premises. SB 584 would also allow people to carry concealed, loaded handguns into college classrooms and dormitories, sports arenas, bars, and other locations throughout the state.

After the October 2017 shooting in Las Vegas and the November 2017 shooting in Texas, municipal officials may be wondering what they can do to regulate guns. The answer is: very little. In 1990, the Michigan Legislature enacted the Firearms and Ammunition Act (PA 319) to put limits on what municipalities could control when it came to guns. Specifically, "A local unit of government shall not enact or enforce any ordinance that regulates, in any manner, the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms." (MCL 123.1102).

Almost a decade ago, in 2008, a man barged into the Kirkwood, Missouri city council meeting and shot and killed five people and wounded two others. This is terrifying for people who think public meetings are a safe place to conduct government business. Though there may be a sergeant-at-arms present to keep the peace, traditionally council meetings might have some hot-headed shouting and other disruptive behaviors, not life-threatening danger. If you are wondering if municipalities can ban the possession or carrying of guns in municipal buildings, the answer is "no"—at least not by the public. What about guns in polling places? The spokesman for the Michigan Secretary of State, which oversees elections, said, "State election law does not

address firearms laws in polling locations, so normal rules for carrying laws apply." (*Ann Arbor News* Nov 4, 2016)

In addition to the state pre-empting the field of gun control, Michigan is an open carry state—meaning, under state law, an adult may openly carry any legal firearm. The concept of openly carrying firearms in a library, school, or city hall can make people uncomfortable. There have been several cases in Michigan resulting in fine-tuning the area of gun control and municipalities.

Court Cases

In 2001, the City of Ferndale passed an ordinance prohibiting the possession or concealment of weapons in all city-owned or city-controlled buildings (with exceptions for law enforcement officers, and auxiliary and retired police officers). The ordinance was challenged by the Michigan Coalition for Responsible Gun Owners, a group that promotes the safe use and ownership of firearms through education, litigation, and legislation. The case was decided by the Court of Appeals, and due to pre-emption by the state on firearm regulation, the ordinance was found invalid.

Another case, *Michigan Gun Owners v Ann Arbor Public Schools*, was decided in 2016. In this case, a person came to a theater performance at a local high school openly carrying. The school district had passed rules banning the possession

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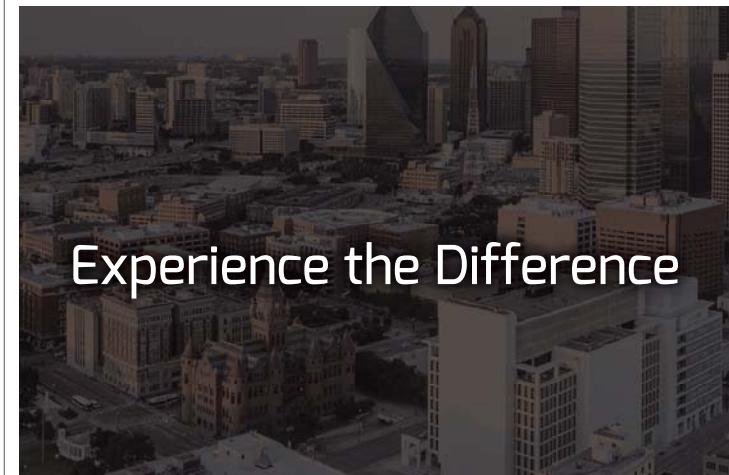


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of firearms on school property and at school-sponsored activities. The rules were unsuccessfully challenged due to a school being found to not be a “local government,” nor are schools controlled by local governments. Subsequently, the school’s rule was not pre-empted by state law.

Back to the library scenario. In 2012, *Capital Area District Library v Michigan Open Carry* centered on whether library staff could ask open carry patrons to leave the premises, as their presence, particularly in the children’s reading area, was making other patrons very uncomfortable and upset. The library had passed regulations banning firearms. When challenged, the Court of Appeals found the rule to be pre-empted by state law.

Permissible Local Regulation

So, what are municipalities allowed to control when it comes to firearms? The Firearms and Ammunition Act (PA 319 of 1990) allows a local unit of government to prohibit or regulate the transportation, carrying, or possession of guns by employees of that local unit in the course of their employment. The League has collected several sample city and village personnel policies addressing this permissive action. In full expression of home rule, some municipalities allow it and some ban it—it is a matter of local choice. It is recommended that cities and villages decide how they want to handle possession of guns by employees and then establish a policy (not an ordinance) regarding that position. In addition, PA 319 allows cities and charter townships (but not villages or general law townships) to regulate the discharge of firearms and pneumatic guns in city/township limits.

In *Czymbor's Timber v City of Saginaw*, the city enacted an ordinance prohibiting the discharge of firearms and bows and arrows in city limits. The ordinance did not provide for the discharge of firearms for hunting, and it was challenged due to hunting being pre-empted by state law and regulated by the Department of Natural Resources (DNR). The Court of Appeals found that the DNR rule did not pre-empt a city from taking measures to assure public peace and safety as authorized under the Home Rule City Act. The case went to the Michigan Supreme Court and held.

Open Carry

To reiterate, open carry is legal in Michigan. Therefore, a person may open carry in a public place as long as the person is carrying with a lawful intent and the firearm is not

concealed. There are areas, however, where open carry is not allowed (MCL 750.234d):

- depository financial institution
- church/house of religious worship
- court
- theatre
- sports arena
- day care center
- hospital
- an establishment licensed under the Michigan Liquor Control Act

Concealed Carry

A person with a concealed pistol license may carry a concealed pistol anywhere in the state, except on certain premises (MCL 28.4250):

- schools or school property
- day care center or child placing agency
- sports arena/stadium;
- bar/tavern
- church/other places of worship
- entertainment facility
- hospital
- dormitory and classrooms of community college/college/university
- casinos

Conclusion

Under Michigan law, it is legal to openly carry firearms almost everywhere (exceptions listed above) and it is legal to carry a concealed pistol anywhere (exceptions listed above). The only gun regulations all local governments can enforce are the possession of guns (for or against) by their employees at the municipal worksite (with exceptions for law enforcement, of course) and for cities and charter townships, whether to prohibit the discharge of firearms in their respective municipal boundaries. ☰

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