



95317238

4

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

OHIOANS FOR CONCEALED CARRY, INC., ET AL  
Plaintiff

Case No: CV-15-844547

CLERK OF COURTS  
CUYAHOGA COUNTY

Judge: SHIRLEY STRICKLAND SAFFOLD

CITY OF CLEVELAND, OHIO, ET AL  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

RELATOR/PLAINTIFF'S AND RESPONDENT/DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT, FILED 02/01/16 AND 02/04/16 RESPECTIVELY, ARE HEREBY GRANTED AND DENIED IN PART. RELATOR/PLAINTIFF'S MOTION TO WAIVE SECURITY OR, IN THE ALTERNATIVE, ESTABLISH SECURITY DEPOSIT FOR THEIR TAXPAYER ACTION, FILED 03/07/16, IS HEREBY GRANTED IN PART. THE FOLLOWING ORDER SHALL DISPOSE OF ALL CLAIMS IN THIS MATTER:

DETERMINING WHETHER AN ORDINANCE CONFLICTS WITH R.C.9.68, THE GENERAL LAW FOR HOME RULE ANALYSIS, THAT WAS HELD TO BE A VALID EXERCISE OF LEGISLATIVE AUTHORITY BY THE OHIO SUPREME COURT IN CLEVELAND V. STATE, 128 OHIO ST. 3D 135, 2010-OHIO-6318, 942 N.E.2D 370, REQUIRES THE COURT TO DETERMINE WHETHER THE ORDINANCE PERMITS OR LICENSES THAT WHICH THE STATUTE FORBIDS, AND VICE VERSA. UNDERSTANDING THAT THE CITY OF CLEVELAND HAS THE POWER TO REGULATE AND GOVERN THEIR POLICE POWERS GRANTED AND CONTROLLED BY ITS CONSTITUTIONAL 'HOME RULE' POWERS (ART. III, SEC. 18 OF OHIO CONSTITUTION), SO LONG AS THE LOCAL ORDINANCES DO NOT CONFLICT WITH A GENERAL STATUTE ENACTED BY THE STATE, THIS COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS FOR THE DISPUTED FIREARM ORDINANCES PASSED BY THE CITY OF CLEVELAND, WHICH WERE ARGUED TO BE ENACTED THROUGH THE CITY'S HOME RULE POWERS:

AS THE RESPONDENT/DEFENDANT CONCEDES, THE DEFINITION FOR 'AUTOMATIC FIREARM' (CLEVELAND CODIFIED ORDINANCE (HEREINAFTER 'C.C.O.')

627.01(A)) AND 'DANGEROUS ORDNANCE' (C.C.O. 627.01(D)) DO NOT COMPLY WITH R.C. 9.68 AND ARE THEREFORE UNCONSTITUTIONAL. UNLIKE THE OHIO REVISED CODE, C.C.O. 627.01 DEFINES 'AUTOMATIC FIREARM' AS INCLUDING A SEMI-AUTOMATIC WEAPON THAT IS CAPABLE OF FIRING MORE THAT THIRTY-ONE (31) CARTRIDGES WITHOUT RELOADING. THE DEFINITION OF 'AUTOMATIC FIREARM' AS FOUND IN C.C.O. 627.01(A) SHOULD MIRROR THE DEFINITION OF 'AUTOMATIC FIREARM' AS DEFINED IN R.C. 2923.11(E). THE DEFINITION OF 'AUTOMATIC FIREARM' ALSO IMPACTS THE DEFINITION OF 'DANGEROUS ORDNANCE' AS 'AUTOMATIC FIREARM' IS INCLUDED IN THAT DEFINITION. ACCORDINGLY, AS THE RESPONDENT/DEFENDANT CONCEDES, THE CLEVELAND CODIFIED ORDINANCE DEFINITION OF 'AUTOMATIC FIREARM' IS UNCONSTITUTIONAL INSOMUCH AS THE DEFINITION DOES NOT EXACTLY MIRROR THAT OF THE OHIO REVISED CODE. THE FOLLOWING ANALYSIS OF THE REMAINING CLEVELAND CODIFIED ORDINANCES ARE TO BE INTERPRETED UNDER THE DEFINITION PROVIDED IN THE OHIO REVISED CODE WHEN IT RELATES TO THE DEFINITION OF 'AUTOMATIC FIREARM.'

C.C.O. 627.01: DEFINITIONS  
THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.  
MIRRORS LANGUAGE OF R.C. 2923.11.

C.C.O. 627.02: CARRYING CONCEALED WEAPONS  
THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.  
MIRRORS LANGUAGE OF R.C. 2923.12.



95317238

C.C.O. 627.04: USING WEAPONS WHILE INTOXICATED

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.  
MIRRORS LANGUAGE OF R.C. 2923.15.

C.C.O. 627.06: FAILURE TO SECURE DANGEROUS ORDNANCE

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

'WHEN A MUNICIPAL ORDINANCE VARIES IN PUNISHMENT WITH THE STATE STATUTE SUCH ORDINANCE IS NOT IN CONFLICT WITH THE STATUTE WHEN IT ONLY IMPOSES A GREATER PENALTY.' CITY OF NILES V. HOWARD, 12 OHIO ST.3D 162, 165, 466 N.E.2D 539 (1984). IF AN ORDINANCE 'ONLY INCREASED THE PENALTY FROM A LESSER MISDEMEANOR TO A FIRST DEGREE MISDEMEANOR, IT IS NOT IN CONFLICT WITH THE GENERAL LAWS OF OHIO.' ID.

C.C.O. 627.07: IMPROPERLY PROVIDING ACCESS TO FIREARMS TO A MINOR

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

'STORAGE' IS AN AREA OF FIREARM LEGISLATION THAT THE CITY IS PROHIBITED FROM ENTERING BECAUSE IT IS SPECIFICALLY PROVIDED FOR IN R.C. 9.68. LIKewise, R.C. 2923.21(A)(3) PROHIBITS ANYONE FROM 'FURNISH[ING]' ANY FIREARM TO A PERSON UNDER EIGHTEEN(18) YEARS OF AGE. HOWEVER, C.C.O. 627.07 PROHIBITS ANYONE FROM 'LEAV[ING]' A FIREARM SO AS TO ALLOW ACCESS TO THE FIREARM BY A PERSON WHO IS UNDER EIGHTEEN (18) YEARS OF AGE. THE 'LEAVING' OF A FIREARM WOULD BE CONSIDERED AN 'OTHER TRANSFER' UNDER R.C. 9.68, AND WOULD SEEK TO REGULATE THE UNLEGISLATED GROUND BETWEEN AFFIRMATIVE SUPPLY OF A WEAPON TO A MINOR, WHEN REFERRING TO 'FURNISH' IN R.C. 2923.21(A)(3), AND THE AFFIRMATIVE 'STORING' OF A WEAPON, WHEN REFERRING TO 'STORAGE' IN R.C. 9.68, TO REGULATE THE CARELESS PLACEMENT OF FIREARMS.

C.C.O. 627.08: UNDERAGE PURCHASE OF HANDGUN

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.  
MIRRORS LANGUAGE OF R.C. 2923.211.

C.C.O. 627.09: IMPROPERLY DISCHARGING A FIREARM ON OR NEAR PROHIBITED PREMISES

THE COURT HEREBY FINDS THIS ORDINANCE UNCONSTITUTIONAL AND INVALID.

R.C. 9.68 STATES THE GENERAL ASSEMBLY'S INTENTION TO ENACT 'UNIFORM LAWS THROUGHOUT THE STATE REGULATING THE OWNERSHIP, POSSESSION, PURCHASE, STORAGE, CARRYING, ETC. IN DETERMINING THE LEGISLATURE'S INTENT, THE COURT MUST LOOK TO THE PLAIN MEANING OF THE STATUTE AND APPLY THAT STATUTE AS WRITTEN WHEN IT IS UNAMBIGUOUS AND DEFINITE. SEE, STATE V. LOWE, 112 OHIO ST.3D 507, 2007-OHIO-606, 861 N.E.2D 512, P9. C.C.O. 627.09 MIRRORS THE LANGUAGE OF R.C. 2923.162, EXCEPT FOR THE ADDITION OF SECTION (A)(4) TO THE CLEVELAND CODIFIED ORDINANCE, THAT NO PERSON SHALL 'DISCHARGE A FIREARM WITHIN FIVE HUNDRED (500) FEET OF THE GROUNDS OF ANY PARK, PLAYGROUND, OR RECREATION CENTER OWNED BY THE CITY.' C.C.O. 627.09(A)(4). IN CONSIDERATION OF THE GENERAL ASSEMBLY'S INTENTION TO PROVIDE 'UNIFORM LAWS' REGULATING OWNERSHIP, POSSESSION, PURCHASE, STORAGE, CARRYING, ETC. OF A FIREARM, AND R.C. 2923.162 RESTRICTION ON DISCHARGING A FIREARM ON A 'LAWN, PARK, PLEASURE GROUND, THE PROPERTY OF ANOTHER, ETC.,' C.C.O. 627.09(A)(4) CONFLICTS WITH THE GENERAL STATUTE, R.C. 9.68, AND THE GENERAL ASSEMBLY'S INTENTION TO PROVIDE 'UNIFORM LAWS' BY ADDING RESTRICTIONS NOT FOUND IN R.C. 2923.162.

C.C.O. 627.10: PROHIBITED WEAPONS ON SCHOOL PROPERTY; DUTY TO NOTIFY POLICE

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

REGULATES THE NOTIFICATION AND REGISTRATION REQUIREMENTS, BUT DOES NOT DIRECTLY IMPACT POSSESSION OR TRANSFER RIGHTS OF FIREARM OWNERS; THEREFORE THE ORDINANCE DOES NOT CONFLICT WITH R.C. 9.68. THE ORDINANCE DOES NOT PERMIT OR LICENSE THAT WHICH THE STATUTE FORBIDS OR VICE VERSA.

C.C.O. 627.12: SEIZURE AND CONFISCATION OF DEADLY WEAPON

THE COURT HEREBY FINDS THIS ORDINANCE UNCONSTITUTIONAL AND INVALID.

R.C. 9.68 STATES THE GENERAL ASSEMBLY'S INTENTION TO ENACT 'UNIFORM LAWS THROUGHOUT THE STATE



95317238

REGULATING THE OWNERSHIP, POSSESSION, ETC. OF FIREARMS; AS WELL AS ALLOWING A PERSON TO 'OWN' OR 'POSSESS' ANY FIREARM, WITHOUT FURTHER 'LICENSE, PERMISSION, RESTRICTION, DELAY, OR PROCESS' UNLESS RESTRICTED BY THE U.S. CONSTITUTION, OHIO CONSTITUTION, STATE LAW OR FEDERAL LAW. C.C.O. 627.12 PERMITS THE SEIZURE OF A 'DEADLY WEAPON' BY INVESTIGATING POLICE OFFICERS IN AN INSTANCE WHERE A PERSON HAS BEEN DRINKING OR DISTURBING THE PEACE, THREATENING BODILY HARM OR CAUSING OR THREATENING A DISTURBANCE OR VIOLENCE, AND THERE IS A REASONABLE BELIEF THAT THE DEADLY WEAPON MAY BE USED TO CAUSE BODILY HARM. THE PERMISSION GRANTED TO AN INVESTIGATING POLICE OFFICER TO SEIZE A FIREARM THROUGH C.C.O. 627.12 CONFLICTS WITH AN INDIVIDUAL'S RIGHT TO OWN OR POSSESS A FIREARM AS PROVIDED IN R.C. 9.68.

**C.C.O. 627.13: REPORTING TRANSFERS OF FIREARMS**

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

C.C.O. 627.13 REQUIRES A PERSON WHO IS NOT A LICENSED GUN DEALER TO REPORT THE SALE OR TRANSFER OF A FIREARM TO THE DIVISION OF POLICE. C.C.O. 627.13 DOES NOT MAKE THE POSSESSION, SALE, OR TRANSFER ILLEGAL, BUT MERELY THE FAILURE TO REPORT THE SALE OR TRANSFER; THEREFORE, THE LOCAL ORDINANCES IS NOT IN CONFLICT WITH A GENERAL STATUTE ENACTED BY THE STATE, NOR DOES IT PERMIT OR LICENSE THAT WHICH THE STATUTE FORBIDS OR VICE VERSA. ACCORDINGLY, THE LOCAL ORDINANCE IS A PROPER USE OF THE CITY OF CLEVELAND'S CONSTITUTIONAL HOME RULE TO REGULATE AND GOVERN.

**C.C.O. 627.14: DEFACING IDENTIFICATION MARKS OF FIREARMS; POSSESSION DEFACED FIREARMS.**

THE COURT HEREBY FINDS THIS ORDINANCE UNCONSTITUTIONAL AND INVALID.

MIRRORS LANGUAGE OF R.C. 2923.201, EXCEPT (B)(1) WHICH MAKES THE SAME OFFENSE A MISDEMEANOR OF THE FIRST DEGREE, INSTEAD OF A FELONY OF THE FOURTH DEGREE. THE SUPREME COURT OF OHIO, IN CLEVELAND V. BETTS, 168 OHIO ST. 3D 386, 154 N.E.2D 917 (1958), AND CITY OF NILES V. HOWARD, 12 OHIO ST.3D 162, 165, 466 N.E.2D 539 (1984), HELD THAT WHEN A MUNICIPAL ORDINANCE VARIES IN PUNISHMENT WITH THE STATE STATUTE FOR THE SAME OFFENSE, IT IS VALID AND CONSTITUTIONAL WHEN IT ONLY IMPOSES A GREATER PENALTY, BUT IS INVALID AND UNCONSTITUTIONAL WHEN IT MAKES THE SAME OFFENSE A LESSER PENALTY OF A MISDEMEANOR WHEN THE STATE STATUTE MAKES IT A FELONY. ACCORDINGLY, BECAUSE C.C.O. 627.14 MAKES DEFACING IDENTIFICATION MARKS OF A FIREARM A MISDEMEANOR IN THE FIRST DEGREE, BUT R.C. 2923.201 MAKES THE SAME OFFENSE A FELONY OF THE FOURTH DEGREE, THE ORDINANCE IS INVALID AND UNCONSTITUTIONAL.

**C.C.O. 627.15: UNLAWFUL TRANSACTIONS IN WEAPONS**

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

REGULATES THE NOTIFICATION AND REGISTRATION REQUIREMENTS, BUT DOES NOT DIRECT THAT A PERSON MAY NOT POSSESS OR TRANSFER A FIREARM; THEREFORE THE ORDINANCE DOES NOT CONFLICT WITH R.C. 9.68. THE ORDINANCE DOES NOT PERMIT OR LICENSE THAT WHICH THE STATUTE FORBIDS AND VICE VERSA.

**C.C.O. 627.16: PROHIBITION AGAINST TRANSFERRING FIREARMS OR DANGEROUS ORDNANCE TO A FELON OR INTOXICATED PERSON**

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

C.C.O. 627.16 IS TO BE VIEWED IN ADDITION TO R.C. 2923.20, WHICH MAKES IT A FOURTH DEGREE FELONY TO RECKLESSLY SELL, LEND, GIVE, OR FURNISH ANY FIREARM PROHIBITED BY R.C. 2923.13 OR 2923.15. C.C.O. 627.16 MAKES THE SAME CONDUCT A FIRST DEGREE MISDEMEANOR IF DONE WITH NEGLIGENCE. R.C. 2923.20 DOES NOT LIST THE PENALTY FOR A SIMILAR ACTION DONE WITH A DIFFERENT MENS REA, AND DOES NOT EXPRESSLY SIGNAL THAT THE STATE HAS EXCLUSIVITY IN THE AREA IF THE SAME ACT IS DONE WITH A LESSER SCIENTER. 'ABSENT A CLEAR MANIFESTATION OF LEGISLATIVE INTENT TO PREEMPT A FIELD OF REGULATION, A MUNICIPALITY MAY ENACT AN ORDINANCE WHICH NEITHER CONFLICTS WITH THE STATE LEGISLATION NOR IS ITSELF UNREASONABLE.' CITY OF CINCINNATI V. BASKIN, 112 OHIO ST.3D 279, 287, 2006-OHIO-6422, 859 N.E.2D 514 (2006) (O'CONNOR, J., CONCURRING IN JUDGMENT ONLY).

**C.C.O. 627.18: REPORTING LOST OR STOLEN FIREARMS**

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

REGULATES THE NOTIFICATION AND REGISTRATION REQUIREMENTS, BUT DOES NOT DIRECTLY IMPACT



95317238

POSSESSION OR TRANSFER RIGHTS OF FIREARM OWNERS; THEREFORE THE ORDINANCE DOES NOT CONFLICT WITH R.C. 9.68, NOR DOES IT PERMIT OR LICENSE THAT WHICH THE STATUTE FORBIDS OR VICE VERSA.

C.C.O. 628.01-628.10 AND 628.99: GUN OFFENDER REGISTRY

THE COURT HEREBY FINDS THIS ORDINANCE CONSTITUTIONAL AND VALID.

REGULATES THE NOTIFICATION AND REGISTRATION REQUIREMENTS, BUT DOES NOT DIRECTLY IMPACT POSSESSION OR TRANSFER RIGHTS OF FIREARM OWNERS; THEREFORE THE ORDINANCE DOES NOT CONFLICT WITH R.C. 9.68. THE ORDINANCE DOES NOT PERMIT OR LICENSE THAT WHICH THE STATUTE FORBIDS OR VICE VERSA.

RESPONDENT/DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON RELATOR/PLAINTIFF'S CLAIM TO COMPEL RELEASE OF PUBLIC RECORDS PURSUANT TO R.C. 149.43(C)(1) IS HEREBY GRANTED.

THERE IS A ONE YEAR STATUTE OF LIMITATIONS FOR 'AN ACTION UPON A STATUTE FOR A PENALTY OR FORFEITURE' PURSUANT TO R.C. 2305.11(A), WHICH IS THE CONTROLLING STATUTE FOR THIS CLAIM.

ACCORDINGLY, RELATOR/PLAINTIFF'S MANDAMUS CLAIM WITH RESPECT TO THE PUBLIC RECORD REQUEST RELATING TO 2008 AND 2011 ARE BARRED UNDER THE ONE YEAR STATUTE OF LIMITATIONS.

RESPONDENT/DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT BARBARA A. LANGHENRY, INDIVIDUALLY, IS HEREBY GRANTED. DEFENDANT BARBARA A. LANGHENRY WAS ACTING IN HER OFFICIAL CAPACITY AS LAW DIRECTOR FOR THE CITY OF CLEVELAND AND IS THEREFORE DISMISSED IN HER INDIVIDUAL CAPACITY.

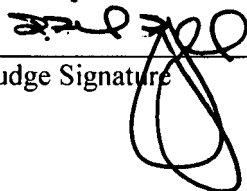
RESPONDENT/DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO THE SECURITY DEPOSIT IS HEREBY DENIED IN PART, AND RELATOR/PLAINTIFF'S MOTION TO WAIVE SECURITY OR, IN THE ALTERNATIVE, ESTABLISH A SECURITY DEPOSIT FOR THEIR TAXPAYER ACTION IS ALSO GRANTED IN PART. AS RELATOR/PLAINTIFF FAILED TO FILE SECURITY FOR THE COST OF THE PROCEEDING OR REQUEST THE COURT WAIVE SECURITY UNTIL DISPOSITIVE MOTIONS WERE FILED, THE COURT HEREBY WAIVES SECURITY, BUT PLAINTIFF/RELATOR IS PROHIBITED FROM RECOVERING ATTORNEY'S FEES AND COSTS.

RESPONDENT/DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO RELATOR/PLAINTIFF DANNY MCINTOSH IS HEREBY GRANTED. RELATOR/PLAINTIFF MCINTOSH LACKS STANDING TO PURSUE THIS TAXPAYER SUIT BASED UPON HIS FAILURE TO SUBMIT A WRITTEN REQUEST TO THE CITY DIRECTOR PURSUANT TO R.C. 733.59.

IT IS SO ORDERED.

COURT COST ASSESSED AS EACH THEIR OWN.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

  
 Judge Signature

8/22/16  
 Date