

ORDINANCE NO. 190920

Amending Chapter 50, Code of Ordinances, by enacting one new section 50-274 relating to the unlawful carrying of concealed firearms in the City by persons who are subject to a restraining order or convicted of domestic violence and the firearm they are in receipt of has been shipped or transported in interstate commerce as prohibited by federal law.

WHEREAS, Section 21.750, of the Revised Statutes of Missouri, preempts the City from enacting ordinances regarding firearms by stating:

“The general assembly hereby occupies and preempts the entire field of legislation touching in any way firearms, components, ammunition and supplies to the complete exclusion of any order, ordinance or regulation by any political subdivision of this state. Any existing or future orders, ordinances or regulations in this field are hereby and shall be null and void except as provided in subsection 3 of this section.

No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance or regulation concerning in any way the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permit, registration, taxation other than sales and compensating use taxes or other controls on firearms, components, ammunition, and supplies except as provided in subsection 3 of this section.”; and,

WHEREAS, an exception to the preemption found in Section 21.750, of the Revised Statutes of Missouri, is provided in Subsection 3 of such Section where it states in part:

“...nothing contained in this section shall prohibit any ordinance of any political subdivision which conforms exactly with any of the provisions of sections 571.010 to 571.070, with appropriate penalty provisions...”; and,

WHEREAS, Section 571.030, of the Revised Statutes of Missouri, states that a person has committed the offense of Unlawful Use of a Weapon if such person:

“...carries concealed upon or about his or her person a knife, a firearm, a blackjack, or any other weapon readily capable of lethal use into any area where firearms are restricted under section 571.107”; and,

WHEREAS, Section 571.107.1(9), of the Revised Statutes of Missouri, states a person is not authorized to carry concealed firearms into “any place where the carrying of a firearm is prohibited by federal law;” and,

WHEREAS, federal law states in Title 18 of the United States Code in Section 922(g) (8) and (9) that:

(g) It shall be unlawful for any person—

ORDINANCE NO. 190920

- (8) who is subject to a court order that--
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

WHEREAS, the City Council is concerned with the unlawful carrying of concealed firearms in the City by persons who are subject to a restraining order or convicted of domestic violence and the firearm they are in receipt of has been shipped or transported in interstate commerce as prohibited by federal law in Title 18, Section 922(g) (8) and (9), of the United States Code; and,

WHEREAS, the City Council desires to prohibit by ordinance in a manner which conforms to the above cited state and federal law the unlawful carrying of a concealed firearm in the City by a person when the person is either subject to a court order restraining that person from harassing, stalking, or threatening an intimate partner of that person or child of that intimate partner or person or engaging in conduct placing an intimate partner in reasonable fear of bodily injury to the partner or child or has been convicted of a misdemeanor crime of domestic violence and the carried firearm such person is in receipt of has been shipped or transported in interstate commerce as prohibited by federal law in Title 18, Section 922(g) (8) and (9), of the United States Code; NOW, THEREFORE,

ORDINANCE NO. 190920

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 50, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by enacting one new section 50-274 relating to the unlawful carrying of concealed firearms in the City by persons who are subject to a restraining order or convicted of domestic violence and the firearm they are in receipt of has been shipped or transported in interstate commerce as prohibited by federal law, to read as follows:

Sec. 50-274. Unlawful carrying of concealed firearms in the City by persons who are subject to a restraining order or convicted of domestic violence.

(a) *Definitions.*

- (1) The word "concealed" as used in this section means kept hidden or removed from sight and either on one's person or within a person's reach.
- (2) The term "intimate partner" as used in this section means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
- (3) The term "misdemeanor crime of domestic violence" as used in this section:
 - a. Means an offense that (i) is a misdemeanor under federal, state, or tribal law; and that (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
 - b. A person shall not be considered to have been convicted of such an offense for purposes of this section, unless (i) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and (ii) in the case of a prosecution for an offense described in this subsection for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
 - c. A person shall not be considered to have been convicted of such an offense for purposes of this section if the conviction has been expunged or set aside, or is an offense for which the person has

ORDINANCE NO. 190920

been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(b) *Unlawful carrying of concealed firearms in the City by persons who are subject to a restraining order or convicted of domestic violence.* A person commits an unlawful carrying of a concealed firearm when:

- (1) The person is carrying a concealed firearm and such person:
 - a. Is subject to a court order that was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; and the order restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child and either includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - b. Has been convicted in any court of a misdemeanor crime of domestic violence.
- (2) And the person carrying the concealed firearm is in receipt of a firearm which has been shipped or transported in interstate or foreign commerce.

(c) *Violation.* A person violating this section shall be guilty of an ordinance violation.

Approved as to form and legality:

Alan L. Holtkamp
Assistant City Attorney