From:	Jim Nugent
To:	Bryan von Lossberg
Cc:	Grp. City Council and City Web Site; Dept. Mayors Office; Dept. City Clerk; Jaeson White; Scott Hoffman; Laurie Clark; Donna Gaukler; Shirley Kinsey; Tiffany Brander; Ellen Buchanan; Eran Pehan; Jeff Brandt; Leigh Griffing; Kathy Crego; Rob Gannon; Dept. Attorney; Dept. MRA; Jeremy Keene; Dennis Bowman; Eran Pehan
Subject:	RE: LR-130 adopted voter firearms legislative initiative goes into effect 1/1/2021. City may no longer prevent carrying of weapons at public assemblies, public parks, schools and polling places not located at publicly owned buildings.
Date:	Thursday, November 12, 2020 10:58:31 AM

TO WHOM IT MAY CONCERN:

Researching and reviewing Montana local government regulatory authority with respect to statewide voter adoption of LR-130(2020) on 11/3/20; especially LR-130's amendments to section 45-8-351 MCA entitled "RESTRICTIONS ON LOCAL GOVERNMENT REGULATION OF FIREARMS", the more restrictive/narrow interpretations associated with "jurisdiction", "polling places" and "schools" are most likely the legal interpretations that the courts would impose.

I contacted Kelly Lynch, Montana League of Cities and Towns deputy director and general counsel; since she regularly attended the Montana State Legislature on behalf of Montana's Cities and Towns and also assisted in writing the voter pamphlet opposition argument against LR-130.

(1) Kelly indicated that the Montana State Legislative intent with respect to the word "jurisdiction" included not allowing the City of Helena to regulate firearms at the Montana State Capitol building; or likely other state office buildings as well. Therefore, a narrow interpretation of "jurisdiction" limiting to city owned publicly owned and occupied buildings is the likely interpretation and application of the new phrase "under its jurisdiction", that has now been inserted into subsection 45-8-351(2) MCA pursuant to LR-130(2020).

(2) Kelly also indicated that interpreting and applying the new phrase "under its jurisdiction" to be limited to city owned and occupied buildings, would mean that the only polling places that city regulations would apply to would be any polling place that is located at a city owned and occupied city public building.

(3) Pursuant to LR-130(2020) Montana local governments will no longer be able to assist and join with school boards/school administrations to have a Montana local government regulate the possession and carrying of firearms outside of school buildings on school playgrounds, school grounds generally, school parking lots, school athletic fields, etc.. A different section of Montana state criminal law, section 45-8-361 MCA of Montana's criminal code does make it a crime to possess or carry a "weapon" inside a school building if the person purposely and knowingly possesses, carries, stores weapon in a school building.

While, the Montana local governments may not "prevent and suppress the carrying of unpermitted concealed weapons" in publicly owned and occupied buildings"; Montana state criminal code pursuant to section 45-8-328 MCA provides that "A PERSON COMMITS THE OFFENSE OF CARRYING A CONCEALED WEAPON IN (a) PORTIONS OF A BUILDING USED FOR STATE OR LOCAL GOVERNMENT OFFICES AND RELATED AREAS IN THE BUILDING THAT HAVE BEEN RESTRICTED". (emphasis added) Section 45-8-328 MCA is the Montana state criminal code entitled "CARRYING CONCEALED WEAPON

IN PROHIBITED PLACE-PENALTY".

Section 45-8-328 MCA also prohibits the carrying of concealed weapons in or at banks, credit unions, savings and loan institutions or similar institutions, including drive –up windows automatic teller machines or unstaffed night depositories or at financial service locations at malls, grocery stores or other places. Section 45-8-328 MCA also prohibits the carrying of concealed weapons in a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued for the sale of alcoholic beverages for consumption on premises.

Pursuant to Montana state criminal law, section 45-8-328 MCA all concealed weapons, even those persons with concealed weapons permits, violate Montana state criminal if the person is present in "PORTIONS OF A BUILDING USED FOR STATE OR LOCAL GOVERNMENT OFFICES AND RELATED AREAS IN THE BUILDING THAT HAVE BEEN RESTRICTED". (emphasis added). Related areas should include local government meeting rooms as related areas. Thus, concealed weapons are prohibited from city council chambers by section 45-8-328 MCA of Montana's state criminal code. Also, the provisions of Montana Criminal Code section 45-8-328 MCA apply to buildings that a government is leasing; but does not own, if there are local government offices and related areas in the leased building.

An owner of land, fields, structures, etc. through their ownership; could have a policy that states no firearms. However, there would be no ordinance law or state law that could be utilized to enforce the policy against a violator.

Also, reportedly, some school groups are preliminarily discussing whether to legally challenge LR-130(2020) on the legal grounds that LR-130(2020) unconstitutionally interferes with a school board's constitutional authority over school district property outside of the school buildings.

In conclusion, it appears that at a minimum the Missoula City Council at a minimum must amend Missoula Municipal Code (MMC) section 8.58.010 MMC to delete the city's current prohibition on a person wearing, bearing or otherwise carrying any firearm to:

(1) a public assembly located outside of a city owned and occupied public building;
(2) public parks,
(3) public election polling places,
(4) public schools,
(5) any other locations of public assembly to conduct and/or administer any public election.

This additional information is intended to assist city elected officials consideration of future amendments to section 8.58.010 Missoula Municipal Code (MMC).

JIM NUGENT

From: Jim Nugent
Sent: Tuesday, November 10, 2020 9:41 AM
To: Bryan von Lossberg <BvonLossberg@ci.missoula.mt.us>
Cc: Grp. City Council and City Web Site <Council@ci.missoula.mt.us>; Dept. Mayors Office <DeptMayor@ci.missoula.mt.us>; Dept. City Clerk <CLERK@ci.missoula.mt.us>; Jaeson White

<WhiteJ@ci.missoula.mt.us>; Scott Hoffman <HoffmanS@ci.missoula.mt.us>; Laurie Clark <ClarkL@ci.missoula.mt.us>; Donna Gaukler <GauklerD@ci.missoula.mt.us>; Shirley Kinsey <KinseyS@ci.missoula.mt.us>; Tiffany Brander <Brandert@ci.missoula.mt.us>; Ellen Buchanan <buchanane@ci.missoula.mt.us>; Eran Pehan <PehanE@ci.missoula.mt.us>; Jeff Brandt <BrandtJ@ci.missoula.mt.us>; Leigh Griffing <GriffingL@ci.missoula.mt.us>; Kathy Crego <CregoK@ci.missoula.mt.us>; Rob Gannon <GannonR@ci.missoula.mt.us>; Dept. Attorney <Atty@ci.missoula.mt.us>
Subject: RE: LR-130 adopted voter firearms legislative initiative goes into effect 1/1/2021. City may no longer prevent carrying of weapons at public assemblies, public parks, schools and polling places not located at publicly owned buildings.

TO WHOM IT MAY CONCERN:

Of course our office will assist the city council to adopt Missoula Municipal Code (MMC) amendments that would be required by LR-130's deletions within subsection 45-8-351 Montana Code Annotated (MCA) pertaining to local government powers with respect to power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of concealed weapons LR-130 amended subsection 45-8-351(2) MCA narrowed and limited the powers of Montana local governments to the power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons to a publicly owned and occupied building under its jurisdiction.

My intent was to recommend Missoula Municipal Code (MMC) amendments necessitated/required by LR-30 amendment to subsection 45-8-351(2) MCA. However, there are a couple of potential gray areas of law pursuant to LR-130 that might require some direction from a majority of the city council as to what amendments are desired for section 8.58.010 Missoula Municipal Code to facilitate drafting the amendments as desired by a majority of the city council.

LR-130 narrowed/limited Montana local government powers to prevent the carrying of unpermitted concealed weapons or the carrying of concealed weapons to a publicly owned and occupied building under its jurisdiction, by inserting the word "unpermitted" into subsection 45-8-351(2) MCA; which is expected to mean/authorize only concealed weapons pursuant to Montana's concealed weapon permit process via county sheriff reviews.

What does the phrase "publicly owned and occupied building under its jurisdiction" mean? Is it limiting jurisdiction to buildings that are publicly owned and controlled by the City? Or does it mean publicly owned and occupied buildings within the city limits? Such as a publicly owned and occupied building such as a new public library that is located on city owned land? Assuming that "publicly owned and occupied building under its jurisdiction" means within the city limits; the City of Missoula could still address weapons within publicly owned and occupied buildings within the city limits, that are not owned or controlled by the City of Missoula.

In addition, to the above identified uncertainty/vagueness about the meaning of the phrase "publicly owned and occupied building under its jurisdiction"; it must be noted and emphasized that LR-130 amended subsection 45-8-351(2) MCA explicitly deletes the power of Montana local governments to

prevent and suppress the carrying of weapons at or into:

(1) Public assemblies; LR-130 would not allow city to regulate weapons possession at outdoor public assemblies, such as parks, courthouse lawn; etc..
(2) parks;
(3) schools; (note this is arguably another gray area. The amendments to subsection 45-8-351(2) MCA clearly delete the word "schools". However, are schools able to be protected/regulated pursuant to the authorization to regulate "publicly owned and occupied buildings under its jurisdiction" ?
(4) possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

These amendments go into effect January 1, 2021.

The amendments to subsection 45-8-351(2) MCA mean that the City must amend section 8.58.010 Missoula Municipal Code (MMC) to delete Missoula Municipal Code provisions such as:

(1) public parks;
(2) any public election polling places; (this is not clear, depending if "jurisdiction" means within the city limits; or alternatively means owned and controlled by the City of Missoula.);
(3) public school buildings; and
(4) any other locations of public assembly where persons gather together to conduct and/or administer any public election related activities are taking place. This would affect polling places, such as a senior citizens center . Also, depending on the correct interpretation/application of the phrase "publicly owned and occupied building under its jurisdiction"; it could apply to all polling places; except a polling place at a city owned and controlled building.

Some desired city council direction will be needed. will await some direction from the city council with respect to addressing potential gray areas prior to bringing a draft to a city council committee.

JIM NUGENT

From: Bryan von Lossberg <BvonLossberg@ci.missoula.mt.us>
Sent: Monday, November 9, 2020 5:16 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: Grp. City Council and City Web Site <Council@ci.missoula.mt.us>; Dept. Mayors Office <DeptMayor@ci.missoula.mt.us>; Dept. City Clerk <CLERK@ci.missoula.mt.us>; Jaeson White <WhiteJ@ci.missoula.mt.us>; Scott Hoffman <HoffmanS@ci.missoula.mt.us>; Laurie Clark <ClarkL@ci.missoula.mt.us>; Donna Gaukler <GauklerD@ci.missoula.mt.us>; Shirley Kinsey <KinseyS@ci.missoula.mt.us>; Tiffany Brander <Brandert@ci.missoula.mt.us>; Ellen Buchanan <buchanane@ci.missoula.mt.us>; Eran Pehan <PehanE@ci.missoula.mt.us>; Jeff Brandt <BrandtJ@ci.missoula.mt.us>; Leigh Griffing <GriffingL@ci.missoula.mt.us>; Kathy Crego <CregoK@ci.missoula.mt.us>; Rob Gannon <GannonR@ci.missoula.mt.us>; Dept. Attorney <Atty@ci.missoula.mt.us>
Subject: Re: LR-130 adopted voter firearms legislative initiative goes into effect 1/1/2021. City may

no longer prevent carrying of weapons at public assemblies, public parks, schools and polling places not located at publicly owned buildings.

Thank you, Jim. Yes, I am intimately familiar with this matter. Will your office be providing specifics around incompatibilities between existing Missoula municipal code and LR-130?

Bryan von Lossberg
Alderman, Missoula City Council - Ward 1
City Council President
(406) 552-7806

On Nov 9, 2020, at 4:24 PM, Jim Nugent <NugentJ@ci.missoula.mt.us> wrote:

MAYOR and CITY COUNCIL:

Some City of Missoula city Municipal Code amendments are necessary as a result of the statewide voter passage of LR-130.

JIM NUGENT