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SENATE DISTRICT 25



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2008 - 2009

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RECEIVED December 29, 2010

JAN 04 2011

OPINION COMMITTEE

The Honorable Greg Abbott
Office of the Attorney General
Attn: Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

COUNTIES IN
SENATE DISTRICT 25

Bexar (north) Hays
Comal Kendall
Guadalupe Travis (south)

RQ-0937-GA

FILE # ML-46645-11

I.D. # 46645

RE: Whether a Type A general-law municipality has authority to adopt and enforce a firearm discharge ban on property located within its original corporate boundaries.

Dear General Abbott:

The City of Wimberley, Texas (City), is a Type A general-law municipality and has adopted an ordinance that prohibits the discharge of firearms within the city limits, except in certain circumstances. A copy of the City's ordinance is enclosed.

The City was incorporated in 2001. In 2004 and 2006 it annexed additional property into its corporate limits. In an effort to promote health, safety, morals, and general welfare, the City seeks to enforce its ordinance prohibiting the discharge of firearms, but only within the area that originally constituted its city limits at incorporation.

The Texas Local Government Code prevents municipalities from regulating the discharge of firearms under certain circumstances. Section 229.002 of the Texas Local Government Code (Code) provides, in relevant part:



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"A municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

- (1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:
 - (A) on a tract of land of 10 acres or more and more than 150 feet from a residence or occupied building located on another property; and
 - (B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract..."

The statute offers no definition of the term "annex." Deferring to the plain meaning of this word, however, the City has historically interpreted "an area annexed by the municipality" to include that area added to the municipality *subsequent* to incorporation and concluded that it may prohibit the discharge of firearms on all properties within its original city limits.

Recently, however, a local court stated that under Section 229.002 the City does not have the authority to regulate the discharge of firearms within its original city limits if the firearm is on a tract of land 10 acres or more and more than 150 feet from a residence or occupied building on another property. The alleged discharge of a firearm did not occur on property that was annexed by the City in 2004 or in 2006, but was part of the original corporate boundaries in 2001. The court concluded that "an area annexed by the municipality" includes the area originally incorporated as a city, if the incorporation occurred after September 1, 1981.

The City of Wimberley contends that it has the authority to ban the discharge of firearms or other weapons described in the statute, on property of any size, if that property was part of the original city boundaries and not part of the annexed land included in the city limits after 2001.

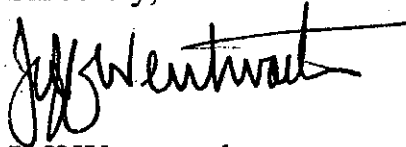
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I respectfully request an opinion on the following question:

Does a city have the authority to prohibit the discharge of a shotgun, air rifle or pistol, BB gun, or bow and arrow on all property located within its original city limits if that city was incorporated after September 1, 1981, and such property is not in the city's extraterritorial jurisdiction and has not been annexed after September 1, 1981?

Thank you for your assistance in this matter.

Sincerely,



Jeff Wentworth
Chairman

Senate Veterans Health Committee, Select

JW/as

Enclosure

CHAPTER 130: GENERAL OFFENSES

Section

Firearms; Air Guns

- 130.01 Purpose
- 130.02 Definitions
- 130.03 Discharge of firearms prohibited; exceptions

Target Ranges

- 130.15 Title
- 130.16 Purpose
- 130.17 Jurisdiction
- 130.18 Definitions
- 130.19 Target range operation; registration required
- 130.20 Target range operating requirements

- 130.99 Penalty

FIREARMS; AIR GUNS

§ 130.01 PURPOSE.

This subchapter is adopted so that the City Council may promote the public health, safety, morals, and general welfare within the city through the regulation of the discharge of air guns, guns, firearms, explosive weapons, and similar devices within the city limits. By prohibiting the discharge of guns, firearms, explosive weapons, and zip guns, and by restricting the discharge of air guns, the City Council seeks to prevent bodily injury, death, and property damage within the city limits. (Ord. 2000-009, passed 10-11-2000)

§ 130.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AIR GUN. Any device designed, made, or adapted to expel a projectile through a barrel by using the energy or force generated by the release of a spring or compressed gases. The term **AIR GUN** includes, but is not limited to, bb guns, pellet guns, air pistols, and air rifles.

EXPLOSIVE WEAPON. Any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an **EXPLOSIVE WEAPON.**

FIREARM. Any device designed, made, or adapted to expel a projectile through a barrel by using the energy or force generated by an explosion or burning substance, or any device readily convertible to that use. The term **FIREARM** includes, but is not limited to, guns, handguns, machine guns, rifles, shotguns, automatic rifles, revolvers, and pistols.

PUBLIC PLACE. Any place to which the public or a substantial group of the public has access, including, but not limited to, parks, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

PUBLIC RIGHT-OF-WAY. The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest.

ZIP GUN. A device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.
(Ord. 2000-009, passed 10-11-2000)

§ 130.03 DISCHARGE OF FIREARMS PROHIBITED; EXCEPTIONS.

(A) It shall be unlawful for any person to discharge, fire or shoot any firearm, explosive weapon or zip gun of any kind within the city limits, except within a properly secured indoor firearms range, constructed and maintained in accord with National Rifle Association specifications and standards or upon a range owned and operated by a governmental entity.

(B) It shall be unlawful for any person to discharge, fire or shoot any air gun in a public place. It shall be unlawful for any person to discharge, fire or shoot any air gun in or across any public right-of-way or across any property line.

(C) This section shall not apply to:

(1) Licensed peace officers, as that term is defined by Texas Code of Criminal Procedure, Article 2.12(3), provided that such discharges are made in the course and scope of the peace officers' official duties;

(2) The use of blank cartridges for a theatrical production, military ceremony, or sporting event that is either sponsored by an educational institution or issued a permit by the Village;

(3) Self defense of a third person, as provided by Texas Penal Code §§ 9.31, 9.32, and 9.33;

(4) Destroying predatory animals on one's own property or with the written permission of the owner of the property; and/or

(5) Target ranges.

(Ord. 2000-009, passed 10-11-2000; Am. Ord. 2001-016, passed 5-17-2001)

TARGET RANGES

§ 130.15 TITLE.

This subchapter shall be referred to as the "Target Range Ordinance."
(Ord. 2001-016, passed 5-17-2001)

§ 130.16 PURPOSE.

This subchapter is adopted so that the City Council may promote the public health, safety, morals, and general welfare within the city through the provision of exceptions to the prohibition against discharging air guns, guns, firearms, explosive weapons, and similar devices. By providing recreational and commercial exceptions to this prohibition, the City Council seeks to allow citizens of the city to discharge air guns, guns, firearms, explosive weapons, and similar devices in a safe and appropriate environment that minimizes bodily injury, death, and property damage within the city limits.

(Ord. 2001-016, passed 5-17-2001)

§ 130.17 JURISDICTION.

The provisions of this subchapter shall apply within the municipal boundaries of the city.
(Ord. 2001-016, passed 5-17-2001)

§ 130.18 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and phrases which are not defined in this subchapter but are defined in other ordinances or code provisions of the city shall be given the meanings set forth in those ordinances.

COUNCIL. The City Council (such as the governing body) of this city.

PERSON. An individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.

TARGET RANGE. Any indoor or outdoor premises where firearms, zip guns, air guns, explosive weapons, or similar devices are discharged, whether or not a fee is charged for the use of the premises, for the purpose of:

(1) Determining the accuracy of the shooter or the firearm; or

(2) Recreation.

(Ord. 2001-016, passed 5-17-2001)

§ 130.19 TARGET RANGE OPERATION; REGISTRATION REQUIRED.

(A) *Target range registration required.* It shall be unlawful for any person to operate a target range whereat any firearm, zip gun, air gun, or explosive weapon is discharged in the city limits without first registering with the City Council, or its designee.

(B) *Registration information.* Any person desiring to operate a target range in the city shall register with the City Council. This registration shall state:

(1) The name of the person registering. If the registrant is a partnership or corporation, the names of all partners and officers shall be given;

(2) The location at which the target range is to be operated;

(3) The mailing address of the target range;

(4) The telephone number of the target range;

(5) The person or persons who shall be responsible for the operation of the target range;

(6) Whether the target range shall be used for pistol, shotgun, or rifle shooting, or any combination thereof;

(7) The hours of operation of the target range;

(8) The location and a description of surrounding property, including, but not limited to, the distance from the target range;

(9) Proof of liability insurance coverage;

(10) Proof of first aid certification; and

(11) That the registrant has received or applied for the proper zoning.
(Ord. 2001-016, passed 5-17-2001) Penalty, see § 130.99

§ 130.20 TARGET RANGE OPERATING REQUIREMENTS.

Any target range operating within the city limits must comply with the requirements set out in this section.

(A) A target range must be registered with the City Council as provided in § 130.19 of this code.

(B) A target range can only operate between the hours of 8:00 a.m. and 8:00 p.m.

(C) A target range can only operate in the city if it is properly fitted and arranged for the purpose of discharging firearms, zip guns, air guns, and explosive weapons so that no danger or risk of harm to adjoining properties arises therefrom.

(D) No discharge of a firearm, zip gun, air gun, or explosive weapon shall occur at a target range unless it is under the direction of an instructor certified by the Texas Commission on Law Enforcement Standards and Education, the National Rifle Association, or a military reserve or junior reserve officer training corps program.

(E) Every discharge of a firearm, zip gun, air gun, or explosive weapon at a target range must be made within and confined by a bullet trap.

(F) A target range must take precautions to protect life and property in the area surrounding the site upon which the target range shall be operated, including but not limited to firing pads, embankments, or other material to be used to prevent bullets or shot from going on or over other property.

(Ord. 2001-016, passed 5-17-2001) Penalty, see § 130.99

§ 130.99 PENALTY.

(A) *General.* Any person who violates any provision of this chapter for which no other penalty is provided shall, upon conviction, be subject to penalties as set forth in § 10.99 of this code.

(B) *Firearms; air guns.* The city shall have the power to administer and enforce the provisions of §§ 130.01 *et seq.* of this code. Any person violating any provision of that subchapter is subject to a suit for injunctive relief as well as prosecution for criminal violations. Upon conviction, violations of that subchapter are punishable by a fine not to exceed \$500 for each offense. A separate offense shall be deemed committed upon each day during or on which a violation occurs. An offense under this section is a class C misdemeanor.

(Ord. 2000-009, passed 10-11-2000)

(C) *Target ranges.* A person who violates §§ 130.15 *et seq.* of this code commits an offense which, upon conviction, is punishable by a fine in an amount not to exceed \$500. The Council or its designee is authorized to prosecute and seek a fine against a violator.

(1) *Violations; civil and criminal penalties apply.* The city shall have the power to administer and enforce the provisions of §§ 130.15 *et seq.* as may be required by governing law. Any person violating any provision of that subchapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of that subchapter is hereby declared to be a nuisance.

(2) *Criminal prosecution.* Any person violating any provision of §§ 130.15 *et seq.* shall, upon conviction, be fined a sum not exceeding \$500. Each day that a provision of that subchapter is violated shall constitute a separate offense. An offense under that subchapter is a misdemeanor.

(3) *Civil remedies.* Nothing in this section or §§ 130.15 *et seq.* shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of that subchapter and to seek remedies as allowed by law, including, but not limited to, the following:

(a) Injunctive relief to prevent specific conduct that violates that subchapter or to require specific conduct that is necessary for compliance with that subchapter;

(b) A civil penalty up to \$100 a day when it is shown that the defendant was actually notified of the provisions of that subchapter and, after receiving notice, committed acts in violation of that subchapter or failed to take action necessary for compliance with that subchapter; and

(c) Other available relief.

(Ord. 2001-016, passed 5-17-2001)