

# CIVIL RIGHTS DEFENSE FIRM, P.C.

*Defending YOUR Inalienable Rights*

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Baltimore City Council  
Office of the President  
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100 North Holliday Street  
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RE: Testimony re: Proposed Ordinance: Weapons - Prohibiting Handguns Near Places of Public Assembly

Dear Chairman Costello and Committee Members,

Thank you for providing me with this opportunity to raise concerns of my clients and myself in relation to the proposed ordinance - Weapons - Prohibiting Handguns Near Places of Public Assembly.

For those unaware of my background, at the state level, I am licensed in Maryland and Pennsylvania. At the federal level, I actively practice across the United States and am admitted to practice in front of the U.S. Supreme Court and a number of Circuit and District Courts across the Country. The focus of my practice involves constitutional rights at the state and federal level.

As you all have copies of my letter of July 21<sup>st</sup>, 2017, and it has already been placed into the record, I will not recite it; but rather, highlight several points made within it and raise several other issues that this committee, and if enacted, the Baltimore City Council, will have to contend with, including the deprivation of civil liberties to the residents of Baltimore and other individuals as a result of the ordinance.

As I quoted in my letter, the U.S. Supreme Court in *D.C. v. Heller* in interpreting the Second Amendment defined "bear arms" as to "wear, bear, or carry ... upon the person or *in the clothing or in a pocket*, for purposes of ... being armed and ready for offensive or defensive action in case of conflict with another person." More recently, the Court in *Caetano v. Massachusetts* held that the possession of electronic incapacitation devices – commonly referred to as Tasers or stun guns – come under the protection of the Second Amendment, including in public. I believe this Committee is acutely aware of that decision, since two months ago, the Baltimore City Council repealed its unlawful Taser ordinance.

In relation to other constitutional concerns, this proposal raises concerns of due process,

equal protection and religious freedom under the state and federal constitutions.

First, due process in a criminal matter requires the state to prove each element of a crime beyond a reasonable doubt. The proposal would criminalize “knowingly” carrying within the prohibited specified locations and then creates a rebuttable presumption that the carrying of the firearm was knowingly; thereby, unconstitutionally seeking to shift the burden to the defendant to disprove an element of the crime.

Moreover, due process precludes a criminal defendant from being convicted, where the law is vague. In relation to the proposal, as my letter points out, there are no definitions for what constitutes parks, churches, schools, public buildings and other places of public assembly; thereby, making it unconstitutionally vague. Interestingly, the proposal endorses Christian-oriented religious institutions in precluding possession at or near “churches,” while discriminating against other religious-oriented buildings, which do not constitute a church, by not providing the same protection under the law. To the extent this Committee contends that “churches” is to cover all religious-oriented buildings, then you have an unconstitutionally vague proposal, because only the Christian faith refers to its religious temples as churches.

Second, it would permit unequal application of the law and sentencing across Maryland, since an individual outside of Baltimore City, who is charged with unlawful possession of a firearm, would not be subject to the one year mandatory sentence and would be eligible for probation before judgment.

It is important to note that the Law Department’s review of the proposal fails to address any of these constitutional concerns.

In turning to other issues involving the proposal, it seeks to strip the judiciary of its ability to determine appropriate penalties based upon the facts and circumstances of individual cases, after both the prosecutor and defendant have opportunity to argue for what they perceive to be an appropriate sentence. It also seeks to divest prosecutors of prosecutorial discretion, by stripping their ability to offer probation before judgment in cases that warrant such a disposition.

The proposal will also require all law enforcement officers to become lawyers to determine whether any particular individual is in violation of the ordinance. In this vein, it bears noting that few lawyers can discern Maryland’s complex maze of firearm laws; yet, if this proposal is enacted, an officer will need to know the exact distance any individual is from any specified location and be able to determine that an individual is not otherwise exempt. As I am sure this Committee is aware, the Maryland State Police in limitedly issuing wear and carry permits, always includes restrictions, such as “only valid while conducting business for ABC Company.” How is an officer to know whether the individual is within the permit’s protections? As an individual is not constitutionally required to respond to an officer’s questions, if an individual produces a wear and bear permit, even with restrictions, what reasonable suspicion, let alone probable cause, does the officer have that the individual has violated the law? If the officer arrests the individual, who was within his/her restrictions, the officer is now subject to a 42 U.S.C. 1983 action for deprivation of constitutional rights, as the individual was unlawfully arrested and potentially prosecuted.

While some contend that this ordinance is necessary because of the increasing rate of homicides in Baltimore, those individuals seemingly ignore the fact that this ordinance will have no impact on decreasing that rate, as the existing felonies and far more egregious misdemeanors –

including murder, manslaughter, unlawful homicide, assault with a firearm and assault – are not dissuading criminals from committing these violent acts.

There are also those who contend that the mandatory minimum is misunderstood, as the State's Attorney retains prosecutorial discretion because the State does not have to charge the offense and if it does, the mandatory minimum can be used to obtain a plea on other charges. This fails to acknowledge that frequently the *only* charge being filed and *only* charge that is applicable is one relating to unlawful possession of a firearm – typically because the individual, with no criminal background, could not comprehend the complex maze of laws and regulations. Therefore, if the State's Attorney's discretion is not to charge those individuals, instead of an increase, we will see a decrease in prosecutions relating to unlawful possession, which is contrary to the understood purpose of this proposal.

While the reduction of crime is a laudable goal, this proposal, in its current form, is not only unconstitutional but also violative of its own stated purpose. Instead of spending monumental amounts of time drafting ordinances – when far more egregious criminal penalties already exist for the conduct sought to be curtailed *i.e.* homicide – this Committee and the Council in general should institute outreach programs to properly explain the complex maze of firearm laws that exists in Maryland. Moreover, specific youth-relate outreach programs should be implemented to get the children off the streets and out of the gangs and into proper after-school and summer programs, where they can expend their energy on productive activities. As a former-President of the Pottstown Police Athletic League, I have seen firsthand the impact that such programs can have upon our youth. I have seen a gangbanger, under the age of 12, with a rap sheet taller than myself, who immersed himself in the activities provided and became an all-star athlete. While not every story has that same happy ending, I leave you with this question: how many youth could we have impacted and changed their lives, if we spent our collective time on them, instead of this ordinance?

Thanking you for this opportunity to address you, I am

Respectfully Yours,  
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