

Local Law No. - 2018

This local law shall be known as the “Banning of Firearms within specified Town Buildings” Law.

BE IT ENACTED by the Town Board of the Town of Mamaroneck

Section 1 – Purpose:

The Town Board is aware of the country’s current plague of shootings of, and other types of attacks on, innocent persons in schools, in the workplace, in churches, in places of worship, in other public places, and in homes. The Town Board recognizes that it cannot solve this problem and is mindful of the right to bear arms given to the people by the Second Amendment to the United States Constitution and by New York Civil Rights Law § 4. Balanced against these rights is the Town’s objective of providing a safe work environment for Town employees and a safe place for visitors to Town buildings. Weighing these competing points, the Town Board finds that safety is paramount. Therefore this law bans possession of firearms within the Town Buildings identified in this local law by persons, other than those permitted to do so by this law.

Section 2 – Creation of a new article in a current chapter of the Mamaroneck Code:

Chapter 100 of the Code of the Town of Mamaroneck hereby is amended to add the following Article III to it:

Chapter 100

Article III: Firearms Banned in Town Buildings

§ 100-7. Legislative Intent.

The Town Board is aware of the country’s current plague of shootings of, and other types of attacks on, innocent persons in schools, in the workplace, in churches, in places of worship, in other public places, and in homes. The Town Board recognizes that it cannot solve this problem and is mindful of the right to bear arms given to the people by the Second Amendment to the United States Constitution and by New York Civil Rights Law § 4. Balanced against these rights is the Town’s objective of providing a safe work environment for Town employees and a safe place for visitors to Town buildings. Weighing these competing points, the Town Board finds that safety is paramount. Therefore this law bans possession of firearms within the Town Buildings identified in this article by persons, other than those permitted to do so by this law.

In enacting this law, the Town Board is relying on the oft-quoted phrase from the United States Supreme Court’s decision in *District of Columbia v Heller*, 554 US 570, 626 (2008):

“Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings”

and the Supreme Court’s reiteration of that proposition in *McDonald v City of Chicago, Illinois*, 561 US 742, 786 (2010) (“We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as . . . ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings’”).

Preceding *Heller* and *McDonald*, the Attorney General of the State of New York, in Informal Opinion No. 89-75, opined that a village, when acting in its proprietary capacity, could ban possession of firearms within Village Hall. In reaching this conclusion, the Attorney General relied upon *Barrett v Kunzig*, 331 F. Supp. 266, 272 (M.D. Tenn 1971), *cert den*, 409 US 914 (1972) which had observed: “[I]t would seem clear that the United States Government and its custodian, General Services Administration, could make use of its property as could any private citizen with his home. Hence, it could prevent entry or make such conditions as it deemed proper as a precedent to entry.”

After *Heller*, the Tenth Circuit Court of Appeals faced a case where banning the possession of firearms on government property was the issue. In *Bonidy v United States Postal Serv.*, 790 F3d 1121 (10th Cir. 2015), the Court of Appeals upheld the constitutionality of the section of the Code of Federal Regulations that prohibits carrying firearms while on property belonging to the United States Postal Service (39 CFR § 232.1 [1]) against a challenge from a person with a permit to carry a concealed weapon.

Although the United States Postal Service (USPS) is an arm of the government and not a private company, the Court noted:

“As a government-owned business acting as a proprietor rather than as a sovereign, the USPS has broad discretion to govern its business operations according to the rules it deems appropriate. . . . [T]he bans [on possession of firearms] struck down in *Heller* and *McDonald* . . . regulated wholly private activity and applied to every citizen within the respective jurisdictions. By contrast, the regulation challenged here applies only to discrete parcels of land owned by the U.S. Postal Service, and affects private citizens only insofar as they are

doing business with the USPS on USPS property. And the regulation is directly relevant to the USPS's business objectives, which include providing a safe environment for its patrons and employees."

Bonidy, 790 F3d at 1126-27.

Finally, this law is compatible with the federal statute (18 USC § 930) that, with certain exceptions, bans the possession of firearms within those buildings owned or leased by the Federal government where employees of the federal government are regularly present for the purpose of performing their official duties.

The Town Board, acting in its proprietary capacity as owner of the Town Buildings defined below, enacts the following ban on the possession of firearms in those Town Buildings.

§ 100-8. Definitions

For the purpose of this article, the following terms have these meanings:

"Exempt person" means

- (a) police officers as that term is defined in subdivision thirty-four of section 1.20 of the NY Criminal Procedure Law,
- (b) peace officers as that term is defined in section 2.10 of the NY Criminal Procedure Law,
- (c) individuals in the service of the United States who, whether in pursuit of their official duty, or when authorized by federal law, regulation or order are authorized to possess a firearm, and
- (d) employees of banking institutions or armored transportation companies whose jobs require them to transport cash, but only when they are performing their duties for their employer.

An Exempt person has that status under this law whether the person is on-duty or off-duty, or in the case of police officers and peace officers only, whether that officer is actively employed or retired.

"Firearm" means an instrument meeting the description contained in any one of the following paragraphs of section 265.00 of the NY Penal Law:

- (1): Machine-gun
- (3): Firearm
- (11): Rifle

- (12): Shotgun
- (15-a): Electronic dart gun
- (15-c): Electronic stun gun
- (20): Disguised gun
- (21): Semiautomatic
- (22): Assault weapon.

“Firearm” also includes BB guns, pellet guns, paint ball guns and air pistols or rifles.

“Town Building” means the buildings and improvements known by these names and/or postal addresses, but not the parking lots that are adjacent thereto:

- (a) the Town Center located at 740 West Boston Post Road, Mamaroneck, NY 10543
- (b) the Hommocks Park Ice Rink located at 140 Hommocks Road, Larchmont, NY 10538
- (c) the Weaver Street Firehouse located at 205 Weaver Street, Larchmont, NY 10538
- (d) the Ambulance District Building located at 155 Weaver Street, Larchmont, NY 10538
- (e) the Highway Garage Building located at 40 Maxwell Avenue, Larchmont, NY 10538
- (f) the Parks Building located within Memorial Park
- (g) the Senior Citizen Center located at 1228 Boston Post Road, Larchmont, New York 10538
- (h) the Sheldrake Environmental Center located at 685 Weaver Street, Larchmont NY 10538.

§ 100-9. Illegal possession

It is a violation of this law for any person, other than an Exempt person, to possess a firearm when in a Town Building.

§ 100-10. Resident Custodians

Notwithstanding section 100-9, the custodian who resides at the Senior Citizen Center and the adult members of that custodian’s family are allowed to possess within the Senior Citizen Center the firearms which that person is licensed to possess, and the custodian who resides at the Sheldrake Environmental Center and the adult members of that custodian’s family are allowed to possess within the Sheldrake Environmental Center the firearms which that person is licensed to possess.

§ 100-11. Signage

Notice of this law’s ban on the possession of firearms in Town Buildings shall be posted conspicuously at each public entrance to a Town Building. No person shall be convicted of

violating this article if such notice is not so posted, unless such person had actual notice of the ban.

§ 100-12.

Penalty

A person who violates this article shall be charged with a violation and if convicted shall be punished by a fine of not less than five hundred and no/thrs (\$500.00) dollars and not more than one thousand and no/thrs (\$1,000.00) dollars.

Section 3 – Severability:

Should any provision of this Local Law be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law, which may be implemented without the invalid or unconstitutional provisions.

Section 4 – Effective Date:

This Local Law shall become effective upon filing with the Secretary of State.

May 30, 2018