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July 27, 2022

Dear Alderman Stamper:

The Ordinance Enforcement Division of the City Attorney's Office was asked to evaluate the proposed ordinance, Milwaukee City Ordinance 105-30. The proposed ordinance relates to the storage of firearms to ensure they are not acquired by a person and then used in a commission of a crime. The proposed ordinance would also regulate the storage of firearms in unoccupied vehicles. The proposed ordinance requires that firearm owners properly store and supervise their firearms, and in the case of the firearm owner losing the firearm or if the firearm is stolen, the firearm owner must report the theft or misplacement of the firearm to the police within 24 hours of discovery. The proposed ordinance also requires that a firearm stored in an unoccupied vehicle parked on the highway or in a parking lot shall be stored in a secure locking device not visible from outside the vehicle.

Chapter 66 of the Wisconsin Statutes governs General Municipality Law. Under Wis. State § 66.0409(2), "no political subdivision may enact an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any firearm, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute." Put simply, a municipality cannot enact a gun regulation unless it is the same as or similar, and no more stringent, than an existing state statute.

Subsection three of the proposed ordinance deals with the storage of firearms to ensure they are not used in a crime. Regarding this, the proposed ordinance states, "A firearm owner shall, at all times, properly store and supervise the whereabouts of any firearm to ensure the firearm is not acquired by any person and used in the commission of a crime. A firearm owner shall regularly determine the whereabouts of each firearm owned and report the theft or misplacement of any firearm to the police department within 24 hours of discovery." The intention of subsection three is that firearm owners should be responsible for storing and supervising their firearms to prevent the firearm from being



used in a crime.

Wis. Stat. § 66.0409(2) creates an issue for enacting the proposed ordinance. Subsection three of the proposed ordinance does two things; it requires proper storage of firearms and it requires owners of firearms to report the theft of a firearm or if the firearm is lost. It could be argued that both requirements of subsection three regulate ownership, keeping, possession, and/or bearing under Wis. Stat. § 66.0409(2).

There IS no Wisconsin State Statute that requires firearm owners to report lost or stolen firearms. As for proper storage and supervision of a firearm, there is nothing directly on point, however, Wis. Stat. § 948.55 touches on the subject. Wis. Stat § 948.55 governs leaving or storing a loaded firearm within easy access of a child. The proposed ordinance is not "the same as or similar" to this statute. Wis. Stat. § 943.34 is the inverse of the proposed ordinance. That statute punishes a person who knowingly receives stolen property. Again, this is not the same as or similar to the proposed ordinance.

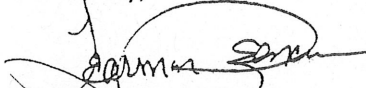
Second, the proposed ordinance also regulates the storage of firearms in unoccupied vehicles. Subsection four of the proposed ordinance states, "A firearm stored in an unoccupied vehicle parked on the highway or in a parking lot shall be stored in a secure locking device not visible from outside the vehicle, or a trunk or similar vehicle compartment that can be securely locked." This subsection intends to ensure the safety of firearms while they are unsupervised in vehicles.

Wis. Stat. § 167.31 governs the safe use and transportation of firearms. Wis. Stat. §167.31 (2)(b)1 provides that, subject to exceptions, no person may place, possess, or transport a firearm in or on a vehicle unless the firearm is unloaded or is a handgun. Wis. Stat. § 66.0409(2) must be applied to determine whether the proposed ordinance is the same as or similar to, and no more stringent than an existing state statute. Wis. Stat. § 167.31 is not the same as or similar to the proposed ordinance. The distinct purpose of Wis. Stat, § 167.31 is to govern the safe transportation of firearms in motor vehicles. *State v. Grandberry*, 2018 WI 29, 1121, 380 Wis. 2d 541, 910 N.W.2d 214. Subsection four of the proposed ordinance governs storing firearms in unoccupied vehicles. Transportation and storage are inherently different. Further, "The current version of [Wis.Stat. § 167.31(2)(b)] does not include a requirement that any firearm be encased." *Id* ¶18. Wis. Stat. § 167,31 (2)(b) does not apply to a firearm that is placed or possessed in a vehicle that is stationary. Wis. Stat, § 167.31 (4)(ag). Because the proposed ordinance and state statute are not the same or similar, this subsection of the proposed ordinance may not be enacted.

Overall, we support the intentions of the proposed ordinance. Research shows that reporting lost and stolen firearms help reduce violence. However, under Wis. Stat. §66.0409(2), gun regulations must be enacted at the state level before a city may enact

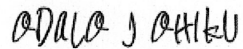
an ordinance on the matter. There is no state statute on point for either subsection of the proposed ordinance. Enacting this proposed ordinance would be unlawful.

Sincerely,

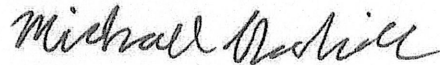


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It appears that state legislation dealing with this subject matter has been introduced, but has not been successfully enacted.

<https://legis.wisconsin.gov/assembly/78/subbeck/safe-storage-for-gun-safety-package/> and

<https://www.wispolitics.com/2021/dem-lawmakers-re-introduce-safe-storage-for-gun-safety-bills-to-curtail-gun-violence-and-accidental-shootings/>

MR/mc #281166