WEST VIRGINIA CODE: §8-12-5a

§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale, and storage of certain weapons and ammunition.

(a) Neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell, or store any deadly weapon, firearm, or pepper spray, or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

(b) For the purposes of this section:

(1) "Deadly weapon" has the meaning provided in §61-7-2 of this code.

(2) "Firearm" has the meaning provided in §61-7-2 of this code.

(3) "Municipally owned or operated building" means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building, or other similar municipal building used for a municipal purpose permitted by state law: *Provided*, That "municipally owned or operated building" does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(4) "Municipally owned recreation facility" means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program, or other similar facility where children are regularly present.

(5) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray in municipally owned or operated buildings.

(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a deadly weapon, firearm, or pepper spray openly or that is not lawfully concealed in a municipally owned recreation facility: *Provided*, That a municipality may not prohibit a person with a valid concealed handgun license from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the

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municipally owned recreation facility.

(3) A person may keep an otherwise lawfully possessed deadly weapon, firearm, or pepper spray in a motor vehicle in municipal public parking facilities if the vehicle is locked and the deadly weapon, firearm, or pepper spray is out of view.

(4) A municipality may not prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2), subsection (b), of this section: *Provided*, That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

(d) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a deadly weapon, firearm, or pepper spray that the person: (1) Upon being requested to do so, left the premises with the deadly weapon, firearm, or pepper spray or temporarily relinquished the deadly weapon, firearm, or pepper spray in response to being informed that his or her possession of the deadly weapon, firearm, or pepper spray was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the deadly weapon, firearm, or pepper spray.

(e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or possessing of a deadly weapon, firearm, or pepper spray pursuant to subsection (c) of this section shall prominently post a clear statement at each entrance to all applicable municipally owned or operated buildings or municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

(f) Redress for an alleged violation of this section may be sought through the provisions of §53-1-1 *et seq*. of this code, which may include the awarding of reasonable attorney's fees and costs, if the petitioner prevails.

(g) For the purposes of §61-7-14 of this code, municipalities may not be considered a person charged with the care, custody, and control of real property.

(h) This section does not:

(1) Authorize municipalities to restrict the carrying or possessing of deadly weapons, firearm, or pepper spray, which are otherwise lawfully possessed, on public streets and sidewalks of the municipality; or

(2) Limit the authority of a municipality to restrict the commercial use of real estate through planning or zoning ordinances; except that a municipality may not restrict or regulate a firearms or ammunitions related business entity in a manner more restrictive than the planning or zoning ordinances imposed upon any other retail business, nor shall a

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municipality place restrictions on quantity limitations regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms, including all indoor or outdoor shooting ranges.

(A) Any provision of an ordinance that is designed or enforced to effectively restrict or prohibit the sale, purchase, transfer, manufacture, repair, or display of firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal defense tools or products other than firearms which are otherwise lawful under the laws of this state is void.

(B) A municipality may not use its planning or zoning powers solely to prohibit the sale of firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal defense tools or products other than firearms within a prescribed distance of any other type of commercial property or of school property or other educational property.

Any person aggrieved by a violation of this subdivision may seek redress as provided in subsection (f) of this section.

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