

ORDINANCE NO. 105-2019 (SMS)

By Council Member Yasinow

An Ordinance amending various sections of Chapter 505, “Animals and Fowls,” Chapter 545, “Theft and Fraud,” and Chapter 549, “Weapons and Explosive,” of Part Five, *General Offenses Code*, and Chapter 713, “Rental Halls,” of Part Seven, *Business Regulation Code*, of the Codified Ordinances of the City of Cleveland Heights; and declaring an emergency.

WHEREAS, the Ohio General Assembly recently enacted House Bill 228, which made changes to the Ohio Revised Code concerning weapons laws, including amending R.C. § 9.68, for the purpose of preempting local firearm regulations and other local weapon-related laws; and

WHEREAS, the amendments to R.C. § 9.68 become effective on December 28, 2019; and

WHEREAS, R.C. § 9.68 purports to reserve to the state the right to regulate the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, other transfer, manufacture, taxation, keeping, and reporting of loss or theft of firearms, their components, and their ammunition; and

WHEREAS, R.C. § 9.68 further purports to preempt, supersede, and declare null and void any local regulation concerning the same that is conflict with state law; and

WHEREAS, R.C. § 9.68 creates a private cause of action for any person, group, or entity that is adversely affected by any local ordinance that conflicts with state law; and

WHEREAS, this Council recognizes that the City of Cleveland Heights retains Home Rule Authority under the Ohio Constitution, but acknowledges that no court has yet ruled on the constitutionality of R.C. § 9.68; and

WHEREAS, as a result, the City is in need of repealing or amending various components of the Codified Ordinances of the City of Cleveland Heights in order to achieve compliance with state law.

BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

SECTION 1. Section 505.12, “Hunting or Killing Animals Prohibited,” of Chapter 505, “Animals and Fowl,” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

505.12 HUNTING OR KILLING ANIMALS PROHIBITED.

(a) Except as otherwise specifically provided in this chapter, no person shall unlawfully hunt, kill or attempt to kill any animals within the City.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.
(Ord. 66-1987. Passed 7-20-87.)

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SECTION 2. Section 505.13, "Protection of Wild Life in Parks," of Chapter 505, "Animals and Fowl," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

505.13 PROTECTION OF WILD LIFE IN PARKS.

(a) No person shall, within any park, unlawfully molest, hunt, take, chase, shoot or throw any object at any animal, or remove or have in his possession any animal or the eggs or young of any such animal.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

SECTION 3. Section 505.14, "Carrier Pigeons," of Chapter 505, "Animals and Fowl," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

505.14 CARRIER PIGEONS.

(a) No person shall unlawfully shoot, kill or maim an Antwerp or homing pigeon, commonly known as "carrier" pigeon, nor shall any person, except the owner thereof, entrap, catch or detain a carrier pigeon, provided it has the name of the owner stamped upon its wing or tail or a band with the owner's name, initial or number on its leg.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (Ord. 66-1987. Passed 7-20-87.)

SECTION 4. Section 545.03, "Property Exceptions as Felony Offense," of Chapter 545, "Theft and Fraud," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

545.03 PROPERTY EXCEPTIONS AS FELONY OFFENSE.

Regardless of the value of the property involved, and regardless of whether the offender has previously been convicted of a theft offense, the provisions of Section 545.05 or 545.18 do not apply if the property involved is any of the following:

(a) A credit card;

(b) A printed form for a check or other negotiable instrument, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank;

~~(c) A firearm or dangerous ordnance as defined in Ohio R.C. 2923.11;~~

(cd) A motor vehicle identification license plate as prescribed by Ohio R.C. 4503.22, a temporary license placard or windshield sticker as prescribed by Ohio R.C. 4503.182, or any comparable license plate, placard or sticker as prescribed by the applicable law of another state or the United States;

(de) A blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by Ohio R.C. 4505.07;

(ef) A blank form for any license listed in Ohio R.C. 4507.01(A).

SECTION 5. Section 549.01, "Definitions," of Chapter 549, "Weapons and Explosives," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

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- (f) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall. "Sawed-off firearm" does not include any firearm with an overall length of at least twenty-six inches that is approved for sale by the federal bureau of alcohol, tobacco, firearms, and explosives under the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921 (a)(3), but that is found by the bureau not to be regulated under the "National Firearms Act," 68A Stat. 725 (1934), 26 U.S.C. 5845 (a).

* * *

- (1) "Dangerous ordnance" does not include any of the following:
- (1) Any firearm, including a military weapon and the ammunition therefor, and regardless of its actual age, which employs a percussion cap or other obsolete ignition system, or which is designed and safe for use only with black powder;
 - (2) Any pistol, rifle or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition therefor unless such firearm is an automatic or sawed-off firearm;
 - (3) Any cannon or other artillery piece which, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;
 - (4) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a type defined in subsection (1)(3) hereof during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;
 - (5) Dangerous ordnance which is inoperable or inert and cannot readily be rendered operable or activated, and which is kept as a trophy, souvenir, curio or museum piece.
 - (6) Any device which is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C.921(a)(4), and any amendments or additions thereto or reenactments thereof, and regulations issued thereunder.
 - ~~(7) Any firearm with an overall length of at least twenty-six inches that is approved for sale by the federal bureau of alcohol, tobacco, firearms, and explosives under the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921 (a)(3), but that is found by the bureau not to be regulated under the "National Firearms Act," 68A Stat. 725 (1934), 26 U.S.C. 5845 (a).~~

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SECTION 6. Section 549.02, "Carrying Concealed Weapons," of Chapter 549, "Weapons and Explosives," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

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- (f) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this subsection or subsections (f)(2), (5)

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and (6) of this section, carrying concealed weapons in violation of subsection (a) of this section is a misdemeanor of the first degree. Except as otherwise provided in this subsection or subsections (f)(2), (5) and (6) of this section, if the offender previously has been convicted of a violation of this section or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of subsection (a) of this section is a felony and shall be prosecuted under appropriate State law. Except as otherwise provided in subsections (f)(2), (5) and (6) of this section, ~~if the weapon involved is a firearm and the violation of this section is committed at premises for which a D permit has been issued under Chapter 4303, of the Revised Code or if~~ the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons in violation of subsection (a) of this section is a felony and shall be prosecuted under appropriate State law.

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SECTION 7. Section 549.04, "Improperly Handling Firearms in a Motor Vehicle," of Chapter 549, "Weapons and Explosives," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

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- (c) (1) This section does not apply to any of the following:
- A. An officer, agent or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's or employee's duties;
 - B. Any person who is employed in this State, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of Ohio R.C. 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in subsection (c)(1)B. does not apply to the person.
- (2) Subsection (a) of this section does not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply:
- A. The person transporting or possessing the handgun is either carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125.
 - B. The person transporting or possessing the handgun is not knowingly in a place described in division (B) of Ohio R.C. 2923.126.
- (3) Subsection (a) of this section does not apply to a person if all of the following apply:
- A. The person possesses a valid all-purpose vehicle permit issued under Ohio R.C. 1533.103 by the Chief of the Division of Wildlife.
 - B. The person is on or in an all-purpose vehicle as defined in Ohio R.C. 1531.01 ~~on private or publicly owned lands or on~~ or in a motor vehicle during the open hunting season for a wild quadruped or game bird.
 - C. The person is on or in an all-purpose vehicle as defined in Ohio R.C. 1531.01 ~~on private or publicly owned lands or on or in~~ a motor

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vehicle that is parked on a road that is owned or administered by the Division of Wildlife.

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SECTION 8. Section 549.06, “Unlawful Transactions in Weapons,” of Chapter 549, “Weapons and Explosives,” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

549.06 UNLAWFUL TRANSACTIONS IN WEAPONS.

(a) No person shall do any of the following:

- (1) Manufacture, possess for sale, sell or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife or similar weapon;
- (2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license or permit showing ~~him~~the transferee to be authorized to acquire dangerous ordnance pursuant to Ohio R.C. 2923.17, or negligently fail to take a complete record of the transaction and forthwith forward a copy of such record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place;
- (3) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in such person's possession or under his control.

(b) Whoever violates this section is guilty of unlawful transactions in weapons. Violation of subsections (a)(1) or (2) hereof is a misdemeanor of the second degree. Violation of subsection (a)(3) hereof is a misdemeanor of the fourth degree. (ORC 2923.20)

SECTION 9. Section 549.08, “Discharging Firearms,” of Chapter 549, “Weapons and Explosives,” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

549.08 DISCHARGING FIREARMS.

(a) No person shall unlawfully discharge any air gun, rifle, shotgun, revolver, pistol or other firearm within the corporate limits of the Municipality.

(b) This section does not apply when firearms are used in the lawful self defense of any person or the property of any person, in the discharge of official duty, ~~to the hunting of any animal or fowl within the municipality through the lawful use of a firearm as defined in Ohio R.C. 2923.11 that is in compliance with state and federal law~~, or when otherwise lawfully authorized.

- (1) A person is allowed to act in self-defense, defense of another, or defense of that person's residence. If, at the trial of a person who is accused of an offense that involved the person's use of force against another, there is evidence presented that tends to support that the accused person used the force in self-defense, defense of another, or defense of that person's residence, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person's residence, as the case may be. (ORC 2901.05)

(c) Whoever violates this section is guilty of a misdemeanor of the first degree.

SECTION 10. Section 549.11, “Throwing Stones at Persons or Vehicles,” of Chapter 549,

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“Weapons and Explosives,” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

549.11 THROWING STONES AT PERSONS OR VEHICLES.

(a) No person shall willfully and maliciously throw, or by other means propel, a stone or other hard substance at or towards any person.

(b) No person shall willfully and maliciously throw a stone or other substance or shoot a missile at or from a motorbus or other motor vehicle. This section does not apply to the lawful use of firearms as defined in Ohio R.C. 2923.11 nor any component of or ammunition for the same.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

SECTION 11. Section 549.13, “Brandishing Replica Firearm,” of Chapter 549, “Weapons and Explosives,” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

549.13 BRANDISHING REPLICIA FIREARM.

(a) No person shall, except in self-the lawful defense of any person or the property of any person, unlawfully draw, exhibit or brandish a replica firearm in a threatening manner or in such a manner as to tend to cause the victim to reasonably believe that the person is actually in possession of an operable firearm. This section does not apply to the lawful use of firearms as defined in Ohio R.C. 2923.11 nor any component of or ammunition for the same.

(b) As used in this section, the term “replica firearm” includes any device or object, made of any material, which is a facsimile or toy version of, or is otherwise recognizable as, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or any other firearm.

(c) Whoever violates this section is guilty of a misdemeanor of the second degree.

SECTION 12. Section 713.06, “Prohibitions for Conduct in Rental Hall; Suspension or Revocation of License,” of Chapter 713, “Rental Halls,” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

713.06 PROHIBITIONS FOR CONDUCT IN A RENTAL HALL; SUSPENSION OR REVOCATION OF LICENSE.

No person, when conducting an event in a rental hall, shall permit:

(a) Any person having in his possession or being under the influence of, selling or offering for sale, or giving away or using any drugs in violation of City ordinances or the Ohio Revised Code.

(b) Gambling in any form unless permitted by State law or the City's ordinances.

(c) Any intoxicated person to remain on the premises.

(d) Fighting or other disorderly conduct.

(e) The carrying of knives or other weapons on the premises, except the lawful carrying of firearms as defined in Ohio R.C. 2923.11.

(f) The sale of any beer or intoxicating liquor unless properly licensed by the Ohio Department of Liquor Control.

(g) The furnishing of any beer or intoxicating liquor to a minor in violation of City ordinances or the Ohio Revised Code.

(h) Any act which is a violation of City ordinances or the Ohio Revised Code.

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SECTION 13. All remaining portions of Chapter 505, Chapter 545, Chapter 549, and Chapter 713 shall remain as currently enacted.

SECTION 14. Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 15. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timely need to avoid conflict with state law. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED: December 2, 2019