

COMMON PLEAS COURT  
WARREN COUNTY, OHIO  
FILED

2021 MAR 31 AM 9:23

JAMES L. SPAETH  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO**

CAROL DONOVAN, DAVID IANNELLI,  
and BROOKE HANDLEY,

*Plaintiffs,*

v.

CITY OF LEBANON and MARK YURICK,  
in his official capacity as City Attorney of the  
City of Lebanon,

*Defendants.*

Case No. 21CV94117

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

*Judge Tepe*

Plaintiffs Carol Donovan, David Iannelli, and Brooke Handley, by and through their counsel, allege:

**INTRODUCTION**

1. Plaintiffs are longtime residents and taxpayers of Lebanon, Ohio—a close-knit community they love. At the center of their community is the Lebanon City Council, which convenes in the Lebanon City Building.<sup>1</sup> For many years, the City Council prohibited the possession of weapons at its meetings. In March 2020, it abandoned that prohibition and enacted Ordinance No. 2020-022 (the “Ordinance”), which permits the concealed carry of handguns within the City Building during City Council meetings and certain other periods. The Ordinance, attached hereto as Exhibit 1, conflicts with Ohio state law. Plaintiffs seek declaratory and

<sup>1</sup> The City Building is located at 50 South Broadway, Lebanon, Ohio 45036.

injunctive relief to restrain enforcement of the Ordinance.

2. Lebanon City Council meetings and work sessions, which are open to the public, are where community members, the city councilmembers who represent them, and other city officials gather to discuss issues that affect Lebanon residents, such as the roads they travel daily, the taxes they pay, and the ways they can help their local economy grow. The City Council also votes on ordinances and resolutions, establishing laws, policies, and programs that affect the community.

3. City Council meetings and work sessions occur in the City Building, which contains the Lebanon Municipal Court. Previously, City Council Rule 15 prohibited the possession of weapons at City Council meetings. But, in March 2020, the City Council changed that rule. The Council enacted the Ordinance, which authorizes individuals with state-issued concealed carry licenses to carry concealed handguns within the City Building, “except during the operation of any function of the Lebanon Municipal Court.”<sup>2</sup> As a result, both councilmembers and members of the public may now bring concealed handguns to City Council meetings.

4. Plaintiffs reflect a cross-section of the Lebanon community. They represent diverse professional paths, political views, and demographics. They share a history of attending City Council meetings and a desire to participate in the democratic process freely, without fear or intimidation.

5. This case concerns Plaintiffs’ and the public’s ability to safely access their city government. Every Lebanon resident has a right to observe his or her government at work and to

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<sup>2</sup> Ordinance No. 2020-023, attached hereto as Exhibit 2, rescinded City Council Rule 15.

be heard on issues before the City Council. This case is not about the rights of law-abiding firearm owners, which Plaintiffs respect and in no way seek to undermine.

6. The City Council's decision to permit concealed firearms in the City Building, including during City Council proceedings, creates an environment in which Plaintiffs cannot feel safe. The potential presence of concealed handguns introduces a risk of physical harm and armed intimidation, particularly in a setting where vigorous discussion on hot button issues can cause tempers to flare. That risk, in turn, chills Plaintiffs' engagement in the democratic process, as more specifically described below.

7. This case also concerns Plaintiffs' and the public's interest in clear, administrable rules regarding where and when licensed individuals can carry concealed handguns. Conflicting rules regarding concealed carry prevent Plaintiffs and other members of the public from identifying the public spaces where they risk exposure to firearms. Likewise, ambiguity or conflict in concealed carry rules inhibit the ability of concealed carry license holders to accurately differentiate between public spaces where they are permitted to carry firearms and those where they can be subject to civil or criminal penalties for doing so.<sup>3</sup>

8. The Ordinance undermines these public interests by conflicting with Ohio state law, which prohibits the concealed carry of handguns at all times within government buildings, like the City Building, that contain courtrooms. *See* R.C. 2923.123, 2923.126(B)(3), 2923.126(B)(7). In light of this conflict, Lebanon exceeded its authority under the Ohio Constitution by enacting the Ordinance.

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<sup>3</sup> For example, Ohio law provides that a person who unlawfully possesses a deadly weapon inside a courthouse or a building containing a courtroom is subject to a felony conviction. R.C. 2923.123(D).

9. Plaintiffs seek a declaration that the Ordinance conflicts with R.C. 2923.123, R.C. 2923.126(B)(3), and R.C. 2923.126(B)(7), and is therefore invalid and can have no force or effect, as well as an injunction restraining enforcement of the Ordinance.

### **PARTIES**

10. Plaintiffs are residents of Lebanon, Ohio who attend or have in the past attended Lebanon City Council meetings and work sessions. They bring this action on behalf of themselves and on behalf of the municipal corporation of the City of Lebanon.

11. Plaintiff Carol Donovan is a longtime resident and taxpayer of Lebanon, Ohio.

12. Plaintiff David Iannelli is a resident and taxpayer of Lebanon, Ohio, and has lived in Lebanon for more than two decades.

13. Plaintiff Brooke Handley is a resident and taxpayer of Lebanon, Ohio. She has lived in Lebanon and Clearcreek Township for most of her life.

14. All Plaintiffs have strong and direct interests in (a) safe access to Lebanon's government, including through attendance at City Council meetings and work sessions and (b) clear rules regarding the public spaces in which they can be exposed to firearms and the attendant risks.

15. Defendant City of Lebanon is a charter municipality, a political subdivision of the State of Ohio, and the county seat of Warren County.

16. Defendant Mark Yurick is the City Attorney of Lebanon. In that role, he acts as the city director of law for the City of Lebanon. Under Ohio state law, the City Attorney "shall apply, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain. . . the abuse of its corporate powers." R.C. 733.56.

## JURISDICTION AND VENUE

17. This Court has jurisdiction over this action under the Ohio Constitution art. IV, R.C. 2721, R.C. 2727.03, and R.C. 733.59. Venue is proper because the City of Lebanon is located in Warren County, Ohio.

## BACKGROUND

### I. Ohio State Law Prohibition on Carrying Firearms in Buildings with Courtrooms

18. Ohio law broadly prohibits individuals from carrying or possessing deadly weapons, including firearms, within courthouses or buildings that contain a courtroom.

19. R.C. 2923.123(A) states:

No person shall knowingly convey or attempt to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located.

20. R.C. 2923.123(B) states:

No person shall knowingly possess or have under the person's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.<sup>4</sup>

21. Firearms are deadly weapons within the meaning of R.C. 2923.123(A) and (B).

Violation of the prohibitions in R.C. 2923.123 can carry criminal penalties. *See* R.C. 2923.123(D).

22. Ohio law also regulates the carrying of concealed handguns throughout the state. Individuals who satisfy certain statutory criteria can receive licenses to carry concealed handguns. *See* R.C. 2923.125. State law permits an individual who holds such a license to carry a concealed handgun “anywhere in this state,” subject to certain specific exceptions. R.C.

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<sup>4</sup> The statute provides several exceptions to the general prohibition on the possession of weapons within courthouses and buildings containing courtrooms. *See* R.C. 2923.123(C) (providing exceptions for, among others, judges, bailiffs, peace officers, and law enforcement officers). None of the exceptions are relevant here.

2923.126(A).

23. One such exception concerns courthouses and other buildings that contain a courtroom; even with a concealed carry permit, a person cannot carry a concealed weapon in such buildings. R.C. 2923.126(B)(3) states:

A valid [concealed handgun] license does not authorize the licensee to carry a concealed handgun into. . . [a] courthouse or another building or structure in which a courtroom is located if the licensee's carrying the concealed handgun is in violation of [R.C. 2923.123].

24. In other words, the state law that permits the concealed carry of handguns throughout Ohio does *not* displace the general Ohio law prohibition on the possession of weapons within buildings containing courtrooms.

25. Ohio state law separately provides that individuals holding concealed carry licenses cannot carry firearms within government buildings, unless the state or local government entity with authority over the building affirmatively authorizes it:

A valid [concealed handgun] license does not authorize the licensee to carry a concealed handgun into. . . [a]ny building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility *and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(3) of this section*, unless the governing body with authority over the building has enacted a statute, ordinance, or policy that permits a licensee to carry a concealed handgun into the building.

R.C. 2923.126(B)(7) (emphasis added).

26. And, Ohio state law *excludes* courthouses and other buildings containing courtrooms from the scope of the authority granted to state and local governments to permit concealed carry of handguns within government buildings. Specifically, R.C. 2923.126(B)(7) provides that the relevant state or local governing body may override the prohibition on carrying

firearms within a particular government building, so long as that building “is not a courthouse or other building or structure in which a courtroom is located that is subject to [R.C. 2923.126(B)(3)].”

27. Read together, R.C. 2923.123, 2923.126(B)(3), and 2923.126(B)(7) prohibit the carrying and possession of firearms within courthouses and other buildings containing courtrooms and make clear that such prohibition applies even to individuals who are otherwise licensed to carry concealed handguns throughout the state of Ohio.

## **II. Conflict Between Ohio Law and The Ordinance**

### ***A. The Lebanon City Building Contains a Courtroom***

28. The City Building located at 50 South Broadway, Lebanon, Ohio 45036 contains the Lebanon Municipal Court.<sup>5</sup>

29. The Lebanon Municipal Court’s facilities within the City Building include the Lebanon Municipal Courtroom.

30. The City Council holds public meetings in the Lebanon Municipal Courtroom on the second and fourth Tuesday of each month. The City Council also holds public work sessions at other times, either in the Municipal Courtroom or in another location within the City Building.

### ***B. The Ordinance Permits Concealed Handguns in the City Building***

31. The City Council passed the Ordinance on March 10, 2020.

32. The Ordinance states that the “Council wishes to enact an ordinance to permit licensed individuals to carry concealed weapons in the City Building. . . during times when the Lebanon Municipal Court is not in operation.” Ex 1.

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<sup>5</sup> See Lebanon Municipal Court, <https://court.lebanonohio.gov/> (last visited Mar. 26, 2021).

33. The Ordinance adopted Section 508.13 of the Lebanon Code of Codified

Ordinances, which provides:

Pursuant to Ohio Revised Code 2923.126, a licensee under Ohio Revised Code section 2923.125 or section 2923.1213 is authorized to carry a concealed handgun in the City of Lebanon, Ohio City Building located at 50 South Broadway, Lebanon, Ohio, except during the operation of any function of the Lebanon Municipal Court.

Ex. 1.

34. Ordinance No. 2020-023 rescinded City Council Rule 15, which had “prohibit[ed] bringing weapons or items resembling weapons into Council chambers.” Ex. 2.

***C. The Ordinance Conflicts With The State Law Prohibition on Weapons Within The City Building***

35. The Ordinance purports to describe the City Council’s authority under Ohio state law to permit licensed concealed carry of handguns within the City Building:

WHEREAS, Ohio Revised Code section 2923.126(B)(7) provides that the governing body of a municipality may enact an ordinance to permit a licensed individual to carry a concealed handgun into government buildings with certain restrictions.

Ex. 1.

36. Revised Code 2923.126(B)(7), however, excludes the City Building, which contains the Lebanon Municipal Courtroom, from the class of government buildings within which the Lebanon City Council may authorize concealed carry.

37. The Ordinance also conflicts with R.C. 2923.123 and 2923.126(B)(3), which broadly prohibit the possession of weapons within buildings containing courtrooms.

38. The City Council included a temporal limit in the Ordinance. It purports to authorize licensed concealed carry in the City Building “except during the operation of any function of the Lebanon Municipal Court.” Ex. 1; *see also* Ex. 2.



39. The Ohio law prohibition on the possession of weapons within buildings that contain courtrooms does not turn on whether the relevant court is in operation. *See* R.C. 2923.123, 2923.126(B)(3). Nor is the state law prohibition otherwise limited in time.

### **III. The Ordinance's Interference With Plaintiffs' Participation in the Democratic Process**

40. The City Council holds meetings within the Lebanon Municipal Courtroom on the second and fourth Tuesday of each month. These City Council meetings are open to the public and broadcast on public access television and YouTube.

41. Members of the public who attend City Council meetings have the opportunity to speak regarding issues before the City Council.

42. Members of the public who watch the meetings remotely are not able to speak regarding issues before the City Council. Additionally, individuals who watch the meetings remotely cannot participate in the informal communication and connections that occur among the in-person attendees, including councilmembers.

43. Between meetings, the City Council also holds work sessions, either in the courtroom or in a separate conference room within the City Building. The councilmembers engage in substantive debate regarding proposed ordinances during work sessions, among other work.

44. City Council work sessions are open to the public but are not broadcast on public access television. Audio recordings and/or written minutes are made available to the public after each work session.

45. Plaintiffs have each attended City Council meetings and/or work sessions in the past.

46. The Ordinance affects Plaintiffs' access to City Council meetings and work sessions and chills their engagement in the democratic process as follows:

*A. Carol Donovan*

47. Carol Donovan is a longtime Lebanon resident and retired real estate professional. She is an active member of the Lebanon community. She has long been involved in the Lebanon Symphony Orchestra, including in leadership positions. And she is the creator and moderator of “Let’s Talk Lebanon Ohio,” a popular Facebook page that provides a forum for communication and engagement among Lebanon residents.

48. Throughout her time in Lebanon, Donovan has attended City Council meetings at which the City Council addressed issues of interest to her. She wishes to continue to attend City Council meetings. In light of the Ordinance, however, she has decided she can no longer do so. The potential presence of concealed firearms heightens Donovan’s risk of physical harm and burdens her with an unreasonable level of fear and concern about potential harm to herself or others. In short, the Ordinance interferes with Donovan’s ability to attend and participate in City Council meetings and work sessions.

49. Donovan generally supports the ability of properly licensed individuals to carry concealed weapons in accordance with Ohio law. Indeed, Donovan plans to attend firearms training with her son, a law enforcement officer and concealed carry licensee, in the coming year.

50. But Donovan recognizes that the City Building—along with other government buildings—is a sensitive space. She knows that emotions are likely to run high in the context of contentious City Council debates. Similarly, she is aware that, because the City Building houses various local government offices, it is likely to attract frustrated or disgruntled individuals. She believes that the presence of concealed firearms in that environment invites catastrophe.

**B. David Iannelli**

51. David Iannelli has lived in Lebanon for more than two decades and is a longtime music teacher and band director in Lebanon City Schools. Over the course of his teaching career in Lebanon, Iannelli has attended City Council meetings with his students on occasions when the City Council invited band students in order to recognize or honor their achievements. Additionally, Iannelli has attended several City Council meetings in his personal capacity when the City Council addressed issues of interest to him, such as funding for the Lebanon Symphony Orchestra.

52. Prior to the passage of the Ordinance, Iannelli intended to increase his attendance at City Council meetings, particularly as he transitions from full-time teaching to retirement in the coming years.

53. In light of the Ordinance, however, Iannelli has decided that he can no longer attend City Council meetings. The presence of concealed firearms at City Council meetings burdens Iannelli with prohibitive fear and stress, and increases his risk of physical harm.

54. Iannelli has in other contexts experienced significant distress and anxiety associated with the presence of firearms. For instance, during the 2019-2020 school year, Iannelli participated in an active shooter drill in the course of his employment as a teacher. The drill involved a trainer simulating a shooting by firing blank rounds from multiple firearms throughout the school. The drill was a traumatic event for Iannelli, driving him and several colleagues to tears.<sup>6</sup>

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<sup>6</sup> Iannelli's experience aligns with emerging research regarding the harmful effect of active shooter drills on the mental and physiological health of drill participants. See Everytown Research & Policy, *The Impact of Active Shooter Drills in Schools* (Sep. 3, 2020), <https://everytownresearch.org/report/the-impact-of-active-shooter-drills-in->

55. So long as the possession of concealed firearms is permitted at City Council meetings and work sessions, Iannelli will no longer attend or participate in City Council proceedings.

**C. Brooke Handley**

56. Brooke Handley has lived in Lebanon and Clearcreek Township for most of her life. She is an active member of the Lebanon community. Over the past decade, Handley has attended City Council meetings and work sessions regarding community issues of interest to her, including the demolition of a community recreation center and a homeless shelter, redevelopment of the Bethel African Methodist Episcopal Church following a 2017 fire, a recent anti-racism resolution passed by the City Council, and a Human Relations Commission proposal recently rejected by the City Council. Between 2010 and 2019, Handley attended approximately one to two City Council meetings or work sessions per year. In 2020, Handley attended approximately 12 City Council meetings and work sessions.

57. The Ordinance has affected Handley's attendance at and participation in City Council meetings and work sessions. Specifically, she has experienced fear, anxiety, and discomfort while attending City Council proceedings. In an effort to protect herself, she devotes attention to evaluating which councilmembers or other attendees might be carrying concealed weapons.

58. Additionally, when considering whether to attend or speak at a particular meeting, Handley weighs the risk associated with the likely presence of concealed handguns. For instance, Handley decided not to speak at a recent City Council meeting regarding an issue of

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[schools/#:~:text=The%20results%20were%20sobering%3A%20Active,%2C%20their%20parent%2C%20and%20teachers.](#)

interest to her due, in part, to her fear that other attendees at the meeting were carrying concealed guns. Even when she does decide to speak at a meeting, Handley carefully calculates her words and does not speak as freely as she would in the absence of concealed weapons.

59. Handley fears the serious physical harm that she or others could suffer due to the presence of firearms at City Council meetings, where the discussion of issues before the Council can become heated. For example, Handley witnessed tense discussions regarding a racial justice ordinance during council meetings and work sessions that she attended in the summer of 2020. Likewise, the recently proposed ordinance to establish a Human Relations Commission, which the City Council considered and rejected, generated tense and emotionally-charged debates at City Council meetings and work sessions. Handley experiences anxiety caused by her knowledge that the likely presence of firearms increases the risk of a dangerous escalation.<sup>7</sup> In short, she considers the presence of firearms at City Council meetings to be a recipe for disaster.

#### **IV. Plaintiffs' Correspondence With The Lebanon City Attorney**

60. On January 22, 2021, Plaintiffs sent a letter to Lebanon City Attorney Mark Yurick describing the conflict between the Ordinance and Ohio law.

61. In their letter, attached hereto as Exhibit 3, Plaintiffs requested that the City Attorney's office "seek an injunction requiring the City to comply with Ohio law and return to its prohibition on the possession of firearms within the City Building." Plaintiffs also provided

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<sup>7</sup> Additionally, Handley understands that the City Building can be exposed to threats outside the context of City Council meetings, as evidenced by a recent bomb threat and corresponding evacuation. See Ed Richter, *Lebanon police chief IDs suspect in bomb threat that caused city building evacuation*, Dayton Daily News (Mar. 18, 2021), <https://www.daytondailynews.com/local/warren-county-man-identified-for-allegedly-making-lebanon-bomb-threat/PGZNKOKW5FFNPCHLVNABRPX4AI/>. Handley fears that permitting concealed firearms in the City Building exacerbates that risk.

notice that, in the event that the City Attorney's office declined to do so, they intended to "avail themselves of the remedies available to them as taxpayers pursuant to R.C. 733.59."

62. On March 2, 2021, the City of Lebanon responded by letter, attached hereto as Exhibit 4. The City declined to seek injunctive relief and stated its position that the Ordinance is "within the power and authority of the City and does not rise to the level of a corporate abuse of power."

**COUNT ONE**  
**Taxpayer Claim for Injunctive Relief (R.C. 733.59)**

63. The preceding and subsequent allegations are incorporated into this claim for relief, as though fully set forth herein.

64. Ohio law provides that a municipality's city director of law shall seek injunctive relief when the municipality, *inter alia*, abuses its corporate powers:

The village solicitor or city director of law shall apply, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the municipal corporation, the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the municipal corporation in contravention of the laws or ordinance[s] governing it, or which was procured by fraud or corruption.

R.C. 733.56.

65. Ohio law further permits a taxpayer to seek such relief if the city director of law declines to do so:

If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation.

R.C. 733.59. Plaintiffs are taxpayers within the meaning of the statute.

66. A municipality abuses its corporate power within the meaning of R.C. 733.56 and R.C. 733.59 when it unlawfully exercises the powers possessed by the corporation, as well as when it assumes power not conferred.

67. A municipality assumes power not conferred when it exceeds its authority under the Home Rule Amendment of the Ohio Constitution, which enables municipalities “to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const. art. XVIII, § 3.

68. A municipality exceeds this Home Rule authority when: (1) it passes an ordinance that is an exercise of the municipality’s police power, rather than of local self-government, (2) the ordinance conflicts with a state statute, and (3) the state statute is a general law. *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 99-100 (2008). The Ordinance represents an exercise of Lebanon’s police power. The City Council invoked Lebanon’s police powers in the text of the Ordinance: “This Ordinance is hereby declared to be necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon.” Ex. 1; *see also* Ex 2 (same).

69. The Ohio statutory provisions implicated here constitute general laws. R.C. 2923.123, R.C. 2923.126(B)(3), R.C. 2923.126(B)(7).

70. These Ohio statutory provisions forbid the possession of firearms within the City Building, which contains the Lebanon Municipal Court. The Ordinance permits individuals with concealed carry licenses to carry concealed handguns within the City Building “except during the operation of any function of the Lebanon Municipal Court.” Ex. 1. The Ordinance conflicts with the cited Ohio statutory provisions.

71. For these reasons, the City Council exceeded Lebanon’s Home Rule authority in passing the Ordinance, and the Ordinance represents an abuse of Lebanon’s corporate powers.

72. On January 22, 2021, Plaintiffs submitted a letter to City Attorney Mark Yurick requesting that he pursue injunctive relief regarding this abuse of Lebanon’s corporate powers under R.C. 733.56. On March 2, 2021, the City of Lebanon responded by letter, declining to pursue injunctive relief.

73. Plaintiffs, in their capacity as taxpayers and on behalf of the municipal corporation of Lebanon, seek an order of injunction to restrain the enforcement of the Ordinance.

74. In doing so, Plaintiffs seek to enforce the public’s interest in the clear rules regarding the concealed carry of firearms within the State of Ohio. Plaintiffs also seek to enforce the public right to engage in the democratic process and to safely access and petition the City of Lebanon’s government, including the City Council.

**COUNT TWO**  
**Claim for Declaratory Judgment (R.C. 2721.01, *et seq.*)**

75. The preceding and subsequent allegations are incorporated into this claim for relief, as though fully set forth herein.

76. The Ohio Declaratory Judgment Act provides that “any person whose rights, status, or other legal relations are affected by a . . . municipal ordinance. . . may have determined any question of construction or validity arising under the . . . ordinance. . . and obtain a declaration of rights, status, or other legal relations under it.” R.C. 2721.03.

77. A municipal ordinance that is an exercise of police power and is in conflict with a general state statute is invalid. Ohio Const. art. XVIII, § 3. A municipal ordinance conflicts with a state law when the ordinance permits that which the statute forbids, or vice versa.

78. The Ordinance represents an exercise of Lebanon’s police power.



79. By purportedly permitting licensed individuals to carry concealed handguns within the City during certain periods, the Ordinances conflict with several general state statutory provisions that prohibit the possession of firearms within the City Building and other government buildings containing courtrooms. R.C. 2923.123, R.C. 2923.126(B)(3), R.C. 2923.126(B)(7).

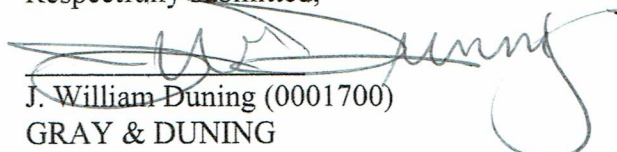
80. Pursuant to R.C. 2721.01, *et seq.*, Plaintiffs seek a declaration that the Ordinance conflicts with the general state statutes R.C. 2923.123, R.C. 2923.126(B)(3), and R.C. 2923.126(B)(7), and is therefore invalid and can have no force or effect.

**DEMAND FOR RELIEF**

Plaintiffs request that the Court:

- a. Issue preliminary and permanent orders of injunction, pursuant to its power under R.C. Chapters 733 and 2727, to restrain the enforcement of Lebanon Ordinance No. 2020-022.
- b. Declare, pursuant to its power under R.C. Chapter 2721, that Lebanon Ordinance No. 2020-022 conflicts with R.C. 2923.123, R.C. 2923.126(B)(3), and R.C. 2923.126(B)(7) and is therefore invalid and shall have no legal effect.
- c. Award all necessary relief to effectuate this declaration, including an order enjoining Defendants from taking any actions under the Ordinance and from permitting the concealed carry of handguns within the City Building. *See* R.C. 2721.09.
- d. Award the Plaintiffs their costs and attorneys' fees. R.C. 733.61; R.C. 2721.11.
- e. Award all other appropriate relief.

Respectfully submitted,

  
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*\*Pro hac vice applications forthcoming*  
*Attorneys for Plaintiffs*

March 31, 2021

# Exhibit 1

ORDINANCE NO. 2020-022

AN ORDINANCE PERMITTING CONCEALED CARRY IN THE CITY BUILDING  
LOCATED AT 50 SOUTH BROADWAY, LEBANON, OHIO DURING TIMES WHEN  
LEBANON, OHIO MUNICIPAL COURT IS NOT IN OPERATION

WHEREAS, Ohio Revised Code section 2923.126(B)(7) provides that the governing body of a municipality may enact an ordinance to permit a licensed individual to carry a concealed handgun into government buildings with certain restrictions; and,

WHEREAS, Council wishes to enact an ordinance to permit licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036 during times when the Lebanon Municipal Court is not in operation; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. That section 508.13 of the Lebanon Code of Codified Ordinances, attached hereto as Exhibit A and incorporated herein as if fully set forth, permitting licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036, during times when the Lebanon, Ohio Municipal Court is not in operation is hereby adopted pursuant to Section 3.02 of the Charter of the City of Lebanon, Ohio and section 2923.126(B)(7) of the Ohio Revised Code.

SECTION 2. This Ordinance is hereby declared to be necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon; and, for the further reason, that this Ordinance is necessary for Council to provide clear and consistent rules for the administration of Council, then this Ordinance shall take effect at the earliest time provided by law.

  
Mayor

Passed: March 10, 2020  
Attest:

  
Clerk of Council

Sponsors

Mr. Messer, Ms. Monroe,  
Mr. Mathews  
Council Members

City  
Manager



City  
Auditor



City  
Attorney



EXHIBIT A

**§ 508.13 CONCEALED HANDGUN POSSESSION ON CITY OWNED  
PROPERTY/BUILDINGS.**

Pursuant to Ohio Revised Code section 2923.126, a licensee under Ohio Revised Code section 2923.125 or section 2923.1213 is authorized to carry a concealed handgun in the City of Lebanon, Ohio City Building located at 50 South Broadway, Lebanon, Ohio, except during the operation of any function of the Lebanon Municipal Court.

# Exhibit 2

ORDINANCE NO. 2020-023

AN ORDINANCE MODIFYING AND AMENDING THE RULES OF COUNCIL OF THE CITY OF LEBANON, OHIO

WHEREAS, the current City Council Rule 15 adopted pursuant to Ordinance 9562 and section 2.10 of the Lebanon Municipal Charter prohibits bringing weapons or items resembling weapons into Council chambers; and,

WHEREAS, Ohio Revised Code section 2923.126(B)(7) provides that the governing body of a municipality may enact an ordinance to permit a licensed individual to carry a concealed handgun into government buildings with certain restrictions; and,

WHEREAS, Council wishes to enact an ordinance to permit licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036 during times when the Lebanon Municipal Court is not in operation; and,

WHEREAS, since current City Council Rule 15 would be inconsistent with the desire to permit licensed individuals to carry concealed weapons into Council chambers, Council desires to amend the Rules of Council.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. That the Rule 15 of the Rules of Council Rule adopted by Ordinance 9562 is hereby rescinded and of no further force or effect.

SECTION 2. That Rule 15 of the Rules of Council shall be marked "This section intentionally left blank."

SECTION 3. This Ordinance is hereby declared to be necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon; and, for the further reason, that this Ordinance is necessary for Council to provide clear and consistent rules for the administration of Council, then this Ordinance shall take effect at the earliest time provided by law.

Passed:  
Attest:

*March 10, 2020*


  
Mayor

  
Clerk of Council

Sponsors

Mr. Messer, Ms. Monroe, Mr. Shafer,  
Mr. Mathews  
Council members

City  
Manager

A handwritten signature in blue ink, appearing to be 'AS', enclosed within a square box.

City  
Auditor

A handwritten signature in blue ink, appearing to be 'AS', enclosed within a square box.

City  
Attorney

A handwritten signature in blue ink, appearing to be 'Messer', enclosed within a square box.



# Exhibit 3

# Gray & Duning

Attorneys at Law

130 EAST MULBERRY, LEBANON, OHIO 45036

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J. WILLIAM DUNING

JOHN C. KASPAR

A. AARON ALDRIDGE

RYAN M. HOUSTON

MERYL B. GRAY (1907-1989)

CINCINNATI OFFICE: SUITE 2300  
1071 CELESTIAL, CINCINNATI, OHIO 45202

January 22, 2021

City Attorney Mark Yurick  
City of Lebanon  
50 South Broadway  
Lebanon, OH 45036

Dear City Attorney Yurick:

We represent Carol Donovan, Brooke Handley, and David Iannelli, all of whom are taxpaying residents of the City of Lebanon (the "City"). We write to express our clients' concern that the City has abused its corporate powers through the Lebanon City Council's passage of Ordinance No. 2020-022 (the "Ordinance"), which permits the concealed carry of firearms in the City Building except "during the operation of any function of the Lebanon Municipal Court."<sup>1</sup> Lebanon Code of Codified Ordinances § 508.13; see Ordinance No. 2020-022, Ex. A. For the reasons outlined below, the Ordinance clearly conflicts with Ohio state law. We respectfully request that you seek an order of injunction, pursuant to R.C. 733.56, to restrain the application of the Ordinance and enforce the state law prohibition on the possession of firearms within the City Building.

The Ordinance clearly conflicts with the Ohio Revised Code, which prohibits cities from permitting conveyance of deadly weapons, including firearms, in buildings that contain courtrooms. The state law prohibition applies regardless of whether any court is in operation. Moreover, although Ohio law authorizes municipalities to permit the licensed concealed carry of handguns in certain government buildings, it explicitly excludes from its scope other government buildings, like the City Building, which houses the Lebanon Municipal Court and related operations.

<sup>1</sup> The City Council simultaneously passed Ordinance No. 2020-023 in order to rescind City Council Rule 15, which had previously banned the possession of weapons at City Council meetings.

The applicable state statutory scheme has three relevant components:

- First, Ohio law prohibits possession of firearms in buildings and structures that contain courtrooms. R.C. 2923.123(A)-(B).
- Second, Ohio law establishes that a concealed handgun license permits the licensee to carry a concealed handgun “anywhere in this state,” subject to several enumerated exceptions. R.C. 2923.126(A). One such exception prohibits licensees from carrying handguns in buildings, such as Lebanon’s City Building, that contain courtrooms. R.C. 2923.126(B)(3) (citing R.C. 2923.123).
- Third, the state statute further prohibits concealed carry licensees from carrying handguns in buildings that are government facilities of the state or one of its subdivisions. R.C. 2923.126(B)(7). Although the Ohio General Assembly included language in the statute that authorizes local governments to override that prohibition with respect to some government buildings, it expressly provided that such authority does not extend to “courthouse[s] or other building[s] or structure[s] in which a courtroom is located that is subject to [R.C. 2923.126(B)(3)].” *Id.*

Taken together, these statutory provisions prohibit the carrying of firearms within the Lebanon City Building and make clear that the City’s statutory authority to permit concealed carry within certain government buildings does not extend to the City Building. Moreover, the statutory text does not limit the prohibition on concealed carry within a building containing a courtroom to periods when the relevant court is in operation.

By enacting the Ordinance, which directly conflicts with this state law prohibition on concealed carry within the City Building, the City has abused its corporate powers. An abuse of corporate powers occurs when a municipality engages in “the unlawful exercise of powers possessed by the corporation, as well as the assumption of power not conferred.” *State ex rel. Fisher v. Cleveland*, 109 Ohio St. 3d 33, 37 (Ohio 2006) (citation and internal quotation marks omitted). A municipality assumes power not conferred, where, as here, it exceeds the home rule authority granted to it by the Ohio Constitution. *See* Ohio Const. art. XVIII, § 3. More specifically, a city exceeds its home rule authority when it enacts an ordinance that is an exercise of police power and that conflicts with a state statute that is a general law. *See Mendenhall v. Akron*, 117 Ohio St. 3d 33, 36-37 (Ohio 2008); *Am. Fin. Servs. Ass’n v. Cleveland*, 112 Ohio St. 3d 170, 173 (Ohio 2006).

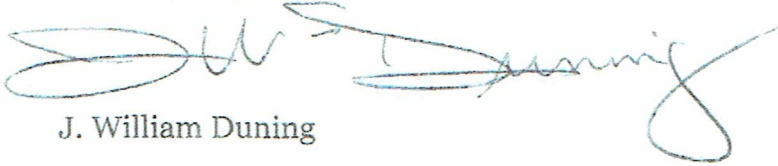
The Ordinance meets these criteria: It represents an exercise of the City’s police power, and it conflicts with the state statute governing the concealed carry of handguns, which is a general law. *See Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96 (Ohio 2008) (holding that a municipality exceeded its home rule authority in passing an ordinance that conflicted with the state statute at issue here, R.C. 2923.126). The Ordinance thus exceeds the City’s home rule authority and constitutes an abuse of its corporate powers. Ohio law directs a

city director of law, when faced with an abuse of the city's corporate power, to seek an injunction pursuant to R.C. 733.56.

The City Council's reversal of Lebanon's longstanding prohibition on concealed carry within the City Building violates Ohio law. We therefore respectfully request that the City Attorney's office seek an injunction requiring the City to comply with Ohio law and return to its prohibition on the possession of firearms within the City Building. We are confident in your commitment to the faithful administration of both state and local law. If, however, you decline to bring Lebanon into compliance with Ohio law, our clients will avail themselves of the remedies available to them as taxpayers pursuant to R.C. 733.59.

Thank you for your attention to this matter.

**GRAY & DUNING**

A handwritten signature in blue ink, appearing to read "J. William Duning", is written over a horizontal line. The signature is fluid and cursive.

J. William Duning

**EVERYTOWN LAW**

Len H. Kamdang, Esq.  
Carolyn Shanahan, Esq.  
450 Lexington Ave., P.O. Box 4184  
New York, NY 10017

*Attorneys for Carol Donovan, Brooke  
Handley, and David Iannelli*

ORDINANCE NO. 2020-022

AN ORDINANCE PERMITTING CONCEALED CARRY IN THE CITY BUILDING  
LOCATED AT 50 SOUTH BROADWAY, LEBANON, OHIO DURING TIMES WHEN  
LEBANON, OHIO MUNICIPAL COURT IS NOT IN OPERATION

WHEREAS, Ohio Revised Code section 2923.126(B)(7) provides that the governing body of a municipality may enact an ordinance to permit a licensed individual to carry a concealed handgun into government buildings with certain restrictions; and,

WHEREAS, Council wishes to enact an ordinance to permit licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036 during times when the Lebanon Municipal Court is not in operation; and,

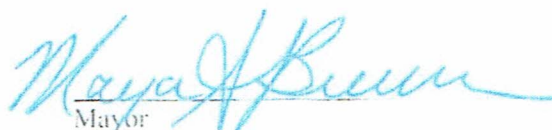
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. That section 508.13 of the Lebanon Code of Codified Ordinances, attached hereto as Exhibit A and incorporated herein as if fully set forth, permitting licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036, during times when the Lebanon, Ohio Municipal Court is not in operation is hereby adopted pursuant to Section 3.02 of the Charter of the City of Lebanon, Ohio and section 2923.126(B)(7) of the Ohio Revised Code.

SECTION 2. This Ordinance is hereby declared to be necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon; and, for the further reason, that this Ordinance is necessary for Council to provide clear and consistent rules for the administration of Council, then this Ordinance shall take effect at the earliest time provided by law.

Passed:  
Attest:

March 10, 2020

  
Mayor



Clerk of Council

Sponsors

Mr. Messer, Ms. Monroe,  
Mr. Mathews  
Council Members

City  
Manager



City  
Auditor



City  
Attorney



EXHIBIT A

**§ 508.13 CONCEALED HANDGUN POSSESSION ON CITY OWNED  
PROPERTY/BUILDINGS.**

Pursuant to Ohio Revised Code section 2923.126, a licensee under Ohio Revised Code section 2923.125 or section 2923.1213 is authorized to carry a concealed handgun in the City of Lebanon, Ohio City Building located at 50 South Broadway, Lebanon, Ohio, except during the operation of any function of the Lebanon Municipal Court.

# Exhibit 4

# FINNEY LAW FIRM

4270 Ivy Pointe Boulevard, Suite 225, Cincinnati, OH 45245

March 2, 2021

Rebecca Simpson Heimlich, Esq.  
Direct Dial: (513) 797-2856  
Fax: (513) 943-6669  
[Rebecca@FinneyLawFirm.com](mailto:Rebecca@FinneyLawFirm.com)

## VIA ELECTRONIC & REGULAR MAIL

J. William Duning, Esq.  
GRAY & DUNING  
130 East Mulberry  
Lebanon, OH 45036  
[mcglothlin@grayandduning.com](mailto:mcglothlin@grayandduning.com)

### **Re: Taxpayer Demand Regarding City of Lebanon Ordinance No. 2020-022**

Dear Attorney Duning,

The City of Lebanon ("City") is in receipt of your letter dated August 22, 2021 on behalf of your clients, Carol Donovan, Brooke Handley, and David Iannelli, requesting that the City Attorney's office seek an injunction against the City's enforcement of City of Lebanon Ordinance No. 2020-022. The City has engaged our firm to represent it in this matter. Please direct all further correspondence to me.

In coordination with City Attorney Mark Yurick, we have reviewed your letter and assessed your demand. The enactment and enforcement of Ordinance No. 2020-022 is within the power and authority of the City and does not rise to the level of a corporate abuse of power. The City therefore declines to seek the requested injunction.

Nevertheless, thank you for raising your clients' concerns regarding this issue. Please do not hesitate to contact me if you have any questions on this matter.

Regards,

FINNEY LAW FIRM, LLC

By:



Rebecca Simpson Heimlich, Esq.

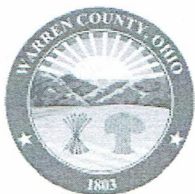
RSH/kr



# Warren County Common Pleas Court Receipt of Transaction

## Receipt # 365054

JAMES L. SPAETH  
Clerk of Court  
Warren County, Ohio



**Received From:**  
DUNING, J. WILLIAM  
130 E. MULBERRY ST.  
LEBANON, OH 45036

**On Behalf Of:**  
CAROL DONOVAN  
C/O J WILLIAM DUNING, 130 EAST MULBERRY ST  
LEBANON, OH 45036

On: 3/31/21 9:22 am  
Transaction # 121533  
Cashier LEISEA

**CaseNumber** 21CV094117

**Judge** TIMOTHY N. TEPE  
**CAROL DONOVAN vs. CITY OF LEBANON**

Comments:

Fee Description	Fee	Prior Paid	Waived	Due	Paid	Balance
(CV) CIVIL CASE DEPOSIT	87.00	0.00	0.00	87.00	87.00	0.00
(CVA) CIVIL CASE DEPOSIT AMOUNT	113.00	0.00	0.00	113.00	113.00	0.00
<b>Total:</b>	<b>200.00</b>	<b>0.00</b>	<b>0.00</b>	<b>200.00</b>	<b>200.00</b>	<b>0.00</b>

**PAYMENTS**

Payment Type	Reference		Amount	Refund	Overage	Change	Net Amount
CHECK	6742	OK	200.00	0.00	0.00	0.00	200.00
<b>Payments Total:</b>			<b>200.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>200.00</b>

CASE GRAND TOTAL			
Waived	Total Fee	Paid	Balance
\$0.00	\$200.00	\$200.00	\$0.00