

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

CAROL DONOVAN, et al.	:	CASE NO. 21 CV 094117
	:	
Plaintiffs	:	JUDGE TIMOTHY N. TEPE
	:	MAGISTRATE MARKUS L. MOLL
v.	:	
	:	
CITY OF LEBANON, et al.	:	DEFENDANTS' MOTION FOR
	:	SUMMARY JUDGMENT
Defendants.	:	
	:	WITH AFFIDAVITS OF SCOTT
	:	BRUNKA, BART DUNAVENT, AND
	:	JOE HACKMAN ATTACHED
	:	

Now comes Defendants City of Lebanon and Mark Yurick in his official capacity as City Attorney of the City of Lebanon (“Defendants”), by and through the undersigned counsel, and pursuant to Ohio Civ. R. 56, hereby moves for summary judgment on all claims asserted by Plaintiffs Carol Donovan, David Iannelli, and Brooke Handley (collectively “Plaintiffs”). There exists no genuine issue of material fact with respect to those claims, and Defendants are entitled to summary judgment thereon as a matter of law. A Memorandum in Support of this Motion is attached hereto, along with supporting affidavits. This Motion is further supported by the depositions of Plaintiffs Carol Donovan, David Iannelli, and Brook Handley as well as Lebanon Municipal Court Judge Martin E. Hubbell, the transcripts and exhibits of which are contemporaneously being filed herein. A motion in accordance with Local Rule 7.10(A)(6) for leave to exceed the page limitation is being filed contemporaneously herewith as well, and the summary required by that Local Rule is provided below.

Respectfully Submitted,

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LOCAL RULE 7.10(A)(6) SUMMARY

Plaintiffs have brought this meritless action claiming that a City of Lebanon ordinance allowing concealed carry in the City's municipal building conflicts with state statutes and exceeds the City's home rule authority. This case is a thinly veiled attempt to second-guess the decision of the Lebanon City Council on the control and supervision of municipal property and regulations concerning the meetings of Council, and to work to impose stricter gun laws in Ohio.

Plaintiffs' case is being driven and paid for by the anti-gun organization Everytown Law. Plaintiffs Donovan, Handley, and Iannelli did not initiate this action, and instead were recruited by their attorneys to fill the role of the plaintiffs in their attorneys' anti-gun rights efforts.

Everytown Law is the legal arm of a larger anti-gun organization that ranks Ohio as the as 30th worst state in the country for what they call "Gun Law Strength," and recommends specific restrictions be adopted by Ohio and other states. <https://www.everytown.org/state/ohio/>.

Everytown is trying to impose its political agenda on the City. This agenda is not only contrary to law, but is also out of line with recent action by Ohio's elected policy makers and a recent United States Supreme Court decision, both of which strengthened Second Amendment rights.¹

Plaintiffs as well have their own agendas that were not revealed in the pleadings.

According to Plaintiffs Handley and Donovan, the ordinance at issue was "[j]ust the right-wing gun nuts marking their territory." Handley Depo., p. 166:10-13, Exhibit V. And, Handley and Iannelli admit they both believe gun laws should be tougher and that no civilian should be able to carry a concealed handgun anywhere in the City of Lebanon, Ohio, or the United States.

¹ In March 2022 Governor DeWine signed SB 215 into law making Ohio the 23rd constitutional carry state, thereby empowering Ohioans aged 21 and older who are lawfully allowed to possess a weapon to carry it concealed on their person. And in June 2022, the United States Supreme Court issued its ruling in *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022), 142 S. Ct. 2111, 213 L. Ed. 2d 387, 2022 U.S. LEXIS 3055, finding that the New York ordinance at issue violated the Second Amendment to the United States Constitution which guarantees "an individual right to possess and carry weapons in case of confrontation." *Id.* at p. 2135 (internal citation omitted).

Deposition testimony reveals that these are Plaintiffs' true concerns, and their attorneys' allegations that the ordinance is preventing Plaintiffs from attending City Council meetings because they are afraid of who may be carrying guns in the meetings is just not true.

Based on the undisputed facts in this matter, Plaintiffs' claim that the ordinance conflicts with state law disallowing concealed carry in buildings containing a courtroom is wholly without merit. Based on the maxim of *noscitur a sociis* — it is known from its associates — which aids in defining undefined statutory terms such as “courtroom,” it is clear that the multipurpose room in which the Lebanon Municipal Court holds its sessions in the City Building is a “courtroom” only when court is in session. It is not a “courtroom” when court is not in session. This definition is consistent with R.C. 1901.36 governing accommodations for municipal courts, the Rules of Superintendence for the Courts of Ohio, relevant caselaw, and the design and construction of the multipurpose room to transform quickly from non-courtroom uses to courtroom use.

The ordinance at issue imposes a temporal limit on when carrying of concealed handguns is allowed in the City Building to any time “except during the operation of any function of the Lebanon Municipal Court.” Accordingly, as a matter of law, the ordinance does not allow the concealed carry of a handgun in a building containing a courtroom. Further, based on the undisputed facts, the ordinance is a valid exercise of the City's power of local self-government.

For these and the reasons more fully described below, Defendants are entitled to summary judgment on Plaintiffs' claims as there are no genuine issues of material fact, and as a matter of law the ordinance at issue is a valid exercise of the City's home rule authority. Further, Plaintiffs lack standing to bring their alleged declaratory judgment action because, as Plaintiffs' deposition testimony reveals, no real, immediate, or justiciable controversy exists and no action by this Court can resolve Plaintiffs' concerns about the ordinance.

MEMORANDUM IN SUPPORT

I. STATEMENT OF UNDISPUTED FACTS

a. The Ordinance.

On March 10, 2020, the Lebanon City Council enacted Ordinance No. 2020-022, a copy of which is attached as Exhibit 1 to Plaintiffs' Complaint for Declaratory and Injunctive Relief (the "Complaint"). Pursuant to Ohio Revised Code § 2923.126(B)(7) Ordinance No. 2020-022 permits licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036 (the City Building") during times when the Lebanon Municipal Court is not in operation. Ordinance No. 2020-022, in relevant part, reads:

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.

Ordinance No. 2020-022, Section 1 (Complaint, Exhibit 1). As provided, Ordinance No. 2020-022 enacted Section 508.13 of the Lebanon Code of Codified Ordinances, which reads:

§ 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.

Lebanon Code of Codified Ordinances § 508.13 (Complaint, Exhibit 1).² Ordinance No. 2020-022, which is the only City ordinance at issue in this matter, is referenced herein as the “Ordinance.”

b. Shopping for plaintiffs.

A little over a year after the Ordinance was passed, Plaintiffs filed this lawsuit. This lawsuit, however, did not begin like most litigation where a plaintiff chooses an attorney to engage to bring a lawsuit on his or her behalf. In this case, attorney Bill Dunning and anti-gun legal group Everytown Law (the “Attorneys”) shopped for plaintiffs to bring this action against the City of Lebanon (“Lebanon” or “City”) challenging its Ordinance. Deposition of Plaintiff Brooke Handley filed contemporaneously herewith (“Handley Depo.”) pp. 89:21-25; 134:17 – 138:4; 140:16 – 142:3; 154:7-14; 166:14 – 167:17; 159:21 – 160:13; Exhibit 5; Deposition of Plaintiff David Iannelli filed contemporaneously herewith (“Iannelli Depo.”) pp. 73:25 – 75:15; 78:16-19; Deposition of Plaintiff Carol Donovan filed contemporaneously herewith (“Donovan Depo.”) pp. 134:15-17; 136:11-17; 137:15-24.

Everytown Law is the legal arm of an anti-gun organization that ranks Ohio as 30th worst state in the country for what they call “Gun Law Strength,” claims that “Ohio has some of the weakest gun laws in the country,” and advocates for tougher gun laws in Ohio and across the country. <https://www.everytown.org/state/ohio/>. The Attorneys had hoped to find a plaintiff that had his or her concealed carry license because that “would be more impactful,” but they

² On March 10, 2020, Lebanon City Council also enacted Ordinance No. 2020-023, which rescinded City Council Rule 15, which had prohibited bringing weapons or items resembling weapons into Council Chambers. Complaint, Exhibit 2. While Plaintiffs mention Ordinance No. 2020-023 in their Complaint, they do not make any claims with respect to the validity or invalidity of that ordinance. All of Plaintiffs’ claims, including their alleged taxpayer action and their request for declaratory judgment, relate solely to Ordinance No. 2020-022. Complaint, ¶¶ 63 - 80.

were unable to do so, and instead recruited the current Plaintiffs herein. Handley Depo., pp. 136:22 – 137:8; 167:4-17, Exhibit W; 140:22 – 142:3.

c. Facts alleged by attorneys do not align with Plaintiffs’ testimony.

After recruiting the Plaintiffs to plug into their lawsuit³ against the City, the Attorneys – who are driving and paying for this litigation⁴ – have made factual allegations regarding these Plaintiffs that are, at best, misleading. In Plaintiffs’ Opposition to Defendants’ Motion to Dismiss the Complaint (“Plaintiffs’ Response”), the Attorneys allege that the “controversy” in this matter is as follows:

The Ordinance...is currently interfering with Plaintiffs’ abilities to attend and participate in City Council meetings. That is, Plaintiffs are already facing a dilemma over whether to refrain from participating in City Council meetings or face the increased risk of physical harm and armed intimidation, along with the attendant fear and anxiety, posed by concealed firearms. As a result, *two Plaintiffs have already stopped attending the meetings, and the third has curtailed her participation.*

Plaintiffs’ Response, p. 18 (internal citation omitted). Plaintiffs’ deposition testimony reveals that these allegations are not true.

Handley testified that since the Ordinance passed, she has attended significantly more City Council meetings and work sessions than she did prior to the passage of the Ordinance. Handley Depo., pp. 78:15 – 79:18. In 2019 – before the Ordinance passed in March of 2020 – Handley attended only about three city council meetings and work sessions. *Id.*, 78:15 – 79:5. In 2020, she attended approximately 24 City Council meetings and work sessions – 8 times more than she had

³ After recruiting the Plaintiffs, attorney Dunning sent a letter on behalf of them on January 23, 2021 to Defendant City Attorney Mark Yurick claiming that the City abused its corporate powers by enacting the Ordinance and asking Mr. Yurick to seek an injunction pursuant to Ohio Revised Code § 733.56 restraining the application of Ordinance No. 2020-022. Complaint, Exhibit 3, p. 1. The City responded through counsel with a letter stating that the enactment and enforcement of the ordinance is within the power and authority of the City and does not rise to the level of a corporate abuse of power, and that the City, therefore, declines to seek the requested injunction. Complaint, Exhibit 4, p. 1. Plaintiffs responded by filing the Complaint.

⁴ It is undisputed that Everytown Law is funding Plaintiffs’ litigation in this matter and none of Plaintiffs are paying any legal fees or costs. Handley Depo. p. 126:14-22, Exhibit M; 172:6-11; Donovan Depo., p. 139:8-15; Iannelli Depo. pp. 77:2-10; 94:5-9.

attended in 2019 before the Ordinance passed. *Id.*, 79:6-13. And, in 2021, she again attended about 24 City Council meetings and work sessions. *Id.*, 79:14-18. Contrary to the allegation by Plaintiffs' Attorneys, Handley's participation in City Council meetings drastically increased after the passage of the Ordinance.

Iannelli's and Donovan's deposition testimony also contradict the above-quoted alleged "controversy." Iannelli is a music educator who has worked for Lebanon City Schools since 1994. Iannelli Depo. pp. 9:9 – 10:3. He testified that earlier in his career he did attend a few City Council meetings mostly for reasons related to the school's band program. *Id.*, 54:10 – 55:3. When specifically asked "why do you not go to city council meetings," Iannelli gave many reason – including being busy and COVID – but he did not mention the Ordinance as a reason he does not attend. *Id.* 66:22 – 67:17.

Donovan testified that she attended a City Council meeting this past January – after the Ordinance was put in place – and estimates that prior to that, the last meeting she attended was about eight years ago. Donovan Depo., pp. 113:20 – 115:14. Clearly, she has not stopped attending meetings because of the Ordinance – as was claimed in Plaintiffs' Response – as the only City Council meeting she has attended in the last eight years was after the Ordinance passed. *Id.* Further, she testified that she rarely goes out anywhere because she has a hip problem that causes her significant mobility issues, and she generally watches City Council meetings online. *Id.* 19:13-17; 114:3-6.

Further, the Complaint – filed almost a year and a half ago – alleges that "Donovan plans to attend firearms training with her son, a law enforcement officer and concealed carry licensee, in the coming year." Complaint, ¶ 49. Donovan, however, testified in her deposition that she has a deep fear of guns rooted in a bad experience as a child, has only ever touched a gun once about

10 years ago, and contrary to the allegation in the Complaint, has not attended firearm training with her son. Donovan Depo., pp 92:12-22; 99:10 – 100:8; 150:20 – 151:2.

As deposition testimony reveals, the narrative and alleged “controversy” that the Attorneys are pushing in this matter does not fit with the testimony of the Plaintiffs they recruited.

d. The Plaintiffs and their individual agendas.

While the individual interests of the Plaintiffs in this lawsuit diverge from what has been alleged in the pleadings, they do each have their own personal agendas.

1. Brooke Handley

Plaintiff Brooke Handley believes that the Ordinance was “[j]ust the right-wing gun nuts marking their territory.” Handley Depo., p. 166:10-13, Exhibit V (DONOVAN0326). And it is clear from her deposition testimony that her opposition to the Ordinance is rooted in her personal beliefs that:

- i. ***No civilian should be allowed to carry a gun anywhere*** in the City of Lebanon, the state of Ohio, or the United States (*Id.*, pp. 96:12 – 97:12) (emphasis added);
- ii. “[A] firearm is a phallic extension of an underlying power struggle” – meaning that “***some white males may use a gun or a firearm*** or a weapon ***to extend*** their authority – ***their power, authority over other minorities or women*** to make themselves feel better about themselves” – and that, in part, is why the white men on Lebanon City Council voted for the Ordinance (*Id.*, pp. 103:25 – 105:13, Exhibit G) (emphasis added);
- iii. ***Lebanon City Council should not have passed the Ordinance unless all City of Lebanon citizens agreed with it.*** She does not feel that all policy decisions must have unanimous support of the citizens, and admits that it is possible that she wants concealed carry to be treated differently because she personally feels there should be more gun restrictions (*Id.*, pp. 99:7 – 100:20, Exhibit G) (emphasis added);
- iv. White males are more likely to “to get angry and potentially cause an act of violence,” and ***the Ordinance is concerning because of the large number of white males on Council and that attend Council meetings*** (*Id.* pp. 101:7-103:16, Exhibit G) (emphasis added);

- v. “[C]onservatives and Republicans are more likely to be racist” and “*more likely to be out to kill black and brown people* than Democrats,” and Lebanon City Council and those that support gun rights are conservative (*Id.*, pp. 156:9-20, Exhibit R; 108:3-7, Exhibit H; 116:8 – 117:16) (emphasis added).

2. *David Iannelli*

Iannelli believes that gun laws should be stricter in the Lebanon, Ohio, and in the United States as a whole. Iannelli Depo., p. 31:4-13. And his specific concern with the Ordinance is that “it just seems like we’re – we keep pushing the envelope” of “gun safety.” *Id.*, 52:17 – 23. According to Iannelli, “concealed carry just never made any sense to me.” *Id.*, 33:8-9. He believes that “only people in military and the police really should be carrying a gun,” and that there should be stricter background checks and training requirements to even own a gun at all. *Id.*, 32:1 – 33:9.

3. *Carol Donovan*

Along with Handley, Carol Donovan believes – and wrote in a message to Handley – that the Ordinance was “[j]ust the right-wing gun nuts marking their territory.” Handley Depo., p. 166:10-13, Exhibit V (DONOVAN0326). And, in her past, Donovan had two bad experiences with guns, and explains that the first was an extremely traumatic experience as a very young child that has caused her to have a deep, personal fear of guns. Donovan Depo., pp. 95:14 – 104:11. According to Donovan:

But I’ve had a fear of guns at a very, very young age and I know what they can do.

And my dear son is trying to help me with that, but it’s – he’s not succeeding very well. And I will never deny the fact that I respect weapons, but I also have a very deep fear of them and I would be lying if I didn’t admit that.

Donovan Depo., p. 99:10-18. Donovan’s concerns about the Ordinance are tied to the trauma she experienced and her resulting very personal fears that she admits “are something [she] personally needs to work on.” *Id.* 119:10 – 120:23.

e. The City Building.

The Ordinance allows the carrying of a concealed handgun into the City Building at times defined in the Ordinance. The City Building houses many of the City’s departments including Community Development and Planning, Administration (City Manager’s Office), Service, Finance and Tax, Law, Building Maintenance, and Engineering. Affidavit of Lebanon City Manager Scott Brunka attached hereto as **Exhibit 1** (“Brunka Aff.”), ¶ 3. The Municipal Court also holds court sessions and has other operations in the City Building at times as described below.

f. The Multipurpose Room in the City Building.

1. Uses of the Multipurpose Room

On the second floor of the City Building is a large multipurpose room that is used for several purposes including Lebanon City Council meetings, Lebanon Board of Zoning Appeals meetings, Lebanon Planning Commission meetings, sessions of the Lebanon Municipal Court, wellness seminars sponsored by the City for its employees and other employee meetings and celebrations (the “Multipurpose Room”). *Id.*, ¶ 4.

City Council Meetings

City Council meetings are held in the Multipurpose Room the second and fourth Tuesday of each month at 7:00 p.m. *Id.* ¶ 5. For this use, the Multipurpose Room is referred to as “Council Chambers.” *Id.* There is no set length of time for City Council meetings, and that length can vary widely depending upon the topics discussed and the membership makeup of the particular Council at the time. *Id.*

Board of Zoning Appeals Meetings

Lebanon Board of Zoning Appeals meetings are held in the Multipurpose Room the first Wednesday of the Month at 5:30 p.m. *Id.*, ¶ 6. This Administrative Board is appointed by City Council and reviews and decides upon appeal requests specific to the Lebanon Zoning Code. *Id.*

Planning Commission Meetings

Lebanon Planning Commission meetings are held in the Multipurpose Room the third Tuesday of each month at 7:00 p.m. *Id.*, ¶ 7. Planning Commission members are appointed by City Council, and the Commission advises the City Council and City departments on broad planning goals, policies, and plans for the physical development of the City. *Id.*

Lebanon Municipal Court

The Lebanon Municipal Court holds its criminal and traffic dockets on Monday and Thursday afternoons, and its civil docket on Tuesday afternoons in the Multipurpose Room. Deposition of Lebanon Municipal Court Judge Martin E. Hubbell filed contemporaneously herewith (“Judge Hubbell Depo.”), p. 60:2-12; Brunka Aff., ¶ 8.

On occasion the Court may hold trials or other matters outside of the Court’s regular hours if the Multipurpose Room is not otherwise in use. *Id.*, pp. 43:22 – 44:12. In his May 25, 2022, deposition, Lebanon Municipal Court Judge Hubbell testified that since he became the Municipal Court Judge he has not set any trials outside of the Court’s regular session hours. *Id.* Prior to serving as Judge, Judge Hubbell served as the Municipal Court’s magistrate judge for 18 years. *Id.*, p. 7:10-12. In that role, he did have occasion to schedule matters outside of regular Court session hours and testified as follows regarding that scheduling:

When I was a civil magistrate, I wanted to make sure that there was not anything scheduled in [the Multipurpose] room before I scheduled a date. I would get some proposed dates, have one of my clerks get in touch with the city. I would not want to infringe upon anybody else using the room upstairs from the city.

Judge Hubbell Depo., p. 111:1-7.

Employee Meetings and Celebrations

The Multipurpose Room is also used for City and/or Court employee meetings and celebrations. Brunka Aff., ¶ 10. For example, the City holds periodic wellness seminars for its employees in the Multipurpose room, and those are generally held on Wednesdays or Fridays. *Id.*

2. Differences in the Multipurpose Room for Court use and for other uses

There are differences in the security, physical appearance, and audio-visual equipment used for and in the Multipurpose Room depending upon the particular use of the Multipurpose Room.

Security Screening Machine

Right outside of and leading into the Multipurpose Room is a security screening machine that is much like what individuals walk through at airport security or at concerts. Affidavit of Lebanon Municipal Court Bailiff Bart Dunavent attached hereto as **Exhibit 2**, (“Dunavent Aff.”), ¶ 5; Brunka Aff., ¶ 11. This security screening machine is used when Court holds its civil, traffic, and criminal sessions. Dunavent Aff., ¶ 6.

Each time the screening machine is used, the Court’s security personnel (who work solely for the Court) must gather the machine’s key, power cord, and other items from a locked closet to set up, turn on, and calibrate the machine. *Id.*, ¶ 7. When the Court’s civil, traffic, and/or criminal session concludes, those same security personnel shut down the screening machine, lock items needed to use it back into a closet, and cover it. *Id.*, ¶ 8.

Only those Court security personnel and the Court’s Bailiff know how to start, calibrate, and use the machine. *Id.*, ¶ 9. The screening machine is used solely for Court sessions and never for City Council meetings or any other non-Court use of the Multipurpose Room. *Id.* ¶ 10; Brunka Aff., ¶ 12.

The Bench

At the front of the Multipurpose Room is a long semi-circle table or structure (the “Long Table”) with chairs behind it in which City Council members and others sit during meetings. *Id.*, ¶ 11; Brunka Aff., ¶ 13. This Long Table is depicted in Exhibit 3 to Judge Hubbell’s deposition. Judge Hubbell Depo., Exhibit 3. As noted on the Exhibit, it depicts a Lebanon City Council Meeting from December 14, 2021. *Id.* As is visible on the Exhibit, each seat at the Long Table is the same height, and the entire surface of the Long Table is the same height as well. *Id.*

For purposes of the Court, however, a special hydraulic system has been installed in the seat in the middle of the Long Table between the two flags. Dunavent Aff., ¶¶ 12-14; Brunka Aff., ¶ 14; Judge Hubbell Depo., pp. 151:18 – 153:8, Exhibit 3. For Court sessions, that seat/position is raised to create an elevated “Bench” for the Judge that is higher than the rest of the Long Table. *Id.* This is in accordance with the Rules of Superintendence for the Courts of Ohio which require that “[e]very courtroom should have an elevated bench.” Rules of Superintendence for the Courts of Ohio, Appendix D, Court Facility Standards, Section I.

The Bench is never raised for any other use of the Multipurpose Room. Dunavent Aff., ¶¶ 12-14; Brunka Aff., ¶ 14; Judge Hubbell Depo., pp. 151:18 – 153:8.

Audio-Visual Equipment

The Multipurpose Room has two separate sets of audio-visual equipment. Affidavit of City of Lebanon Studio Production Manager Joe Hackman attached hereto as **Exhibit 3**, (“Hackman Aff.”), ¶ 4; Brunka Aff., ¶ 15. One set is used exclusively by the Lebanon Municipal Court, and the other is used for Lebanon City Council meetings and sometimes other non-Court uses of the Multipurpose Room such as employee wellness meetings. Hackman Aff., ¶ 5; Brunka

Aff., ¶ 15. Each of the two sets has its own separate cameras and recording systems. And, each set has its own operator or operators. *Id.*, ¶¶ 4-7.

g. Other operations/functions of the Court.

In addition to civil, criminal and traffic Court sessions, the operations or functions of the Court also include the Clerk of Courts and the Probation Department which are located in the City Building near the Multipurpose Room. Judge Hubbell Depo., pp. 33:8 – 34:6; Brunka Aff. ¶ 16. As indicated on signs leading into the City Building, “MUNICIPAL COURT OPERATING HOURS” are “TYPICALLY MONDAY – FRIDAY FROM 8 A.M. to 5 P.M.” Brunka Aff., ¶ 17. And as indicated on the Court’s website, official “Hours of Operation” are Monday through Friday 8:00 am to 4:00 pm. Brunka Aff., ¶ 18, Exhibit A.

II. LAW AND ARGUMENT

a. Summary judgment standard.

“Civ.R. 56(C) mandates the entry of summary judgment if the evidence, properly submitted, shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Todd Dev. Co. v. Morgan* (2008), 116 Ohio St. 3d 461, 463, citing Civ.R. 56(C). On a motion for summary judgment, “the nonmoving party may not rest upon the mere allegations or denials of the pleadings. Instead, the burden shifts to the nonmoving party, and the nonmoving party’s response must set forth specific facts showing that there is a genuine issue for trial.” *Id.*, citing Civ.R. 56(E).

Importantly, “there is no requirement in the Civil Rules that a moving party must negate the nonmoving party’s every possible defense to its motion for summary judgment.” *Id.*, at 464. Where the nonmoving party fails to meet its burden of demonstrating a genuine issue of material fact, summary judgment is appropriate. *Id.*, at 463.

b. Defendants are entitled to summary judgment on Plaintiffs’ alleged Taxpayer Claim for Injunctive Relief (Count One of the Complaint).

As a matter of law Plaintiffs’ claim that “City Council exceeded Lebanon’s Home Rule authority in passing the Ordinance” and, therefore, assumed powers not conferred is without merit. Complaint ¶ 71.

The Home Rule Amendment to the Ohio Constitution “confers a high measure of sovereignty upon municipalities,” *City of Cleveland v. City of Shaker Heights* (1987), 30 Ohio St.3d 49, 51, 507 N.E.2d 323, “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. XVII, sec. 3; *Cincinnati Bell Tel. Co. v. City of Cincinnati* (1998), 81 Ohio St. 3d 599, 602, 693 N.E.2d 212. “The power of local self-government and that of the general police power are constitutional grants of authority equivalent in dignity. A city may not regulate activities outside its borders, and *the state may not restrict the exercise of the powers of self-government within a city.*” *Canton v. Whitman* (1975), 44 Ohio St.2d 62, 66, 337 N.E.2d 766 (emphasis added). “It is of the essence of home rule and of self-government that the sovereign body that has that power, whether described as a commission, council, assembly or otherwise, has the inherent power to carry on its duties according to its own rules. Were it otherwise, home rule and self-government would become a fiction, and the purpose of the constitutional amendment would be denied.” *City Comm’n of Piqua v. Piqua Daily Call*, 64 Ohio App.2d 222, 225, 412 N.E.2d 1331 (2d Dist. 1979). Thus, “[t]he courts are sensitive to the home rule authority of municipalities because a disregard of that authority would be an effective nullification of the constitutional right.” *Payphone Ass’n of Ohio v. City of Cleveland*, 146 Ohio App. 3d 319, 328, 766 N.E.2d 167, 2001 Ohio App. LEXIS 4095 (8th Dist. 2001).

Nonetheless, courts “have used a three-part test to evaluate conflicts under the Home Rule Amendment.” *Cleveland v. State* (2010), 128 Ohio St.3d 135, 942 N.E.2d 370, 2010-Ohio-6318 ¶10. “A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.” *City of Canton v. State* (2002), 95 Ohio St. 3d 149, 766 N.E.2d 963, 2002-Ohio-2005 ¶9; accord *Ohioans for Concealed Carry, Inc. v. City of Clyde* (2008), 120 Ohio St. 3d 96, 896 N.E.2d 967, 2008-Ohio-4605 ¶24.

Based on the undisputed facts in this matter, as a matter of law Plaintiffs cannot satisfy this test for at least two reasons: (1) the Ordinance does not conflict with any state statute; and (2) the Ordinance is a valid exercise of the City’s power of local self-government.⁵

1. Plaintiffs cannot, as a matter of law, establish the first element of the home rule test because the Ordinance does not conflict with any state statute.

“In determining whether an ordinance is in ‘conflict’ with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.” *City of Cincinnati v. Baskin* (2006), 112 Ohio St. 3d 279, 283, 859 N.E.2d 514, 2006-Ohio-6422, quoting *Struthers v. Sokol* (1923), 108 Ohio St. 263, 140 N.E. 519 (syllabus ¶2); see also *State v.*

⁵ Defendants posit that Plaintiffs’ claim also fails because the statutes Plaintiffs claim the Ordinance conflicts with are not general laws. The trial court in *Ohioans for Concealed Carry, Inc. v. City of Clyde* (2008), 120 Ohio St. 3d 96, 896 N.E.2d 967, 2008-Ohio-460 relied on *Toledo v. Beatty*, 169 Ohio App.3d 502 to determine that ORC § 2923.126 is not a general law, and that the City of Clyde ordinance therefore did not violate Clyde’s home rule authority. Between the trial court’s decision, however, and the appellate court’s decision, the Ohio General Assembly enacted ORC § 9.68. The appellate court relied on the enactment of ORC § 9.68 to distinguish *Beatty*, overrule the trial court and hold that ORC § 2923.126 is a general law and that “[b]ecause R.C. 9.68(A) precluded any law other than state or federal law from infringing on the right to carry arms, the law preempted Clyde Ordinance 2004-41.” The case was then appealed to the Ohio Supreme Court. According to the Ohio Supreme Court’s opinion, “[s]imply put, the General Assembly, by enacting R.C. § 9.68(A), gave persons in Ohio the right to carry a handgun unless federal or state law prohibits them from doing so.” This could be interpreted as merely ensuring that local governments do not attempt to impose *more restrictions* on the carrying and possession of handguns and as not having any impact on local ordinances, such as the one at issue, that *do not attempt to impose such additional restrictions*. Accordingly, the court may have been too quick to rely on ORC § 9.68 as a basis for determining that ORC § 2923.126 is a general law. Defendants posit that it is not a general law, and that this is a third, and independent, reason that Plaintiffs cannot establish that the Ordinance exceeds the City’s home rule authority.

Burnett (2001), 93 Ohio St.3d 419, 755 N.E.2d 857, 2001 Ohio 1581; *Middleburg Hts. V. Ohio Bd. Of Bldg. Standards* (1992), 65 Ohio St.3d 510, 512, 605 N.E.2d 66, 1992-Ohio-11. “In other words, ‘[n]o real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa.’” *Baskin*, 112 Ohio St. 3d at 283, quoting *Sokol*, 108 Ohio St. at 268.

In determining whether a conflict exists, *courts have a general duty, whenever possible, to harmonize local ordinances with state law.* *City of Tiffin v. McEwen*, 130 Ohio App.3d 527, 531, 720 N.E.2d 587 (3d Dist. 1998); *Payphone Assn. of Ohio*, 146 Ohio App. 3d at 328; *N. Ohio Patrolman Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 377, 402 N.E.2d 519. And *any doubts* regarding the validity of a legislative enactment *should be resolved in favor of the enactment.* *State v. Gill* (1992), 63 Ohio St. 3d 53, 55, 584 N.E.2d 1200; *City of Tiffin*, 130 Ohio App.3d at 531.

Plaintiffs contend that certain provisions of state law impermissibly conflict with Ordinance No. 2020-022 so as to invalidate the latter. First, Plaintiffs rely upon R.C. 2923.123 (A) and (B), which read:

(A) 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.

(B) 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.

Next, Plaintiffs rely upon state law addressing the duties of persons possessing a concealed handgun license in R.C. 2923.126:

(B) A valid concealed handgun license does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section 2923.12 of the Revised Code or in any manner prohibited under section 2923.16 of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(3) 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 section 2923.123 of the Revised Code;

(7) Any 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;

According to Plaintiffs, “read together [these statutes] prohibit the carrying and possession of firearms within courthouses and other buildings containing courtrooms” and “such prohibition applies even to individuals who are otherwise licensed to carry concealed handguns throughout the state of Ohio.” Complaint ¶ 27. Plaintiffs’ challenge to Ordinance No. 2020-022 rests solely upon their contention that the Ordinance permits the carrying of a concealed handgun into a building that contains a courtroom. Complaint ¶¶ 28-37.⁶ As a matter of law, this claim is without merit as the Ordinance does not allow the carrying or possession of any firearm – concealed or not – in any building that contains a courtroom.

This case raises the question how temporally a courtroom constitutes a courtroom when the venue in which court is held is a multipurpose room also utilized for other governmental functions. The Multipurpose Room in the City Building is used for several purposes including Lebanon City Council meetings, Lebanon Board of Zoning Appeals meetings, Lebanon Planning Commission meetings, sessions of the Lebanon Municipal Court, wellness seminars sponsored by the City for its employees, and other employee meetings and celebrations. Brunka Aff., ¶ 4. Meetings of the City Council, the Board of Zoning Appeals, and the Planning Commission and the Municipal Court’s civil, traffic, and criminal sessions take place at certain times described

⁶ Plaintiffs make no claim that the City Building is a “courthouse.” They claim only that the City Building contains a “courtroom.” See generally Complaint ¶¶ 28-37.

above. *Id.*, ¶¶ 5-10. Outside of those times the City and Court staff coordinate on the availability and scheduling of uses for the Multipurpose Room. Judge Hubbell Depo., pp. 111:1-7: 43:22 – 44:12; Brunka Aff. ¶ 9.

The Ohio Revised Code, including R.C. Chapter 2923, does not define or include a definition of a “courtroom.” As an aid in “determining the meaning of an undefined [statutory] term, the maxim of *noscitur a sociis* — it is known from its associates — directs [a court] to look to accompanying words to deduce the undefined word’s meaning.” *Inland Prods. V. City of Columbus*, 193 Ohio App. 3d 740, 751, 954 N.E.2d 141, 2011 Ohio App. LEXIS 1745 (10th Dist. 2011) quoting *Ltd., Inc. v. Commr. Of Internal Revenue* (C.A.6, 2002), 286 F.3d 324, 332 (6th Dist. 2002); *Bungard v. Dep’t of Job & Family Servs.*, 2007-Ohio-6280, ¶12, 2007 Ohio App. LEXIS 5511 (10th Dist. 2007). That maxim follows from the premise that “the coupling of words denotes an intention that they should be understood in the same general sense.” *Inland Prods.* at 751, quoting *Wilson v. Stark Cty. Dept. of Human Servs.* (1994), 70 Ohio St.3d 450, 453, 639 N.E.2d 105, quoting 2A Sutherland Statutory Construction (5 Ed.Singer Rev.1992) 183, Section 47.16; see also *State v. Romage* (2014), 138 Ohio St. 3d 390, 394, 2014-Ohio-783, 7 N.E.3d 1156, 2014 Ohio LEXIS 455, 2014 WL 866449 (under the canon of construction *noscitur a sociis* “a word gains meaning by the company it keeps”).

In addition to prohibiting the concealed carrying of handguns into a building in which a “courtroom” is located, R.C. § 2923.126 also prohibits the concealed carrying of handguns into a “school safety zone.” R.C. § 2923.126(B)(2). A “school safety zone” is defined by statute to include schools, school buildings, and school premises “*whether or not any instruction, extracurricular activities, or training provided by the school is being conducted...at the time.*” R.C. §§ 2923.126(B)(2), 2923.122, 2901.01, and 2925.01 (quoting § 2925.01) (emphasis added).

The General Assembly specifically provided, in the context of Ohio’s handgun laws, that schools, school buildings, and school premises always constitute a school safety zone even when no school activities are taking place. In the same context of Ohio’s gun laws – R.C. Chapter 2923 – the General Assembly chose not to similarly define a courtroom as being a courtroom even when court is not in session. Under the statutory construction maxim of *noscitur a sociis*, the General Assembly clearly did not intend for a physical location that is sometimes used as a “courtroom” to always constitute a “courtroom” even when that that physical location is being used for other purposes.

And in this case, when the Multipurpose Room is being used for purposes other than the Municipal Court even the characteristics and operation of the room change. As explained above, each time the Multipurpose Room is used for a session of Court, the room has to be physically changed by raising the Bench, the security screening machine that lead into the Multipurpose Room must be set up, calibrated, and put into use, and separate Court-specific audio-visual equipment, including audio and recording devices, must be used. For all other uses of the Multipurpose Room, the security screening machine is not used, the Bench is not raised, and if audio-visual equipment is required, a set of such equipment totally separate from the Court’s system is used.

Furthermore, the fact that the Multipurpose Room in the City Building constitutes a “courtroom” only when Court is in session is consistent with R.C. 1901.36 governing accommodations for municipal courts, the Rules of Superintendence for the Courts of Ohio, and relevant caselaw.

R.C. 1901.36 imposes the requirement on municipalities to provide various accommodations for municipal court, including “suitable accommodations for the municipal court

and its officers....suitable accommodations for a law library, complete sets of reports of the supreme and inferior courts and such other law books and publications as are deemed necessary by the presiding judge, and shall provide for each courtroom, a copy of the Revised Code.....[and] any other employees that are necessary.” Thus, “Municipal Courts remain dependent to a reasonable extent upon the legislative authority of the municipality in which they sit.” *State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), 34 Ohio St.2d 120, 127, 296 N.E.2d 544. And, in the first instance, the nature, scope or limitations on the accommodations provided for a municipal court are the prerogative of the legislative authority of the municipality. In fact, in addressing R.C. 1901.36, the Ohio Supreme Court recognized the discretion afforded to the legislative authority: “[i]t is only in regard to the law library that sole discretion is left to the ‘presiding judge.’ The remaining clauses of R.C. 1901.36 are geared to the discretion of the ‘legislative authority.’” *Id.* Thus, the Lebanon City Council, in providing a multipurpose room as a courtroom for the Municipal Court when it is in session, still retains the discretion to treat and consider the venue differently at other times.

And, in constructing the Multipurpose Room, the City employed this discretion to design the room so that it can easily transform from non-courtroom uses to courtroom use. *Brunka Aff.*, ¶ 15. A special hydraulic system was installed in the Long Table at the front of the Multipurpose Room so that the Bench can be raised when Court is in session and satisfy the Rules of Superintendence for the Courts of Ohio. *Dunavent Aff.*, ¶¶ 12-14; *Brunka Affl.*, ¶¶ 14-15; *Judge Hubbell Depo.*, pp. 151:18 – 153:8. These Rules provide that “[e]very courtroom should have an elevated bench.” Rules of Superintendence for the Courts of Ohio, Appendix D, Court Facility Standards, Section I. When Court is not in session, the Bench is not raised. *Brunka Aff.* ¶ 14. Further, audio-visual equipment meeting the particular needs of the Municipal Court was installed

in addition to the audio-visual equipment that is used in the Multipurpose room for City Council and any other non-court purposes. Hackman Aff., ¶¶ 4-5; Brunka Aff., ¶ 15. And, a security screening system for use only when Court is in session was installed. Dunavent Aff., ¶¶ 5-6; Brunka Aff., ¶¶ 11-12, 15.

The fact that the Multipurpose Room is only considered a “courtroom” when Court is in session is also consistent with the well-accepted definition of a “court.” As explained by the Ohio Supreme Court:

A court is an incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. It is only when a court is in session thus regularly constituted that it may lawfully perform its fixed and permanent functions...

State ex rel. Hawke v. Le Blond (1923), 108 Ohio St. 126, 133, 140 N.E. 510. Consistent with this definition, a court exists only when it is in session. *A fortiori*, a multipurpose room that is used for court only part of the time constitutes a “courtroom” only when court is in session.

The Ohio Supreme Court implicitly recognized this concept and the fact that the use of a multipurpose room as a “courtroom” does not preclude other uses or designations of such venue when court is not in session. In *State ex rel. Musser v. City of Massillon* (1984), 12 Ohio St. 3d 42, 45-46, 465 N.E.2d 400, the judges of a municipal court sought a writ of mandamus to compel the municipality to allow the use of council chambers as accommodations for the court’s referee. Recognizing that R.C. 1901.36 grants municipalities, in the first instance, the authority to provide and define the accommodation for a municipal court, the Court granted the writ because council chambers were adjacent to existing courtrooms and the Rules of Superintendence required referees have court and office facilities similar to those offered a judge. Implicit in the Court’s decision and written opinion is the concept that the council chambers will constitute a

“courtroom” when court is being held by the referee, but at other times will remain council chambers. *Id*; see also *State ex rel. Law Office of the Pub. Defender v. Rosencrans*, 2005-Ohio-6681, 2005 Ohio App. LEXIS 5997 (2d Dist. 2005) (mayor’s court conducted in council chambers).

For the reasons explained above, a “courtroom” exists in the City Building only when the Lebanon Municipal Court is in session. Ordinance No. 2020-022 specifically provides that “... 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... *except during the operation of any function of the Lebanon Municipal Court.*” Lebanon Code of Codified Ordinances § 508.13 (Complaint, Exhibit 1) (emphasis added). Accordingly, Ordinance No. 2020-022 does not allow the carrying or possession of any firearm – concealed or not – in any building that contains a courtroom. Accordingly, the Ordinance does not directly conflict with state law, so as a matter of law Plaintiffs cannot satisfy the first required element of the home rule test and their alleged taxpayer claim for injunctive relief – Count One of the Complaint – must be dismissed.

2. Plaintiffs cannot, as a matter of law, establish the second element of the home rule test because the Ordinance is a proper exercise of the City’s power of local self-government.

Because the Ordinance does not conflict with state law, it is a valid exercise of the City’s home rule sovereignty. Even if this Court were to find, however, that Ordinance does conflict with a state statute, it is still a valid exercise of the City’s home rule authority because it constitutes a matter of local self-government, rather than an exercise of local police power.

As stated above, one of the required elements in establishing that a local ordinance exceeds a municipality’s home rule authority is that the ordinance at issue constitutes an exercise of police power rather than an exercise of local self-government. *Ohioans for Concealed Carry*,

Inc., 120 Ohio St. 3d at 99. “Although the Supreme Court of Ohio has not provided a precise definition of ‘police power’ in the context of the Home Rule Amendment, the court has described the term to mean ‘the right and duty of the government to provide for the common welfare of the governed.’” *City of Dublin v. State*, 181 Ohio App. 3d 384, 2009-Ohio-1102, 909 N.E.2d 152, 2009 Ohio App. LEXIS 874, ¶ 14 (10th Dist. 2009) quoting *State v. Martin* (1958), 168 Ohio St. 37, 40, 151 N.E.2d 7. “Our United States Supreme Court described ‘police power’ as a state’s authority that ‘springs from [its] obligation...to protect its citizens and provide for the safety and good order of society.’” *Id.*, quoting *Panhandle Eastern Pipe Line Co. v. State Highway Comm. Of Kansas* (1935), 294 U.S. 613, 622, 55 S. Ct. 563, 79 L. Ed. 1090.

It is undisputed that the City Council member who proposed the Ordinance did so for the purpose of providing security for City Council members during City Council meetings. Donovan Depo., pp. 33:25 – 34:6; Brunka Aff., ¶ 19, Exhibit B. This City Council member told local media that: “We have zero security measures, and I just thought, ‘Hey, why can’t we carry our firearms here to our meetings?’ ... I personally didn’t want to burden [the taxpayers] with our security.” Brunka Aff., Exhibit B.

This undisputed purpose is not to “provide for the common welfare of the governed.” It is to address a particular internal concern about City Council members’ safety, and as such is solely a matter that relates to the administration of the internal affairs of the City Council. This is evidence by the fact that the City Council member that introduced the Ordinance explained to local media that he was proposing allowing concealed carry because he didn’t want to burden taxpayers with the issue of City Council members’ security.

Because the Ordinance relates solely to the administration of the internal affairs of the City, and not for the “safety and good order of society” or for the “common welfare of the

governed,” it is a valid exercise of the City’s power of local self-government. *Marich v. Bob Bennett Constr. Co* (2008), 116 Ohio St.3d 553, 2008 Ohio 92, 880 N.E.2d 906, ¶ 10 quoting *Beachwood v. Cuyahoga Cty. Bd of Elections* (1958), 167 Ohio St. 369, 5 O.O.2d 6, 148 N.E.2d 921 (An ordinance that relates “solely to the government and administration of the internal affairs of the municipality” is created under its power of local self-government).

If the ordinance is one relating solely to matters of self-government – as is the case here – “the [home rule] analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.” *Marich*, 116 Ohio St.3d at ¶ 10, quoting *Am. Financial Servs. Assn. v. Cleveland* (2006), 112 Ohio St. 3d 170, 2006 Ohio 6043, 858 N.E.2d 776, ¶ 23.

Defendants acknowledge that in *Ohioans for Concealed Carry, Inc. v. City of Clyde*, the Ohio Supreme Court determined that the City of Clyde deadly weapon ordinance at issue was an exercise of the City’s police power, rather than an exercise of local self-government. *Ohioans for Concealed Carry, Inc.*, 120 Ohio St. 3d at 102. The Court’s reasoning, however, for that determination does not apply to the Ordinance at issue here.

The Clyde ordinance prohibited licensed handgun owners from carrying concealed handguns in Clyde city parks, and provided that a violation of the ordinance was a first-degree misdemeanor. *Id.* at 96, 98. The Court relied on two factors in determining that the Clyde ordinance was an exercise of police power. *Id.* at 102. The first factor was the Clyde ordinance was similar to the ordinances in on *Marich v. Bob Bennett Constr. Co.*, *supra* and *Ohio Ass'n of Private Detective Agencies v. City of N. Olmsted* (1992), 65 Ohio St. 3d 242, 602 N.E.2d 1147, 1992 Ohio LEXIS 3153, 1992-Ohio-65, in that it related to the public health and safety and general welfare of the public. *Ohioans for Concealed Carry, Inc.*, 120 Ohio St. 3d at 102. The

second factor was that the Clyde ordinance included a penalty for violation aimed at “curbing the regulated behavior for the general welfare of the municipality’s citizens.” *Id.* Neither factor applies here.

The first factor does not apply, because unlike the Clyde ordinance, the Ordinance at issue here is not similar to the ordinances at issue in *Marich* and *Ohio Assn. of Private Detective Agencies, Inc.* The court in *Marich* addressed a traffic ordinance specifically aimed at protecting drivers and pedestrians. *Id.* at 101. Unlike the Ordinance at issue here, the Ordinance in *Marich* was aimed at protecting the public and therefore clearly constituted an exercise of police power. *Id.* The Ordinance here is aimed at security to protect City Council members during City Council meetings.

In *Ohio Assn. of Private Detective Agencies, Inc.* the ordinance at issue required security officers, private policeman, and similar workers to register with the local police department before commencing employment. The Court’s ruling that the ordinance was an exercise of police power was based on its reasoning that “the ordinance imposed a penalty for noncompliance and that it could ‘hardly be argued to be a matter involving the structure or operation of a charter municipality.’” *Ohioans for Concealed Carry, Inc.*, 120 Ohio St. 3d at 101 quoting *Ohio Assn. of Private Detective Agencies, Inc.*, 65 Ohio St.3d at 244. The Ordinance at issue here does not impose any penalty, so the court’s reasoning in *Ohio Assn. of Private Detective Agencies, Inc.* does not apply here.

The second factor applied by the Court in *Ohioans for Concealed Carry, Inc.* also does not apply because the Ordinance at issue here does not impose any penalty for violation. And, in fact, a penalty would be nonsensical given that the Ordinance does not impose any restriction that could be violated as do the ordinances in *Marich*, *Ohio Assn. of Private Detective Agencies*,

Inc. and in *Ohioans for Concealed Carry, Inc.* Unlike the ordinances in those cases, the Ordinance here removes a restriction rather than creating a restriction.

Further, unlike the purpose of the ordinances in *Marich, Ohio Assn. of Private Detective Agencies, Inc.* and *Ohioans for Concealed Carry, Inc.* which were aimed at protection the public, the Ordinance here is undisputedly aimed at being a security measure to protect Lebanon City Council members at Lebanon City Council meetings. As such it is a valid exercise of the City's power of self-government.

c. Defendants are entitled to summary judgment on Plaintiffs' alleged Declaratory Judgment claim (Count Two of the Complaint).

Count Two of Plaintiffs' Complaint seeks a declaration that that Ordinance No. 2020-022 conflicts with Ohio Revised Code §§ 2923.123, 2923.126(B)(3), and 2923.126(B)(7) and is therefore invalid and can have no force or effect. Complaint, ¶¶ 75-80. Based on the undisputed facts in this matter, as a matter of law Plaintiffs' claim for declaratory judgment must be dismissed for two independent reasons. First, Plaintiffs lack standing to bring this claim. Second, even if Plaintiffs had standing, as a matter of law Plaintiffs' declaratory judgment claim fails on the merits.

1. Plaintiffs lack standing to bring their declaratory judgment claim.

"It is well established that prior to a court's consideration of the merits of a legal claim, 'the person or entity seeking relief must establish standing to sue.'" Decision Denying Defendants' Motion to Dismiss entered November 8, 2021 ("Court's Decision") quoting *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal* (2007), 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27.

To maintain an action for declaratory judgment, a party must show that a real controversy exists between the parties, which is justiciable in character, and that speedy relief is necessary to the preservation of rights, which may otherwise be impaired or lost. *Burger Brewing Co. v. Liquor*

Control Comm. (1973), 34 Ohio St.2d 93, 97, 296 N.E.2d 261. “[A] declaratory judgment action lies when a party challenges a statute as it specifically applies to him or her.” *Kuhar v. Medina County Bd. of Elections*, 2006-Ohio-5427, *P13, 2006 Ohio App. LEXIS 5412 (9th Dist. 2016) citing *Karches v. City of Cincinnati* (1988), 38 Ohio St.3d 12, 16, 526 N.E.2d 1350; *State ex rel. O'Connor v. Davis*, 139 Ohio App.3d 701, 745 N.E.2d 494 (9th Dist. 2000). “Courts only have the power to resolve present disputes and controversies, but do not have the authority to issue advisory opinions to prevent future disputes.” *Kuhar*, 2006-Ohio-5427, *P14. The controversy must be a real or actual controversy. See *Burger Brewing Co.*, at 97.

Since this Court ruled on Defendants’ motion to dismiss and found that Plaintiffs have standing to bring their alleged declaratory judgment action, discovery has revealed that the alleged real and immediate justiciable controversy that Plaintiffs argued gave them such standing, is not true and does not exist. In their Opposition to Defendants’ Motion to Dismiss the Complaint the “controversy” Plaintiffs allege gives them standing is as follows:

The Ordinance...is currently interfering with Plaintiffs’ abilities to attend and participate in City Council meetings. That is, Plaintiffs are already facing a dilemma over whether to refrain from participating in City Council meetings or face the increased risk of physical harm and armed intimidation, along with the attendant fear and anxiety, posed by concealed firearms. As a result, ***two Plaintiffs have already stopped attending the meetings, and the third has curtailed her participation.***

Plaintiffs’ Response, p. 18 (internal citation omitted).

As explained in detail in the fact section above Plaintiffs’ deposition testimony reveals that these allegations are not true. According to their testimony, none of Plaintiffs have refrained from going to City Council meetings because of the Ordinance. In fact, Brooke Handley’s attendance at City Council meetings and work sessions increased in both 2020 and 2021 eight times over what her attendance had been in 2019 before the Ordinance was put in place in early 2020. Carol Donovan testified that the only City Council meeting she has been to in the past eight years was

this past January – almost a year after the Ordinance passed. And, she explained that she does not get out very often, and watches City Council meetings online because of mobility issues related to her hip. Finally, when asked why he does not attend City Council meetings, Iannelli gave several reasons he has not attended in the last few years – for example, busyness and COVID – but did not even mention the Ordinance as a reason he does not attend.

It is clear the Attorneys that recruited these Plaintiffs are trying to tell a story to this Court about the alleged “controversy” that just is not true. The evidence has revealed that the Plaintiffs do not have any real controversy at issue here that the Court can resolve. When asked about their concerns regarding the Ordinance, neither Donovan nor Handley even mentioned the Lebanon Municipal Court. Handley Depo., pp. 65:11 – 67:2; Donovan Depo., pp. 34:7 – 36:5. Iannelli merely stated an intellectual concern that the law prohibited concealed carry in buildings with courtrooms, and he is essentially looking for an advisory opinion from this Court on that issue, which the Declaratory Judgment Act does not allow. Iannelli Depo., pp. 51:20 – 52:23; *Calvary Indus. v. Coral Chem. Co.*, 2019-Ohio-1288, 2019 Ohio App. LEXIS 1384 (12th Dist. 2019) (“The Declaratory Judgment Act does not authorize a court to render an advisory opinion”).

It is clear that Iannelli’s and Handley’s real concern is they want stricter gun laws in general and do not believe that any civilian should be allowed to carry a concealed handgun anywhere in the United States. And, Donovan’s concern is rooted in what she admits is a personal fear stemming from a traumatic experience with guns as a small child that her son is trying to help her with. The Court cannot address any of these concerns.

Further, even if Plaintiffs are concerned about concealed carry in city council meetings – even though it is not stopping them from going – that is not something this Court can resolve either, because it is undisputed that there is no prohibition on local governments allowing

concealed carry of handguns into city council meetings. As Plaintiffs admitted in their Response to Defendants' Motion to Dismiss, "Licensees may carry a concealed handgun 'anywhere in this state,' subject to certain enumerated exceptions. R.C. § 2923.126(A)." Plaintiffs' Response, p. 2. Plaintiffs do not claim – nor could they – that city council meetings or business are included in any of those "certain enumerated exceptions."

And, even if this Court were to disallow concealed carry in the Municipal Building – which as explained above would be contrary to law and the City's home rule authority – Plaintiffs alleged concern about City Council meetings would still not be resolved, because City Council could simply meet in another separate building and allow concealed carry in meetings at that location. Plaintiffs admit that in that case, their alleged "controversy" still would not be resolved. Donovan Depo., p. 147:9-15; Innelli Depo., pp. 52:25 – 53:5.

Accordingly, for the foregoing reasons, as a matter of law Plaintiffs lack standing to bring their purported declaratory judgment claim.

2. As a matter of law, Plaintiffs' claim for declaratory judgment fails on the merits.

Further, even if this Court were to find that Plaintiffs have standing to bring their purported declaratory judgment claim, such claim fails on the merits. For the reasons explained above, based on the undisputed facts herein, as a matter of law, the Ordinance does not conflict with Ohio Revised Code § 2923.123, § 2923.126(B)(3), or § 2923.126(B)(7). Plaintiffs' request for a declaration that it does, therefore, must be dismissed.

And, as explained above, even assuming that this Court were to find that the Ordinance does conflict with one or more of those state statutes – which it does not – it is still valid and enforceable because it is a valid exercise of the City's power of local self-government. As such it is a valid and enforceable exercise of the City's home rule authority.

III. CONCLUSION

For the foregoing reasons, no genuine issue of material fact exists for trial, and Defendants are entitled to summary judgment as a matter of law on Plaintiffs' claims. Accordingly, Defendants respectfully requests that the Court enter summary judgment in its favor on the Complaint.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was served this 10th day of August 2022, via email upon the following:

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COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

CAROL DONOVAN, et al.	:	CASE NO. 21 CV 094117
	:	
Plaintiffs	:	JUDGE TIMOTHY N. TEPE
	:	MAGISTRATE MARKUS L. MOLL
v.	:	
	:	
CITY OF LEBANON, et al.	:	
	:	AFFIDAVIT OF SCOTT BRUNKA
Defendants.	:	
	:	

STATE OF OHIO)
) SS:
COUNTY OF WARREN)

Now comes Scott Brunka, being first duly sworn and cautioned, and deposes and states as follows:

1. I have personal knowledge of the matters set forth herein and am competent to testify regarding the same.
2. I am employed by the City of Lebanon, Ohio as its City Manager, and I have held that position with the City for nearly five years. Prior to holding the position of City Manager, I was the City’s Deputy City Manager for fifteen years.
3. The City Building located at 50 South Broadway, Lebanon, Ohio 45036 (the “City Building”) houses many of the City’s departments including Community Development and Planning, Administration (City Manager’s Office), Service, Finance and Tax, Law, Building Maintenance, and Engineering.
4. On the second floor of the City Building is a large multipurpose room that is used for several purposes including Lebanon City Council meetings, Lebanon Board of Zoning

Appeals meetings, Lebanon Planning Commission meetings, sessions of the Lebanon Municipal Court, wellness seminars sponsored by the City for its employees and other employee meetings and celebrations (the “Multipurpose Room”).

5. City Council meetings are held in the Multipurpose Room the second and fourth Tuesday of each month at 7:00 p.m. For this use, the Multipurpose Room is referred to as “Council Chambers.” There is no set length of time for City Council meetings, and that length can vary widely depending upon the topics discussed and the membership makeup of the particular Council at the time.
6. Lebanon Board of Zoning Appeals meetings are held in the Multipurpose Room the first Wednesday of the Month at 5:30 p.m. This Administrative Board is appointed by City Council and reviews and decides upon appeal requests specific to the Lebanon Zoning Code.
7. Lebanon Planning Commission meetings are held in the Multipurpose Room the third Tuesday of each month at 7:00 p.m. Planning Commission members are appointed by City Council, and the Commission advises the City Council and City departments on broad planning goals, policies, and plans for the physical development of the City.
8. The Lebanon Municipal Court holds its criminal and traffic docket on Monday and Thursday afternoons, and its civil docket on Tuesday afternoons in the Multipurpose Room.
9. Outside of the times the Multipurpose Room is used as described above in paragraphs 5 through 8 of my Affidavit, the City and Court staff coordinate on the availability and scheduling of uses for the Multipurpose Room.

10. The Multipurpose Room is also used for City and/or Court employee meetings and celebrations. For example, the City holds periodic wellness seminars for its employees in the Multipurpose room, and those are generally held on Wednesdays or Fridays.
11. Right outside of the Multipurpose room is a security screening machine that is much like what individuals walk through at airport security or at concerts. This security screening machine is used by the Court.
12. The screening machine is used solely for Court sessions and never for City Council meetings or any other non-Court use of the Multipurpose Room.
13. At the front of the Multipurpose Room is a long semi-circle table or structure (the “Long Table”) with chairs behind it in which City Council members and other sit during meetings. When City Council meets and for all other non-Court uses of the Multipurpose Room, each seat at the Long Table is the same height, and the entire surface of the Long Table is the same height as well.
14. For purposes of Court a special hydraulic system has been installed in the seat in the middle of the Long Table. For Court sessions, that seat is raised to create an elevated “Bench” for the Judge that is higher than the rest of the Long Table. The Bench is never raised for any other use of the Multipurpose Room.
15. In constructing the Multipurpose Room, the City designed the room so that it can easily transform from non-courtroom uses to courtroom use. In addition to the special hydraulic system described above to create the Bench for Court use, audio-visual equipment meeting the particular needs of the Municipal Court has been installed in addition to the audio-visual equipment that is used in the Multipurpose room for City Council and any other non-

Court purposes. And, a security screening machine for use when Court is in session has been installed.

16. The Clerk of Courts and the Probation Department are located in the City Building near the Multipurpose Room.

17. Signs reading as follows are affixed on doors for the general public leading into the City Building:

IT IS ILLEGAL TO CARRY A FIREARM, DEADLY WEAPON, OR DANGEROUS WEAPON ANYWHERE ON THESE PREMISES DURING MUNICIPAL COURT OPERATING HOURS, WHICH ARE TYPICALLY MONDAY – FRIDAY FROM 8 A.M. TO 5 P.M.

Concealed weapons are only permitted in the building when the Municipal Court is not in operation. Concealed carry permit holders entering the building with a Concealed handgun, when municipal court is not in operation must comply with all applicable provisions of the Ohio Revised Code including but not limited to Section 2923.126.

Posted Pursuant to Ordinance No. 2020-022 and Chapter 2923 of the Ohio Revised Code

18. The Lebanon Municipal Court’s website provides that official “Hours of Operation” are Monday through Friday 8:00 am to 4:00 pm. A screenshot of this page of the Court’s website is attached hereto as **Exhibit A**.

19. The news article attached hereto as **Exhibit B** was published by WKRC Local Channel 12 on February 4, 2020, and can also be found at this link, <https://local12.com/news/local/arming-city-council-lebanon-council-considers-allowing-ccw-holders-to-carry-at-meetings>.

FURTHER AFFIANT SAITH NAUGHT.



Scott Brunka

Sworn to before me and subscribed in my presence this 9th of August, ~~2021~~ 2022



KELLI L. KLINE
Notary Public, State of Ohio
My Commission Expires:
August 17, 2025



Notary Public

[SEAL]

Lebanon Municipal Court

50 South Broadway, Lebanon, OH

Judge Martin E. Hubbell

Brenda Morgan, Clerk

Monday,
August 08 2022

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[Uniform Bond Schedule](#)

[Criminal/Traffic Costs](#)

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Welcome to Our Web Site!

Welcome to the Lebanon Municipal Court. The Lebanon Municipal Court serves the City of Lebanon and Turtlecreek Township.

The purpose of this web site is to make available public records, information and forms for public use. The Court claims no responsibility for any discrepancies or exclusions that exist.

Location

50 South Broadway
Lebanon, OH 45036
[Map to Court](#)

Hours of Operation

Monday - Friday
8:00 am - 4:00 pm
Closed all Legal Holidays

Contact Information

Phone: (513) 933-7210
Fax: (513) 228-3903

Legal Disclaimer

The Lebanon Municipal Court computer record information disclosed by the system is current only within the limitations of the Lebanon Municipal Court data retrieval system. There will be a delay between court filings and judicial action and the posting of such data. The delay could be at least twenty-four hours, and may be longer. The user of this system is hereby notified that any reliance on the data displayed on the screen is at your own risk and liability. Information on the system may be altered, amended, or modified without notice. If you require verified information as to the records of the Lebanon Municipal Court, you may send a request to the Lebanon Municipal Court or visit the court, located at 50 South Broadway, Lebanon, Ohio 45036, during regular business hours.

The Court, Clerk of Court, their agents, and the developers of this web site assume no liability whatsoever associated with the use or misuse of the data contained herein.

You are visitor # 1114898 to court.lebanonohio.gov.

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Arming city council? Lebanon council considers allowing CCW holders to carry at meetings

by Tessa DiTirro, WKRC
Tuesday, February 4th 2020



Lebanon council considers allowing CCW holders to carry at meetings (WKRC)

LEBANON, Ohio (WKRC) - A local city councilman thinks he and his fellow councilmembers should be allowed to have guns at council meetings. Soon, anyone with a concealed carry permit might be allowed to carry guns to their meetings.

People come and go from the Lebanon city building all the time. Inside, there are city offices, court is held and city bills are paid. On the front door, there is a pretty clear message: No guns allowed.

ne and do harm, they're not going to be paying attention to a sign

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"We have zero security measures, and I just thought, 'Hey, why can't we carry our firearms here to our meetings?'" said Shafer.

Shafer feels no threat in the building but wants to be prepared if something would happen.

"The taxpayers -- I personally didn't want to burden them with our security," said Shafer.

He said carrying concealed could only happen during council meetings.

"I've not really received any calls, emails for or against. Just most of it has been on social media and a large majority are in favor of it," said Shafer.

Opponents said armed councilmembers and citizens are concerning, adding more security at the meetings is a better option.

"They would feel concerned for their safety if somebody who is not a police officer is carrying a firearm, then they're concerned automatically," said Shafer.

Shafer said constituents talk to him about city business all the time outside the city building and are not concerned about the possibility of him carrying concealed. Shafer is not sure how many other members of council carry concealed.

Tuesday night, the council discussed the idea. The city's law director will move forward drafting an ordinance that council will review and make changes to. The ordinance would need to be heard in public readings at meetings. If it were to pass, it would need a unanimous vote.

Monroe has looked into a similar ordinance, but it did not pass.

MORE TO EXPLORE

Prosecutors to seek 8-year prison term for Shakira

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

CAROL DONOVAN, et al.	:	CASE NO. 21 CV 094117
	:	
Plaintiffs	:	JUDGE TIMOTHY N. TEPE
	:	MAGISTRATE MARKUS L. MOLL
v.	:	
	:	
CITY OF LEBANON, et al.	:	
	:	AFFIDAVIT OF BART DUNAVENT
Defendants.	:	
	:	

STATE OF OHIO)
) **SS:**
COUNTY OF WARREN)

Now comes Bart Dunavent, being first duly sworn and cautioned, and deposes and states as follows:

1. I have personal knowledge of the matters set forth herein and am competent to testify regarding the same.
2. I am employed as the Bailiff for the Lebanon Municipal Court, and I have held that position full-time for 12 years, and preceding that on a part-time basis for over 20 years.
3. As part of my role as the Court’s Bailiff, I supervise two Court security guards (“Security Personnel”).
4. On the second floor of the City Building located at 50 South Broadway, Lebanon, Ohio 45036, there is a large multipurpose room that is used for several purposes including Lebanon Municipal Court sessions, Lebanon City Council meetings, and other meetings of employees and of certain City boards and commissions (the “Multipurpose Room”).

5. A security screening machine – much like is used to screen individuals by airport security or at concerts – has been installed right outside of and leading into the Multipurpose Room for use when the Lebanon Municipal Court is in session.
6. This security screening machine is used to scan individuals who are entering the Multipurpose Room for a session of the Lebanon Municipal Court. It is used when the Court holds its civil, criminal, and traffic dockets/sessions.
7. Each time the screening machine is used, the Court's Security Personnel (who work solely for the Court) must gather the machine's key, power cord, and other items from a locked closet to set up, turn on, and calibrate the machine.
8. When a Court session concludes, the Security Personnel shut down the screening machine, lock items needed to use it back into a closet, and cover it.
9. Only the Court Security Personnel and I know how to start, calibrate, and use the machine.
10. The screening machine is used solely for Court sessions and never for City Council meetings or any other use of the Multipurpose Room.
11. At the front of the Multipurpose Room is a long semi-circle table or structure (the "Long Table") with chairs behind it in which City Council members, Judge Hubbell, or others sit depending upon the particular use of the Multipurpose Room at the time.
12. For purposes of Court, a special hydraulic system has been installed in the seat/position in the middle of the Long Table, so that portion can be raised to create an elevated "Bench" for the Judge that is higher than the rest of the Long Table.
13. I am the person that generally engages the hydraulic system to raise the Bench for Lebanon Municipal Court sessions. I do not raise it for any other purpose.

14. When the Bench is not raised, the entire surface of the Long Table as well as each seat at the Long Table, is the same height.

FURTHER AFFIANT SAITH NAUGHT.



Bart Dunavent

Sworn to before me and subscribed in my presence this 9 of AUGUST, 2021^{2022 Lew}



Notary Public

[SEAL]



LORI WASSON
Notary Public, State of Ohio
My Commission Expires March 28, 2023

COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

CAROL DONOVAN, et al.	:	CASE NO. 21 CV 094117
	:	
Plaintiffs	:	JUDGE TIMOTHY N. TEPE
	:	MAGISTRATE MARKUS L. MOLL
v.	:	
	:	
CITY OF LEBANON, et al.	:	
	:	AFFIDAVIT OF JOE HACKMAN
Defendants.	:	
	:	

STATE OF OHIO)
) **SS:**
COUNTY OF WARREN)

Now comes Joe Hackman, being first duly sworn and cautioned, and deposes and states as follows:

1. I have personal knowledge of the matters set forth herein and am competent to testify regarding the same.
2. I am employed by the City of Lebanon, Ohio as its Studio Production Manager, and I have held that position with the City for twenty-three years.
3. On the second floor of the City Building located at 50 South Broadway, Lebanon, Ohio 45036, there is a large multipurpose room that is used for several purposes including Lebanon City Council meetings, Lebanon Board of Zoning Appeals meetings, Lebanon Planning Commission meetings, sessions of the Lebanon Municipal Court, and employee seminars, meetings and celebrations (the "Multipurpose Room").
4. The Multipurpose Room has two separate sets of audio-visual equipment. Each of the two sets has its own separate cameras and recording systems.

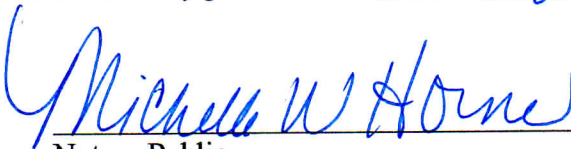
5. One of the sets of audio-visual equipment was installed to meet the particular needs of the Lebanon Municipal Court and is used exclusively by the Court. The other set was installed to meet the particular needs of the Lebanon City Council and other non-Court users of the Multipurpose Room, and it is used exclusively for Lebanon City Council meetings and other non-Court uses of the Multipurpose Room.
6. I operate the second above-described set of audio-visual equipment for City Council Meetings and sometimes other City board or commission meetings, employee meetings, or other non-Court uses of the Multipurpose Room.
7. I do not operate the audio-visual equipment that has been specifically installed for and is used by the Lebanon Municipal Court. That system has a separate operator or operators.

FURTHER AFFIANT SAITH NAUGHT.



Joe Hackman

Sworn to before me and subscribed in my presence this 5th of August, 2021



Notary Public

[SEAL]

