

**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. 21 CV 94117

**Judge Tepe
Magistrate Moll**

Oral Argument Requested

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
MEMORANDUM IN SUPPORT, ATTORNEY AFFIDAVIT OF LAURA KEELEY, AND
SUPPORTING EXHIBITS A-J ATTACHED**

Plaintiffs Brooke Handley, David Iannelli, and Carol Donovan hereby move this Court for summary judgment under Rule 56 of the Ohio Rules of Civil Procedure.¹ As established in Plaintiffs' Memorandum in Support, the Affidavit of Attorney Laura Keeley, and the supporting Exhibits, all attached hereto, Defendant City of Lebanon's Ordinance No. 2020-022, which purports to allow concealed handguns in the Lebanon City Building, is an exercise of the police power that conflicts with certain general laws of the State of Ohio that prohibit deadly weapons in buildings that contain courtrooms, including the Lebanon City Building. Consequently, Ordinance No. 2020-022 exceeds

¹ At the time of this filing, Plaintiff Carol Donovan has initiated the sale of her residential property within the City of Lebanon. Following closure of the sale, which is pending, she intends to move her residence to Turtlecreek Township, just outside the Lebanon city limits. Ms. Donovan maintains her view that the Ordinance at issue is invalid, for the reasons stated herein. In light of the upcoming change in her residence and taxpayer status, however, Ms. Donovan intends to file a notice of voluntary dismissal from the instant action. Ms. Donovan anticipates filing such notice forthwith. Pending the filing of such notice, Plaintiffs have retained Ms. Donovan's name on this motion. Plaintiffs Brooke Handley's and David Iannelli's Lebanon residence and taxpayer status are unchanged, and they will continue to pursue relief on the merits.

Lebanon's constitutional home-rule authority and is invalid. Plaintiffs—in their personal capacity and as taxpayers on behalf of the municipal corporation of the City of Lebanon—respectfully request that this Court issue an injunction and declaration to that effect.

Respectfully submitted,

/s/ Carolyn Shanahan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that Plaintiffs' Motion for Summary Judgment, along with the attached Memorandum in Support, Attorney Affidavit of Laura Keeley, and Supporting Exhibits, has been served by electronic mail on the following counsel of record, this 10th day of August, 2022:

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INTRODUCTION

This case presents a clear-cut question of statutory interpretation. Ohio law forbids the possession of any deadly weapon or dangerous ordnance in courthouses and any other “building or structure in which a courtroom is located.” R.C. 2923.123 and 2923.126(B)(3), (7). Along with firearms, the state-law prohibition covers, *inter alia*, bombs, grenades, and other explosives in such buildings. R.C. 2923.11 and 2923.123. There is no dispute that the Lebanon City Building houses the Lebanon Municipal Court, including its courtroom. As such, Ohio law clearly prohibits the possession of firearms, and other weapons, within the City Building. Nevertheless, Lebanon enacted Ordinance No. 2020-022 (the “Ordinance”), which purports to allow the concealed carry of handguns in the City Building during City Council meetings that occur in the courtroom, as well as during other ill-defined periods. The Ordinance thus exceeds Lebanon’s constitutional home-rule authority and represents an abuse of its corporate power. In short, the Ordinance conflicts with state law, and state law must prevail. That resolves this case.

Defendants have attempted to create a loophole through an untenable interpretation of the relevant Ohio law. To be clear, the record in this case does not reveal disputes about any of the material facts. Instead, the parties’ central dispute is a legal one; they disagree as to the meaning of the word “courtroom” in the governing Ohio law. Defendants have contended throughout this case that the Ordinance does not conflict with R.C. 2923.123 or 2923.126 because the state statutes prohibit possessing firearms in a building containing a courtroom only when the relevant court is in operation. *See e.g.*, Memo. in Support of Mot. to Dismiss at 9-15; *contra* Opp. to Mot. to Dismiss at 9-14. When the court is not in operation, Defendants say, the courtroom ceases to exist as such for purposes of state law—even though, of course, it remains in the building. As detailed herein, this position finds no support in the law. On the contrary, it requires reading into the statutes words that are simply not present there.

Moreover, Defendants’ construction of the governing state law is utterly unworkable in reality. Indeed, the Ordinance at issue here exemplifies the confusion that flows from Defendants’ reading of state law. In an effort to achieve consistency with R.C. 2923.123 and 2923.126, the Ordinance permits concealed carry in the City Building except during “the operation of any function of the Lebanon Municipal Court.” Ex. A (adopting Lebanon Code of Codified Ordinances 508.13).¹ The Ordinance does not define the “functions” of the Municipal Court. Indeed, even Judge Martin E. Hubbell—the presiding judge of the Lebanon Municipal Court—acknowledged at his deposition his own uncertainty about what constitutes a “function” of the Municipal Court within the meaning of the Ordinance. Hubbell Dep. 134:1-19.² Nor do the state statutes speak to court operations or court functions. Defendant Mark Yurick, the Lebanon City Attorney, has opined that state law precludes the City Council from permitting concealed carry during periods when Municipal Court employees are on duty in the City Building. *See* Ex. I at 56:3-59:11; Ex. H at 2; Ex. J. But even that analysis provides little useful guidance to members of the public. As detailed herein, Judge Hubbell and other court employees work varying hours within the City Building. In fact, Judge Hubbell—unbeknownst to the City Council and the public—sometimes works in his chambers in the City Building at the same time that City Council meetings occur in the courtroom. Hubbell Dep. 150:18-21. In short, there is no way for a member of the public to know with certainty whether court employees are on duty—even entering the City Building and seeking them out would not always suffice, as some of the Municipal Court’s facilities (such as Judge Hubbell’s chambers) are not public-facing. Hubbell Dep. 12:7-20.

That is an absurd state of affairs, and clearly precluded by state law. Indeed, the uncertainty created by the Ordinance underscores the prudence of the General Assembly’s choice to set out a

¹ All exhibits are attached to the Affidavit of Attorney Laura Keeley, filed herewith.

² The parties have jointly filed the transcripts of the depositions of Defendant and Lebanon City Attorney Mark Yurick, Judge Martin E. Hubbell, Lebanon City Manager Scott Brunka, and all three Plaintiffs.

bright line prohibition on deadly weapons and dangerous ordnances at all times within buildings like the City Building. Plaintiffs respectfully request that this Court enjoin the Ordinance and declare it to be invalid.

BACKGROUND

Ohio law flatly forbids the possession of any deadly weapon or dangerous ordnance in courthouses and other buildings containing courtrooms:

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.

R.C. 2923.123(B); *see also* R.C. 2923.123(A).³ This prohibition covers not just handguns but all manner of firearms, as well as ballistic knives, bombs, grenades, and other explosive devices. *See* R.C. 2923.11(A) and (K). Violation of this prohibition is a felony. R.C. 2923.123(D)(2).

With regard to concealed handguns, Ohio law generally allows qualified individuals to carry “anywhere in this state,” with several enumerated exceptions for certain sensitive places.⁴ One such exception reaffirms the prohibition in R.C. 2923.123:

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].

R.C. 2923.126(B)(3).⁵ Local governments have discretion to permit concealed handguns within some

³ “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.” R.C. 2923.123(A).

⁴ The United States Supreme Court has recently reaffirmed that “regulations prohibiting the carry of firearms in . . . sensitive places,” including “courthouses,” are “constitutionally permissible” under the Second Amendment. *N.Y. State Rifle & Pistol Assn. v. Bruen*, __ U.S. __, 142 S.Ct. 2111, 2133 (2022).

⁵ At the time this lawsuit arose, Ohio law required anyone who wished to carry a concealed handgun to obtain a concealed-carry license. *See* R.C. 2923.12(A)(2) and (C)(2). The General Assembly has since repealed this requirement. *See* R.C. 2923.111(B). Although R.C. 2923.126 continues to refer to a “concealed handgun license” and “licensees,” individuals who otherwise qualify to carry concealed handguns are deemed to be licensees, even without a license. R.C. 2923.111(B)(2).

government buildings, but Ohio law expressly *excludes* courthouses and buildings containing courtrooms from that discretion. R.C. 2923.126(B)(7). In short, Ohio law prohibits the possession of deadly weapons, including firearms, within any building in which a courtroom is located.

A. The Lebanon Municipal Court

The Lebanon City Building—located at 50 South Broadway, Lebanon, Ohio—contains the Lebanon Municipal Court. Hubbell Dep. 11:4-19, 153:14-24; Ex. B. Specifically, the Municipal Court’s facilities are located on the second floor of the City Building and include (a) the courtroom; (b) the clerk’s office; (c) the chambers of Judge Martin E. Hubbell, the presiding judge of the Municipal Court; (d) a jury room; (e) the Lebanon Municipal Prosecutor’s office; and (f) the Lebanon Probation Department. Hubbell Dep. 12:7-20. The Municipal Court has both a civil docket and a combined criminal and traffic docket. On the criminal side, the court hears misdemeanor cases and conducts preliminary hearings in felony cases. Hubbell Dep. 27:1-29:17, 60:2-12; Ex. B at R. 2.0(A).

The Lebanon Municipal Court is normally open to the public five days per week. Hubbell Dep. 89:24-90:16; Ex. B at R. 2.0(A). Signs posted on the City Building state that the court’s “operating hours” are “typically” from 8:00 a.m. to 5:00 p.m., Monday through Friday. *See, e.g.* Ex. C at ¶ 9 and DONOVAN0018; *see also* Brunka Dep. 94:2-95:5; Ex. D. As Judge Hubbell noted during his deposition, however, the posted “municipal court operating hours are not accurate.” Hubbell Dep. 142:15-20. In practice, court sessions can continue beyond 5 p.m., based on the size of the day’s docket and at the discretion of the presiding judge. Indeed, Judge Hubbell explained that court sessions often last until 6:00 or 7:00 p.m., particularly on Mondays and Thursdays, when the criminal and traffic docket is heard. *See* Hubbell Dep. 60:3-12, 68:15-25, 109:22-110:21; *see also* Yurick Dep. 93:19-94:5. Court sessions may also be scheduled in the evening or on weekends at the judge’s discretion. Ex. B at R. 2.0(A); *see, e.g.*, Yurick Dep. 38:5-39:11 (testifying that he has appeared at trial on a Saturday).

Even when the Municipal Court is not formally in session, court functions continue. After a court session ends for the day, court staff remain on site to perform various administrative tasks. Hubbell Dep. 73:8-20, 74:4-75:7 (“There are a tremendous amount of administrative tasks that need to be performed.”).⁶ Moreover, the probation department holds “unscheduled meetings with probationers all the time.” Hubbell Dep. 103:6-104:24. And Judge Hubbell often works in his chambers, on a varying schedule. Hubbell Dep. 75:20-76:10. It’s not unusual for him to work in his chambers in the evenings, and he comes into the City Building on the weekend at least twice per month. Hubbell Dep. 75:22-77:2. Notably, Judge Hubbell has worked in chambers while Lebanon City Council meetings occurred in the Municipal Court’s courtroom.⁷ Hubbell Dep. 150:18-21. And due to the layout of the second floor and the Municipal Court’s facilities, Judge Hubbell can work in chambers during City Council meetings without the City Council or the public being aware that he is doing so. *Id.*; *see also* Hubbell Dep. 12:7-20 (Judge Hubbell’s chambers are behind a locked door).

B. Lebanon City Council Meetings

The Lebanon City Council holds four public meetings per month. *See* Yurick Dep. 33:17-22; Brunka Dep. 12:5-10. These meetings are held once per week in the evenings, at 7:00 p.m. Brunka Dep. 12:3-17. These meetings occur in the City Building and take one of two forms: (a) City Council work sessions occur on the first Tuesday and third Monday of the month, generally in a conference room on the first floor of the building, and (b) regular (i.e., voting) meetings take place on the second and fourth Tuesdays in the courtroom of the Lebanon Municipal Court. *See* Brunka Dep. 39:11-16

⁶ In addition to Judge Hubbell, the prosecutors, and the public defenders, court staff who work in the City Building include four or five clerk’s office staff, four Probation Department personnel, and three court security personnel. *See* Hubbell Dep. 40:7-20.

⁷ Defendants have taken the position in this litigation that the Municipal Court’s courtroom ceases to be a courtroom when it’s being used for Council meetings. *See* Memo. in Support of Mot. to Dismiss at 14-15. But the parties do not dispute that it is the same physical space. That is, City Council meetings take place in the room where Judge Hubbell presides over Municipal Court sessions. Hubbell Dep. 21:11-18, 22:3-10, 26:17-25. This room contains the judge’s bench, counsel tables, a jury box, and a public gallery. Hubbell Dep. 26:17-25. Plaintiffs refer to this room throughout as the “courtroom.”

(discussing Exhibit E); Hubbell Dep. 21:11-18, 26:17-20 (discussing Exhibit F); Lebanon, *City Council*, https://www.lebanonohio.gov/government/city_council/index.php (accessed Aug. 7, 2022).

Members of the public can attend both work sessions and regular meetings, and they are invited to address the members of the City Council during the Council's regular meetings. Answer ¶¶ 5, 41; *see also* Brunka Dep. 32:20-22; Yurick Dep. 28:5-15. Members of the public may also watch regular meetings remotely, on either YouTube or a local cable television channel. Lebanon, *City Council*, https://www.lebanonohio.gov/government/city_council/index.php (accessed Aug. 7, 2022); Answer ¶ 42. Lebanon citizens who wish to speak to the City Council during a meeting must attend in person; there is no option to remotely address the Council during a meeting. Answer ¶ 42. Work session meetings are not live streamed for remote viewers, but Lebanon publishes audio recordings of the work sessions on its website.⁸

C. The Ordinance

On March 10, 2020, the Lebanon City Council passed Ordinance No. 2020-022, which declares that individuals may carry concealed handguns in the City Building during periods when the Municipal Court is not in operation. The operative provision of the Ordinance—which appears at Lebanon Code of Codified Ordinances 508.13—provides:

Pursuant to Ohio Revised Code section 2923.126, a licensee under 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. A (adopting Lebanon Code of Codified Ordinances 508.13).⁹

⁸ For instance, the audio recordings of the Lebanon City Council's work sessions during the year 2020 are available here: https://www.lebanonohio.gov/government/agendas___minutes/city_council_work_session_meeting_agendas___minutes/2020.php. *See* Ex. G at Response 2.

⁹ Although the Ordinance specifically authorizes concealed carry by concealed-carry-license holders, *see* Exhibit A, the General Assembly's subsequent change to Ohio's concealed-carry regime means that the Ordinance now allows anyone who may legally carry a concealed handgun to bring that

Defendant and Lebanon City Attorney Mark Yurick presented the language of the Ordinance, which he drafted, to the City Council during the Council's February 4, 2020, work session. Yurick Dep. 47:1-3, 89:16-20, 91:6-9; Ex. H at 2. He explained to the Council that the Ordinance does not cover periods of Municipal Court operations because, under Ohio law, the City Council does not have discretion to permit concealed carry of handguns in the City Building when court operations occur. *See* Ex. I at 56:3-59:11; Ex. H at 2.¹⁰ Mr. Yurick further cautioned during the February 4, 2020 work session that "court functions, I think, means more than just having court in session." Ex. I at 58:17-19; *accord* Ex. I at 57:12-14. In Mr. Yurick's analysis, the Municipal Court operates during any period when court personnel are present and on duty in the City Building. *See* Ex. I at 56:25-57:10; Ex. H at 2 ("Mr. Yurick is recommending that the Lebanon ordinance prohibits concealed carry of firearms any time that Lebanon Municipal Court employees are present in City Hall"); Ex. J (email from Mr. Yurick stating: "I don't think that Lebanon's City Council may allow weapons in the building when court is in session or when court personnel (clerks, probation officers, etc.) are present and on duty."); Brunka Dep. 68:23-69:13 (Lebanon City Manager Scott Brunka describing his understanding that the Ordinance does not permit concealed carry when Municipal Court staff are present).

The City Council passed the Ordinance as drafted by Mr. Yurick on March 10, 2020. Ex. A; *see also* Ex. I at 58:3-58:9. Pursuant to the Ordinance, the City of Lebanon now purportedly permits individuals to carry concealed handguns in the City Building at some times, including during City Council meetings. Brunka Dep. 33:12-20, 63:22-64:5.

handgun into the City Building, irrespective of whether they have undergone training or actually obtained a concealed-carry license, *see* R.C. 2923.111(B)(2).

¹⁰ As detailed further in the Attorney Affidavit of Laura Keeley attached hereto, Exhibit I is an excerpted transcript of the audio recording of the February 4, 2020, Lebanon City Council work session. The audio recording is available on the City of Lebanon's website at https://www.lebanonohio.gov/government/agendas___minutes/city_council_work_session_meeting_agendas___minutes/2020.php. The corresponding time stamps run from 1:04:49 through 1:10:35.

D. The Plaintiffs' Challenge

Plaintiffs David Iannelli and Brooke Handley are homeowners and taxpayers of Lebanon, and they have attended City Council meetings in the past. *See* Handley Dep. 8:18-23, 16:25-17:12, 40:21-41:14, 69:25-70:8; Iannelli Dep. 10:2-5, 11:13-19, 54:10-15; *see also* Brunka Dep. at 19:2-8.¹¹ They are fearful of the presence of firearms at sometimes-contentious Council meetings; and Plaintiffs' attendance at, and participation during, these meetings has been chilled by Defendants' invitation of concealed carry. *See* Handley Dep. 69:9-24; 170:22-171:21; Iannelli Dep. 56:15-17; 65:10-17.

Their fear is real. Mr. Iannelli, a longtime music teacher, finds the presence of guns viscerally upsetting. During an active-shooter drill at his school, he and other teachers were brought to tears by the firing of blank rifle rounds in the school building. Iannelli Dep. 44:3-22. As Ms. Handley has testified, firearms at City Council meetings are "very potentially dangerous" because the Council discusses "a very large number of controversial issues" and attendees at the meetings "get very passionate and heated about their opinions." Handley Dep. 69:13-24; *see also* Iannelli Dep. 54:6-9, 65:10-17 (similar).¹² At one such meeting, in May 2021, Ms. Handley refrained from exercising her right to speak because she did not want to get in a dispute with someone who might be carrying a weapon. Handley Dep. 170:22-171:21.

¹¹ As noted in footnote 1 of the Notice of Motion filed herewith, Plaintiff Carol Donovan has initiated the sale of her Lebanon residential property. Following closure of the sale, she intends to move her residence to Turtlecreek Township. Ms. Donovan maintains her position that the Ordinance is invalid. But in light of the upcoming change in her residence and taxpayer status, Ms. Donovan intends to file a notice of voluntary dismissal from the instant action. Ms. Donovan anticipates filing such notice forthwith. Plaintiffs Brooke Handley's and David Iannelli's Lebanon residence and taxpayer status are unchanged, and they will continue to pursue relief on the merits.

¹² The record reflects that Mr. Brunka, the Lebanon City Manager, and the City Council have also experienced some concern about contention at City Council meetings: Mr. Brunka explained that he, along with the City Council, decided to request law enforcement presence at the City Council's regular voting meetings (which occur in the courtroom) during a six month period in 2021 and 2022, in light of "a little bit of contention" at some of those meetings. Brunka Dep. 30:22-32:3.

Plaintiffs have thus turned to this Court to seek relief. Complaint at 17. The parties have taken discovery, and the case is ripe for disposition.

LEGAL STANDARD

“The basic standard for summary judgment has been well established in Ohio jurisprudence.” *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, ¶ 13. Rule 56 “mandates the entry of summary judgment if the evidence, properly submitted, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Id.* at ¶ 11. “A material fact is one that would affect the outcome of the suit under the applicable substantive law.” *Barnickel v. Auto Owners Ins. Co.*, 186 Ohio App.3d 722, 2010-Ohio-1100, 930 N.E.2d 364, ¶ 10 (12th Dist.). Here, there is no material fact in dispute, and Plaintiffs are entitled to relief.

ARGUMENT

The central dispute in this case is a question of law. Specifically, the parties disagree as to the meaning of state law: Does Ohio’s statutory prohibition on possessing deadly weapons in buildings containing courtrooms apply to all buildings containing courtrooms or only to buildings where court functions are at that moment in operation? As detailed herein, principles of statutory interpretation and the plain language of the statutory text clearly support the former reading.

Revised Code 733.59 provides that a municipal taxpayer “may institute suit in his own name, on behalf of the municipal corporation” to seek an injunction restraining the municipality’s abuse of its corporate power.¹³ Abuse of municipal corporate power includes “the unlawful exercise of powers

¹³ Revised Code 733.59 states in full: “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. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding.” R.C. 733.59. Revised Code 733.56, in turn, directs a city director of law to seek an injunction to restrain a municipality’s abuse of its corporate power. R.C. 733.56.

possessed by the corporation, as well as the assumption of power not conferred.” *Fisher v. Cleveland*, 109 Ohio St.3d 33, 2006-Ohio-1827, 845 N.E.2d 500, ¶ 19, quoting *Porter v. Oberlin*, 1 Ohio St.2d 143, 146, 205 N.E.2d 363 (1965).

The Ordinance represents an abuse of Lebanon’s corporate power because it exceeds Lebanon’s constitutional home-rule authority. As detailed herein, it plainly conflicts with Ohio law, which forbids members of the public from carrying deadly weapons or dangerous ordnances in buildings containing courtrooms. The temporal limitation in Lebanon’s Ordinance does not save it. Indeed, the Ordinance’s temporal carveout only serves to create confusion because its scope is ill-defined and because the Municipal Court can operate beyond its posted court hours, and there is no reasonable way for members of the public to determine, in practice, whether it is in fact doing so.

Plaintiffs have properly brought this action in their capacity as taxpayers pursuant to R.C. 733.59. In their individual capacities, Plaintiffs have also properly asserted a claim for declaratory judgment. Plaintiffs here address the Ordinance’s invalidity first, followed by their standing to seek both injunctive and declaratory relief.

I. The Ordinance Exceeds Lebanon’s Home-Rule Authority.

Under the Ohio Constitution, municipalities such as Lebanon “have authority 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.” Constitution, Article XVIII, Section 3. Thus, under the Ohio Constitution, a municipality’s home rule is not boundless. “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.” *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. All three prongs of this test are met here, and Ohio law must prevail.

A. The Ordinance Conflicts with State Statutes.

Ohio law flatly prohibits the possession of “deadly weapon[s]” and “dangerous ordnance[s]” in “courthouse[s]” and any “building or structure in which a courtroom is located.” R.C. 2923.123(B). Furthermore, although Ohio law generally allows the concealed carry of handguns in public spaces, Ohio law specifically prohibits concealed carry in any “courthouse” or in any “building or structure in which a courtroom is located” where such carry “is in violation of section 2923.123 of the Revised Code.” R.C. 2923.126(B)(3); *see also* R.C. 2923.126(B)(7). The statutory scheme makes exceptions for certain *individuals*, such as judges, bailiffs, and law-enforcement officers, but makes no exceptions for particular buildings or times of day. *See* R.C. 2923.123(C).

The statutory scheme does not define the phrase “building or structure in which a courtroom is located,” and so the common meanings of those words apply. *See State v. Black*, 142 Ohio St.3d 332, 2015-Ohio-513, 30 N.E.3d 918, ¶ 39 (“In the absence of a definition of a word or phrase used in a statute, words are to be given their common, ordinary, and accepted meaning.”); *see also* R.C. 1.42 (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”). The parties do not dispute that the Lebanon City Building is a “building or structure.” With regard to the word “courtroom,” the one and only common, ordinary, and accepted meaning is the room in which a court meets or holds its proceedings. *See, e.g., Courtroom*, <https://www.lexico.com/en/definition/courtroom> (“The *place* or *room* in which a court of law meets.” (emphasis added)) (accessed Aug. 6, 2022); *Courtroom*, <https://www.ahdictionary.com/word/search.html?q=courtroom> (“A *room* in which the proceedings of a court are held.” (emphasis added)) (accessed Aug. 6, 2022); *Courtroom*, <https://www.merriam-webster.com/dictionary/courtroom> (“a *room* in which a court of law is held” (emphasis added)) (accessed Aug. 6, 2022). “Courtroom” is a spatial term, not a temporal one. A “building or structure in which a courtroom is located” is a physical building that includes within it a physical room in which a court of law meets.

The Lebanon City Building is beyond doubt a “building or structure in which a courtroom is located.” The Lebanon Municipal Court meets and holds its proceedings in a room in the City Building. Hubbell Dep. 11:4-11, 12:7-13, 153:14-24. Moreover, that room contains all the normal appurtenances and characteristics of a courtroom: the judge’s bench, a jury box, counsel tables, and a public gallery. Hubbell Dep. 26:17-25 (discussing Ex. F). It is a courtroom in both form and function. Consequently, the Ordinance, by allowing concealed handguns to be carried in the City Building, conflicts with the state law forbidding deadly weapons in the City Building. *See* R.C. 2923.123(B) and 2923.126(B)(3), (7); Ex. A.

To be sure, the Ordinance does not allow handguns to be carried “during the operation of any function of the Lebanon Municipal Court.” Ex. A. But this language does not resolve the conflict. The state laws do not speak to court functions or operations; they simply prohibit deadly weapons in courthouses and other buildings containing courtrooms, without any limitation as to time or day. *See* R.C. 2923.123(B) and 2923.126(B)(3), (7). Harmonizing the Ordinance and the state law would thus require this Court to insert into the state statutes words that simply are not there—i.e., re-writing the prohibition to reach a “building or structure in which a courtroom is located” (as the statute says) but only *while the court is “in operation”* (which the statute does not say). *Compare In re Foreclosure of Liens for Delinquent Land Taxes*, 140 Ohio St.3d 346, 2014-Ohio-3656, 18 N.E.3d 1151, ¶ 12 (“Where the statute’s meaning is clear and unambiguous, we apply the statute as written. This court must give effect to the words used, refraining from inserting or deleting words.” (Citation omitted.)).

Even if the plain language of the governing state law was not clear (and it is), the Court must abide by the “guiding principle of statutory construction” that “when the General Assembly enacts a statute, it does not intend to produce an absurd result.” *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner’s*

Office, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 22; *see* R.C. 1.47(C).¹⁴ Reading a time-based limit into the state law provisions would violate this principle. In addition to firearms, R.C. 2923.123 prohibits (and criminalizes) possession of other deadly weapons and dangerous ordnances, such as bombs and grenades. R.C. 2923.123(B); *see also* R.C. 2923.11(A), (K) (defining “deadly weapon” and “dangerous ordnance”). Any reading of R.C. 2923.123 that applies to firearms by necessity also applies to explosives and other weapons; if the statute does not prohibit possession of firearms in the City Building at all times, then neither does it prohibit possession of *bombs* in the City Building at all times. *See* R.C. 2923.123(B) and 2923.11(K)(4). That cannot be what the General Assembly intended. Likewise, the governing Ohio statutory provisions prohibit weapons possession in both “courthouse[s]” and any other “building or structure in which a courtroom is located.” R.C. 2923.123(B) and 2923.126(B)(3). If the latter category—“building[s] or structure[s] in which a courtroom is located”—is temporally limited, it stands to reason that a similar limitation applies to “courthouses.” But the General Assembly surely did not intend to prohibit deadly weapons in courthouses *only* when court is in operation. In short, construing the statutory term “building or structure in which a courtroom is located” to mean such buildings only when the relevant court is operating would muddy the meaning of otherwise clear state law and produce absurd results.

Moreover, as the Ordinance in this case demonstrates, reading a time-based limitation into R.C. 2923.123 and 2923.126 opens the door to unworkable rules. Assuming, *arguendo*, that the state law prohibition applies only during some periods, the statutory text provides no guidance for defining those periods. In the absence of any state law guidance, the Ordinance purports to permit concealed

¹⁴ Where, as here, the statutory language is clear and unambiguous, the plain language controls. But to the extent this Court considers the alternative statutory construction that Defendants have previously offered, the consequences of Defendants’ construction of the statute are relevant. *See* R.C. 1.49(E).

carry in the City Building except during “the operation of any function of the Lebanon Municipal Court.” Ex. A. But what counts as a “function” of the Municipal Court? The Ordinance does not say.

Defendants have suggested that the Municipal Court operates whenever court personnel are on duty in the City Building. *See, e.g.*, Ex. I at 58:18-19; Ex. J; Brunka Dep. 69:1-5.¹⁵ This includes Judge Hubbell himself, whose work is undoubtedly a function of the court. *Compare* Hubbell Dep. 150:23-24. But the Ordinance, on its face, provides no clear instructions to members of the public as to “the operation of any function” of the court. Even Judge Hubbell, upon reading the Ordinance, acknowledged uncertainty about the meaning of the term “function” for purposes of the Ordinance. *See* Hubbell Dep. 134:1-19. (“Q. What is a function of the Lebanon Municipal Court [for purposes of the Ordinance]? A. I don’t know.”). Furthermore, the varying hours of court staff make compliance with the Ordinance difficult in practice. The length of each day’s court session varies depending on the day’s docket. *See* Hubbell Dep. 65:10-22, 68:15-25. Moreover, after court sessions, court staff must remain to perform additional work, the length of which also varies. *See* Hubbell Dep. 73:8-75:13. Similarly, the time Judge Hubbell spends working in his chambers varies, both by day and by week, depending on his caseload. Hubbell Dep. 75:20-77:17. Thus, even outside of the Lebanon Municipal Court’s business hours, members of the public cannot be certain that the Ordinance permits concealed carry in the City Building—even entering the building, ascending to the second floor, and looking to see for themselves whether any court employees are still at work may not be sufficient, as the Municipal Court’s facilities include non-public spaces. *See* Hubbell Dep. 109:10-21; 111:15-112:25, 150:5-151:2. For instance, Judge Hubbell’s chambers are located behind a locked door. *See* Hubbell Dep. 12:7-20, 150:5-151:2. Indeed, a member of the public who brings a concealed handgun to a City

¹⁵ Plaintiffs agree that, at a minimum, the Municipal Court is in operation whenever court personnel are on duty in the City Building.

Council meeting that occurs while Judge Hubbell works in his chambers would appear to violate state law, even under Defendants' view of that law.¹⁶

This uncertainty should trouble both individuals who wish to carry concealed handguns legally and individuals, such as the Plaintiffs, who wish to avoid them. The confused state of affairs created by the Ordinance illustrates the General Assembly's wisdom in *not* adding any temporal limitation to the state law prohibition on deadly weapons and dangerous ordnances in courthouses and buildings containing courtrooms. Because Ohio law forbids the possession of deadly weapons in buildings containing courtrooms, with no time limitations, the Ordinance conflicts with state law.

B. The Ordinance is an Exercise of the Police Power.

That said, this conflict would be of no moment were Lebanon's ordinance merely "an exercise of local self-government." *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906, ¶ 10. Municipalities may promulgate ordinances that relate "solely to the government and administration of the internal affairs of the municipality." *Id.* at ¶ 11, quoting *Village of Beachwood v. Bd. of Elections of Cuyahoga Cty.*, 167 Ohio St. 369, 148 N.E.2d 921, paragraph one of the syllabus. But where, "as is more likely, [an] ordinance pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law." *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23.

¹⁶ In connection with the ordinance, Lebanon has posted signs on the City Building stating that "MUNICIPAL COURT OPERATING HOURS ... ARE TYPICALLY MONDAY – FRIDAY FROM 8 A.M. TO 5 P.M." (Emphasis added.) Ex. C at ¶ 9 and DONOVAN0018; *see also* Brunka Dep. 94:2-95:5; Ex. D. To the extent that this fuzzy language provides any intelligible guidance at all, this signage thus encourages residents of Lebanon to unwittingly commit the felony of carrying a deadly weapon into a building containing a courtroom, in violation of R.C. 2923.123. This is so even under the more limited view that the state law prohibition applies only when the Municipal Court is in operation, since the court is indisputably sometimes in operation after 5:00 p.m. and on the weekends. *See* Hubbell Dep. 68:19-25, 73:8-77:2; *see also* Hubbell Dep. 142:15-24 (noting that the posted "municipal court operating hours are not accurate").

A municipal ordinance is an exercise of the police power when it is enacted “to protect the public health, safety, or morals, or the general welfare of the public.” *Marich* at ¶ 11. Here, there can be no doubt that the Ordinance is an exercise of the police power. First, the Ordinance itself declares as much. Section 2 of the Ordinance states that it is “necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon.” Ex. A § 2; *accord* Yurick Dep. 49:9-25. Although not dispositive, the Supreme Court of Ohio has ruled that similar language “clearly supports” the conclusion that an ordinance is an exercise of the police power. *Ohioans for Concealed Carry v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 37 (analyzing ordinance that claimed to be “necessary for the preservation of the public peace, health and safety”).¹⁷

More importantly, however, the Supreme Court of Ohio has held that “regulation of the manner in which weapons can be carried ... involves the police power of the state.” *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633, ¶ 13. The Supreme Court of Ohio has thus cited with approval the “[s]everal appellate courts ... [that] have held that local ordinances regulating firearm possession are police-power regulations.” *Clyde* at ¶ 34. This makes sense; regulation of firearm possession is undoubtedly a public-safety issue. Thus, the Ordinance is a clear exercise of the police power.

C. Ohio’s Statutory Prohibition on Weapons in Buildings Containing Courtrooms is a General Law.

Finally, it is beyond question that the state statutes with which the Ordinance conflicts are “general laws” within the home-rule framework. First, the Supreme Court of Ohio has specifically ruled that R.C. 2923.126, which governs where concealed handguns may be carried, is a general law

¹⁷ To be sure, the Ordinance’s text also states that it is “necessary ... to provide clear and consistent rules for the administration of Council.” Ex. A § 2. But even assuming that this second purpose relates to self-government, the Ordinance’s simultaneous invocation of the police power means that the Ordinance does not relate *solely* to municipal administration—as it must to avoid invalidation. *See Marich* at ¶ 11.

that displaces contrary municipal ordinances. *Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, at ¶¶ 53-54. That holding controls here.

Second, the Supreme Court’s reasoning in that case applies even more strongly to R.C. 2923.123, which bars deadly weapons and dangerous ordinances from buildings containing courtrooms. *See Clyde* at ¶¶ 39-52. The Supreme Court has explained that “to constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.” *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21. As to the first and second prongs, R.C. 2923.123 is plainly a comprehensive statewide enactment that applies to all parts of the state alike; it contains no geographic exceptions and “does not operate differently based on different locations in [the] state,” *Clyde* at ¶ 45. *See* R.C. 2923.123(B) (“No person shall knowingly possess ... a deadly weapon or dangerous ordinance in a ... building or structure in which a courtroom is located.”). As to the third prong, by banning deadly weapons and dangerous ordinances from courthouses, R.C. 2923.123 is an exercise of the state’s police power; it says nothing at all about the legislative power of municipalities. *See id.*; compare *Klein* at ¶ 13 (observing that “prohibit[ing] the carrying of concealed weapons ... involves the police power of the state”). And fourth, R.C. 2923.123 prescribes a rule of conduct for citizens generally, notwithstanding its exceptions for judges, law enforcement, and peace officers, *see* R.C. 2923.123(C). Indeed, there are also special exceptions for peace officers in R.C. 2923.126(E), yet the Supreme Court in *Clyde* nonetheless stated with respect to that statute that the analysis of the fourth prong “require[d] little discussion” because “any citizen seeking to carry a concealed handgun ... must comply with the requirements of R.C. 2923.126.” *Clyde* at ¶ 51. So too here. R.C. 2923.123 is a general law.

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For the foregoing reasons, R.C. 2923.123 and 2923.126 are both general laws, and each plainly conflicts with the Ordinance. Moreover, the Ordinance is an exercise of the police power. As such, the Ordinance cannot stand. *See Clyde* at ¶ 1.

D. Plaintiffs Have Standing as Taxpayers to Obtain Injunctive Relief.

Additionally, Plaintiffs have met the requirements to obtain injunctive relief in their R.C. 733.59 taxpayer action: Plaintiffs pay taxes in Lebanon, where they reside; Plaintiffs requested, in writing, that the Lebanon City Attorney, Mr. Yurick, challenge the Ordinance at issue and seek appropriate injunctive relief; Plaintiffs have paid all costs imposed by this Court related to the proceedings; and Plaintiffs have demonstrated that the action seeks enforcement of a public right. *See* R.C. 733.59; *see also State ex rel. Nimon v. Village of Springdale*, 6 Ohio St.2d 1, 215 N.E.2d 592 (1966).

A municipal taxpayer “may institute suit in his own name, on behalf of the municipal corporation,” to restrain a municipality’s abuse of corporate power. R.C. 733.59; *see also Bower v. Village of Mount Sterling*, 12th Dist. Madison No. CA99-10-025, 2000 WL 485497 (Apr. 24, 2000) (holding taxpayer suit brought in taxpayer’s name is proper); *Mack v. City of Toledo*, 2019-Ohio-5427, 151 N.E.3d 151, ¶ 118 (6th Dist.) (same). Here, Plaintiffs are homeowners, residents, and taxpayers of Lebanon. *See* Handley Dep. 16:21-17:12; Iannelli Dep. 10:2-5, 11:13-19; *see also* Brunka Dep. 19:2-8. On January 22, 2021, Plaintiffs requested, in writing, that Mr. Yurick challenge the Ordinance and seek appropriate injunctive relief. Complaint, Ex. 3. On March 2, 2021, Defendants’ counsel responded to Plaintiffs’ request by declining to seek the requested injunction. Complaint, Ex. 4. Plaintiffs subsequently filed this lawsuit.

As this Court held in its order denying Defendants’ motion to dismiss, Plaintiffs’ taxpayer action seeks enforcement of a public right. Decision Denying Mot. to Dismiss (“Decision”) at 4-6. A taxpayer suit brought under R.C. 733.59 must aim to “enforce a public right, regardless of any personal

or private motive or advantage.” *State ex rel. Caspar v. City of Dayton*, 53 Ohio St.3d 16, 20, 558 N.E.2d 49 (1990). At the same time, “plaintiffs’ personal interest in a case does not necessarily diminish their aim to enforce the public’s interest.” Decision at 4; *see also State ex rel. Cater v. City of N. Olmsted*, 69 Ohio St.3d 315, 323, 631 N.E.2d 1048 (1994); *State ex rel. White v. City of Cleveland*, 34 Ohio St.2d 37, 40, 295 N.E.2d 665 (1973). As this Court has recognized, “there is no question that the Ordinance also affects the public interest as it controls when and where licensed individuals can carry concealed firearms,” and Plaintiffs’ action seeks to vindicate that interest. Decision at 5-6; *see, e.g., Brunka Dep.* 63:22-64:5, 68:23-69:13. Ohio courts have recognized the public interest in clear, uniform, and administrable rules regarding where and when individuals can carry concealed handguns. *See Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, at ¶ 40 (“The General Assembly, in crafting [R.C. 2923.126], indicated that it ‘wish[ed] to ensure uniformity throughout the state regarding . . . the authority granted to a person holding a [concealed-carry license].”). The Ordinance here provides no clear guidance to the public, creating a trap for the unwary. *See supra* at 13-15. Thus, Plaintiffs’ lawsuit seeks to vindicate the public’s interest in clear, uniform, and administrable rules regarding where and when individuals can carry firearms.

In addition, Plaintiffs also seek to vindicate the public interest in safe access to and participation in the democratic process. *See Handley Dep.* 65:25-67:2. The right of the public “to observe and understand the actions of their elected officials” is “a bedrock of our society and . . . essential to our popular form of government.” *State ex rel. Mason v. State Emp. Relations Bd.*, 133 Ohio App.3d 213, 218, 727 N.E.2d 181 (10th Dist.1999).

Accordingly, Plaintiffs have satisfied all R.C. 733.59 requirements for injunctive relief.

E. Plaintiffs Have Standing to Obtain Declaratory Relief.

As this Court has found, Plaintiffs have standing to seek declaratory relief. “[D]eclaratory relief is available to a plaintiff who can show that (1) a real controversy exists between the parties, (2) the

controversy is justiciable, and (3) speedy relief is necessary to preserve the rights of the parties.” *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 49.

This Court has determined that “there is a real controversy or justiciable issue between the parties” here. Decision at 7. As the Court explained, “a real justiciable controversy is one that presents a danger or dilemma to the plaintiffs and that is not based on the happening of hypothetical future events.” Decision at 7-8; *accord Waldman v. Pitcher*, 2016-Ohio-5909, 70 N.E.3d 1025, ¶ 26 (1st Dist.). Here, the Ordinance has taken effect, “there is a genuine dispute as to the legal validity of the Ordinance,” and “Plaintiffs and Defendants’ interest in this dispute are adverse.” Decision at 8. Plaintiffs are faced with the dilemma of wishing to participate in meetings of the City Council but not wishing to expose themselves to the risk of physical harm and intimidation posed by the concealed carry of firearms. *E.g.*, Handley Dep. 69:9-24, 170:22-171:21. Ms. Handley has curtailed her in-person participation in City Council meetings, and Mr. Iannelli does not currently attend them in person at all. *See* Handley Dep. 171:11-21; Iannelli Dep. 56:15-17. For this reason, Plaintiffs have standing to seek a declaratory judgment regarding the validity of the Ordinance.

CONCLUSION

For the foregoing reasons, there are no genuine issues as to any material fact, and Plaintiffs have established that they are entitled to judgment as a matter of law. Plaintiffs respectfully request that the Court declare that Lebanon Ordinance No. 2020-022 is invalid and enjoin the Ordinance.

August 10, 2022

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Respectfully submitted,

/s/ Carolyn Shanahan

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Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

Carol Donovan <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. 21CV94117
	:	
v.	:	Judge Tepe
	:	Magistrate Moll
	:	
City of Lebanon <i>et al.</i> ,	:	AFFIDAVIT OF ATTORNEY
	:	LAURA KEELEY IN
Defendants.	:	IN SUPPORT OF PLAINTIFFS'
	:	MOTION FOR SUMMARY
	:	JUDGMENT

I, LAURA KEELEY, having been first duly sworn upon oath, depose and say:

1. I am an attorney for the Plaintiffs in this case and a member in good standing of the bars of the State of New York and the State of California. I submit this affidavit in support of Plaintiffs' Motion for Summary Judgment. Except where otherwise indicated, the facts stated herein are based on my personal knowledge, and if called as a witness, I could and would competently testify thereto.

2. Attached as **Exhibit A** is a true and correct copy of Ordinance No. 2020-022, passed by the Lebanon City Council on March 10, 2020, and produced by Defendants in discovery at Bates Nos. LEBANON0207-08. The Ordinance was also attached as Exhibit 1 to the Complaint and marked as Plaintiffs' Deposition Exhibit 8 during discovery.

3. Attached as **Exhibit B** is a true and correct copy of an excerpt from the Lebanon Municipal Court Local Rules of Court, effective May 1, 2022. The excerpt, which was produced by Plaintiffs in discovery at Bates Nos. DONOVAN0080-81, was also marked as Plaintiffs' Deposition Exhibit 5. *See* Hubbell Dep. 89:24-90-16 (testimony of Judge Hubbell regarding the excerpted local rules). The Lebanon Municipal Court Local Rules of Court are available in full on the Lebanon Municipal Court's website, at <https://court.lebanonohio.gov/rules.php>.

4. Attached as **Exhibit C** is a true and correct copy of the Affidavit of Marshall Miller, dated July 7, 2022, including the attachments to that affidavit. Mr. Miller is a professional photographer, and his affidavit concerns photographs he took on April 6, 2022, of signs posted on and inside the Lebanon City Building. *See* Ex. C at ¶¶ 1-2. Plaintiffs produced the Affidavit of Mr. Miller in discovery at Bates Nos. LEBANON0470-74 and the attachments to Mr. Miller's affidavit at Bates Nos. DONOVAN0013-50.

5. Attached as **Exhibit D** is a true and correct copy of an email chain between Scott Brunka, Lebanon City Manager, and Defendant Mark Yurick, Lebanon City Attorney, dated March 25 through 27, 2020. Defendants produced the email chain in discovery at Bates Nos. LEBANON0219-20. The email chain was also marked as Plaintiffs' Deposition Exhibit 31 and Mr. Brunka confirmed its authenticity. *See* Brunka Dep. 77:25-78:10.

6. Attached as **Exhibit E** is a true and correct copy of a partial floor plan of the second floor of the Lebanon City Building, produced by Defendants in discovery at Bates No. LEBANON0243. This document was also marked as Plaintiffs' Deposition Exhibit 2. Mr. Brunka testified that it is a fair and accurate representation of the portion of the second floor that it portrays. Brunka Dep. 36:10-37:1.

7. Attached as **Exhibit F** is a true and correct copy of a still image of the December 14, 2021 Lebanon City Council meeting. The image was generated by Plaintiffs' counsel from the video recording of that meeting, which is available on YouTube at <https://www.youtube.com/watch?v=wTMSCdKlHxA>. Judge Hubbell confirmed that the image, which was also marked as Plaintiffs' Deposition Exhibit 3, depicts his courtroom. Hubbell Dep. 21:7-18.

8. Attached as **Exhibit G** is a true and correct copy of Defendants' Responses to Plaintiffs' Requests for Admission, dated May 27, 2022.

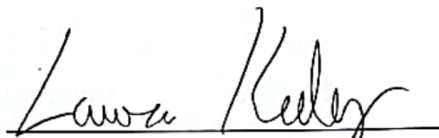
9. Attached as **Exhibit H** is a true and correct copy of the Minutes for the February 4, 2020 Lebanon City Council Meeting (Work Session), produced by Plaintiffs' at Bates Nos. DONOVAN0008-10. These minutes were also marked as Plaintiffs' Deposition Exhibit 25. In order to produce a copy of these minutes in discovery, Plaintiffs' counsel downloaded the minutes from the Lebanon City Council's website, where they are publicly available. *See Lebanon, 2020 Council Work Session Agendas & Minutes*, https://www.lebanonohio.gov/government/agendas_minutes/city_council_work_session_meeting_agendas_minutes/2020.php (accessed Aug. 7, 2022); *see* Ex. G at Response 3 (admitting that the 2020 work session minutes, as available on City of Lebanon's website, are genuine and accurate minutes of Lebanon City Council work sessions). Other than affixing Bates numbers, Plaintiffs' counsel did not alter the minutes.

10. Attached as **Exhibit I** is a true and correct copy of excerpts from a transcript of the February 4, 2020 Lebanon City Council Work Session, produced by Plaintiffs in discovery beginning at Bates No. DONOVAN0103. The transcript was prepared by a certified court reporter, at the direction of Plaintiffs' counsel, based on the audio recording of the February 4, 2020 work session available on the City of Lebanon's website at https://www.lebanonohio.gov/government/agendas_minutes/city_council_work_session_meeting_agendas_minutes/2020.php. *See* Ex. G at Response 2 (Defendants' admission of the authenticity of the work session audio recordings, as available online). The transcript was also marked as Plaintiffs' Deposition Exhibit 26. During his deposition, Mr. Yurick reviewed a portion of the transcript from page 55, line 15 through page 59, line 11. He also listened to the corresponding section of the audio recording, which runs from time stamps 1:03:55 through 1:10:35. Mr. Yurick noted the omission of the word "it" from the transcript at page 59, line 9, and otherwise confirmed the accuracy of the transcription. Yurick Dep. 88:8-89:3.

11. Attached as **Exhibit J** is a true and correct copy of an email chain produced by Defendants at Bates No. LEBANON0492. The email chain, dated January 8, 2020, includes correspondence by Mr. Yurick with the email listserv for the Ohio Municipal Attorneys Association (OMAA). This document was also marked as Plaintiffs' Deposition Exhibit 17.

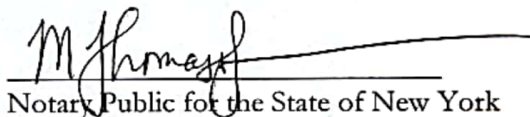
* * *

DATED this 9th day of August, 2022



LAURA KEELEY (PHV Reg. No. 25973-2022)

SUBSCRIBED AND SWORN TO before me this th day of August, 2022


Notary Public for the State of New York

MOLLY A. THOMAS-JENSEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02TH6425245
Qualified in Kings County
My Commission Expires 11-15-2025

Exhibit A

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

Maya J. Brum
Mayor

Amil Burke
Clerk of Council

Sponsors

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

City
Manager

[Signature]

City
Auditor

[Signature]

City
Attorney

[Signature]



LEBANON0207

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 B

Lebanon Municipal Court

Martin E. Hubbell
Judge

Local Rules of Court

Effective May 1, 2022



50 South Broadway
Lebanon, Ohio 45036
(513) 933-7210



1.0 Scope and Effective Date.

These Rules are adopted as Local Rules of Court governing practice and procedure in the Lebanon Municipal Court. These Rules are adopted pursuant to the Ohio Constitution, the Rules of Superintendence for the Courts of Ohio, the Ohio Rules of Civil Procedure, and the Ohio Rules of Criminal Procedure.

These Rules are intended to be supplemental to, and used in conjunction with, the Rules of Superintendence for the Courts of Ohio, the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, and the Ohio Traffic Rules. Should any conflict exist, the Ohio Rules shall prevail over these Local Rules.

These Rules shall be cited as "Loc.R. x."

These Rules are effective as of May 1, 2022, and shall supersede and replace any Local Rules previously adopted by this Court.

2.0 Court Administration.

A. Hours and schedule. The offices of the Court shall be open for the transaction of business between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, designated holidays excepted, unless otherwise ordered by the presiding Judge.

Criminal and Traffic sessions shall take place each Monday and Thursday, designated holidays excepted, beginning at 1:00 p.m. until concluded. Civil sessions shall begin each Tuesday at 1:00 p.m. until concluded. Court sessions may also be scheduled on evenings and weekends to accommodate special circumstances at the Court's discretion.

B. Director of Court Administration. The Court shall appoint as required a qualified court administrator who will function as the chief non-judicial officer of the Court. In addition to providing general supervision of the Court's case flow, community control, jury, budgetary, clerk supervision, and personnel systems, the court administrator shall implement the administrative policy decisions of the Court and perform such other duties as may be assigned by the presiding Judge.

C. Magistrates. The Court may employ one or more Magistrates who may hear cases by reference, and in accordance with Traf.R. 14, Crim.R. 19, Civ.R. 53, and Sup.R. 19.

D. Records Retention Schedule. All Court records shall be maintained in accordance with Ohio Supreme Court Sup.R. 26, the Revised Code, a City of Lebanon ordinance, or Rule established by this Court.

3.0 Fees and Costs.

Exhibit C

**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

Judge Tepe/Magistrate Moll

I, MARSHALL MILLER, having been first duly sworn upon oath, depose and say: I am a professional photographer based in Lebanon, Ohio and am over eighteen years of age. This affidavit is based on my personal knowledge and familiarity. I am competent to testify as to the matters contained herein, if requested to do so.

1. On April 6, 2022, at the direction of Plaintiffs' counsel in the above-referenced case I travelled to the Lebanon Municipal Building, located at 50 S. Broadway St. Lebanon, OH 45036 ("the Building") to take photos of the building.
2. I was specifically instructed to photograph signs outside and inside the Building. I did not remove, relocate, or otherwise alter any of the signs that I photographed.
3. Plaintiffs' Exhibit 9¹ (Donovan0015-16) contains a picture of the front entrance to the lobby of the Building. It is a true and accurate representation of the front entrance to the lobby on South Broadway as it appeared when I photographed it on April 6, 2022.

¹ Plaintiffs' counsel informed me that some of the photographs I took were marked as exhibits during the depositions taken in this case. Exhibit numbers here refer to the relevant deposition exhibits.

4. Plaintiffs' Exhibit 10 (Donovan0039-40) contains a picture of signage inside the first floor of the Building alongside the entrance on East Main Street. It is a true and accurate representation of signage inside the first floor of the Building alongside the entrance on East Main Street as it appeared when I photographed it on April 6, 2022.
5. Plaintiffs' Exhibit 11 (Donovan0041-42) contains a close-up picture of signage inside the first floor near the East Main Street south corner of the Building. It is a true and accurate representation of signage inside the first floor near the East Main Street south corner as it appeared when I photographed it on April 6, 2022.
6. Plaintiffs' Exhibit 12 (Donovan0031-32) contains a close-up picture of the side entrance to the lobby of the Building. It is a true and accurate representation of the lobby side entrance as it appeared when I photographed it on April 6, 2022.
7. Plaintiffs' Exhibit 34 (Donovan0021-24) includes pictures taken just inside the front entrance to the first floor lobby of the Building on South Broadway. The pictures are true and accurate representations of first floor entrance to the lobby of the Building as it appeared when I photographed it on April 6, 2022.
8. Plaintiffs' Exhibit 35 (Donovan0025-28) includes pictures of the employees' entrance on the first floor of the northeast corner of the Building near the alley. They are true and accurate representations of the employees' entrance on the first floor of the northeast corner of the Building near the alley as it appeared when I photographed it on April 6, 2022.
9. Plaintiffs' Exhibit 36 (Donovan0017-18) contains a close up picture of a sign on the front entrance to the lobby of the Building on South Broadway. It is a true and accurate representation of a sign on the front entrance to the lobby of the Building on South Broadway as it appeared when I photographed it on April 6, 2022.

10. Photograph Donovan0014 is a picture of the front entrance to the lobby of the Building on South Broadway. It is a true and accurate representation of the front entrance of the Building as it appeared when I photographed it on April 6, 2022.
11. Photograph Donovan0020 is a picture of the lobby taken through the front door of the Building. It is a true and accurate representation of the lobby through the front door of the Building as it appeared when I photographed it on April 6, 2022.
12. Photograph Donovan0030 is a picture of the side entrance to the lobby of the Building. It is a true and accurate representation of the lobby side entrance of the Building as it appeared when I photographed it on April 6, 2022.
13. Photograph Donovan0034 is a picture of the Building lobby entrance on first floor corner of East Main and South Broadway. It is a true and accurate representation of the picture of the building entrance on First Floor Corner of East Main and South Broadway as it appeared when I photographed it on April 6, 2022.
14. Photograph Donovan0036 is a close up picture of a sign on the Building entrance on first floor corner of East Main and South Broadway. It is a true and accurate representation of a sign on the building entrance on first floor corner of East Main and South Broadway as it appeared when I photographed it on April 6, 2022.
15. Photograph Donovan0038 is a picture of the Building entrance on the southeast corner on East Main, near the one-way alley (the Probation Entrance). It is a true and accurate representation of the building entrance on the southeast corner on East Main (the Probation Entrance) as it appeared when I photographed it on April 6, 2022.
16. Photographs Donovan0044 and Donovan0048 are pictures the Lebanon Municipal Court service window, located on the second floor of the Building. They are true and accurate

representation of images of the second floor Municipal Court service window as it appeared when I photographed it on April 6, 2022.

17. Photograph Donovan0046 is a picture of a sign near the Lebanon Municipal Court service window, located on the second floor of the Building. It is a true and accurate representation of a sign near the second floor Municipal Court service window of the Building as it appeared when I photographed it on April 6, 2022.

18. Photograph Donovan0050 is a close up picture of a sign on the second floor of the Building that indicates the direction to the Lebanon Municipal Court service window and courtroom, which are located nearby on the second floor of the Building. It is a true and accurate representation of a the sign indicating the direction to the Lebanon Municipal Court's service window and courtroom, which are located nearby on the second floor of the Building as it appeared when I photographed it on April 6, 2022.

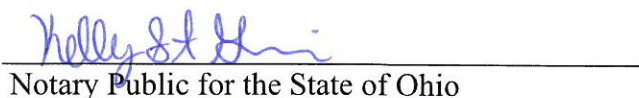
DATED this 7th day of July, 2022


Marshall Miller

SUBSCRIBED AND SWORN TO before me this 7th day of July, 2022.



Kelly M St Germain
Notary Public, State of Ohio
My Commission Expires:
March 14, 2026


Notary Public for the State of Ohio

EVERYTOWN LAW
Len Kamdang*
Carolyn Shanahan*
Laura Keeley*
450 Lexington Avenue
P.O. Box 4184

New York, N.Y. 10017
(646) 324-8126
GRAY & DUNING
J. William Duning
130 East Mulberry
Lebanon, Ohio 45036

(513) 932-5532

duning@grayandduning.com

lkamdang@everytown.org

cshanahan@everytown.org

**Admitted pro hac vice*

Andrew Nellis**

P.O. Box 14780

Washington, D.C. 20044

202-517-6621

anellis@everytown.org

**Admitted pro hac vice*

April 6, 2022

FRONT VIEW OF BUILDING





DONOVAN0014

April 6, 2022

FRONT ENTRANCE TO LOBBY
ON SOUTH BROADWAY



April 6, 2022

FRONT ENTRANCE TO LOBBY
ON SOUTH BROADWAY
(CLOSE UP)



NOTICE

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

Carrying weapons are only prohibited in the building
when the Municipal Court is in session.
Concealed carry permits holders entering the building
with a concealed handgun, when municipal court is
in session, must comply with all applicable
state laws or the law of the state in which
they are located in Section 200702d.

Penalties for carrying a firearm on the premises
are imposed under M.C.S. 20-205.

April 6, 2022

ENTRANCE TO LOBBY
THROUGH FRONT DOOR



DONOVAN0020

April 6, 2022

**FIRST FLOOR WAITING
(CLOSE UP)**



April 6, 2022

FIRST FLOOR WAITING ROOM
(CLOSE UP)

NOTICE



**IT IS ILLEGAL TO CARRY
A FIREARM, DEADLY WEAPON, OR
DANGEROUS ORDNANCE ANYWHERE
ON THESE PREMISES**

Unless otherwise authorized by law, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises.

Posted Pursuant to the Ohio Revised Code

April 6, 2022

FIRST FLOOR NORTHEAST
CORNER NEAR ALLEY



DONOVAN0026

April 6, 2022

FIRST FLOOR NORTHEAST
CORNER NEAR ALLEY
(CLOSE UP)

NOTICE



Pursuant to State Law,
no person shall knowingly possess,
have under the person's control,
convey, or attempt to convey a deadly
weapon or dangerous ordnance
onto these premises.

EMPLOYEES ONLY

April 6, 2022

LOBBY SIDE ENTRANCE



DONOVAN0030

April 6, 2022

LOBBY SIDE ENTRANCE
(CLOSE UP)

NOTICE

**IT IS ILLEGAL TO CARRY
A FIREARM, DEADLY WEAPON, OR
DANGEROUS ORDNANCE ANYWHERE
ON THESE PREMISES DURING
MUNICIPAL COURT OPERATING HOURS,
WHICH ARE TYPICALLY
MONDAY - FRIDAY FROM 8A.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. 2019-002
and Chapter 2923 of the Ohio Revised Code

April 6, 2022

FIRST FLOOR CORNER ON EAST MAIN
AND SOUTH BROADWAY



DONOVAN0034

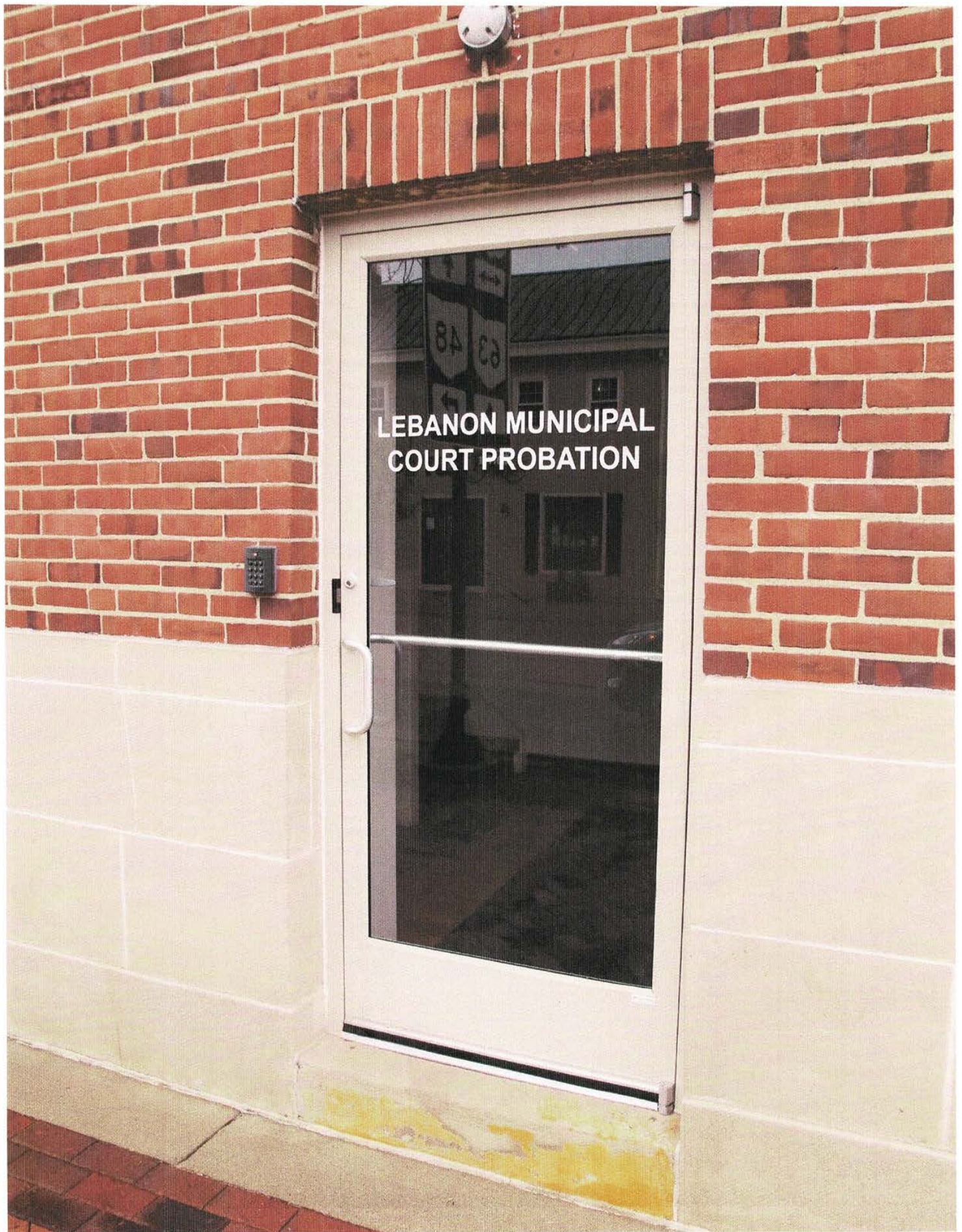
April 6, 2022

FIRST FLOOR CORNER ON EAST MAIN
AND SOUTH BROADWAY
(CLOSE UP)



April 6, 2022

FIRST FLOOR CORNER ON
EAST MAIN SOUTH CORNER NEAR
ONE WAY ALLEY



April 6, 2022

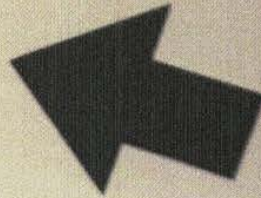
INSIDE FIRST FLOOR CORNER ON
EAST MAIN SOUTH CORNER NEAR



April 6, 2022

INSIDE FIRST FLOOR CORNER ON
EAST MAIN SOUTH CORNER NEAR
(CLOSE UP)

Probation Department



NOTICE



**IT IS ILLEGAL TO CARRY
A FIREARM, DEADLY WEAPON, OR
DANGEROUS ORDNANCE ANYWHERE
ON THESE PREMISES**

Unless otherwise authorized by law, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises.
Posted Pursuant to the Ohio Revised Code



April 6, 2022

INSIDE SECOND FLOOR
MUNICIPAL COURT WINDOW



April 6, 2022

INSIDE SECOND FLOOR
MUNICIPAL COURT

WE CANNOT PROVIDE LEGAL ADVICE

State law prohibits employees of the court from providing legal advice of any kind whatsoever. If you have any legal questions about the law, your legal rights, how to complete legal or court forms, or court procedures please contact an attorney.

ORC 4765.07.

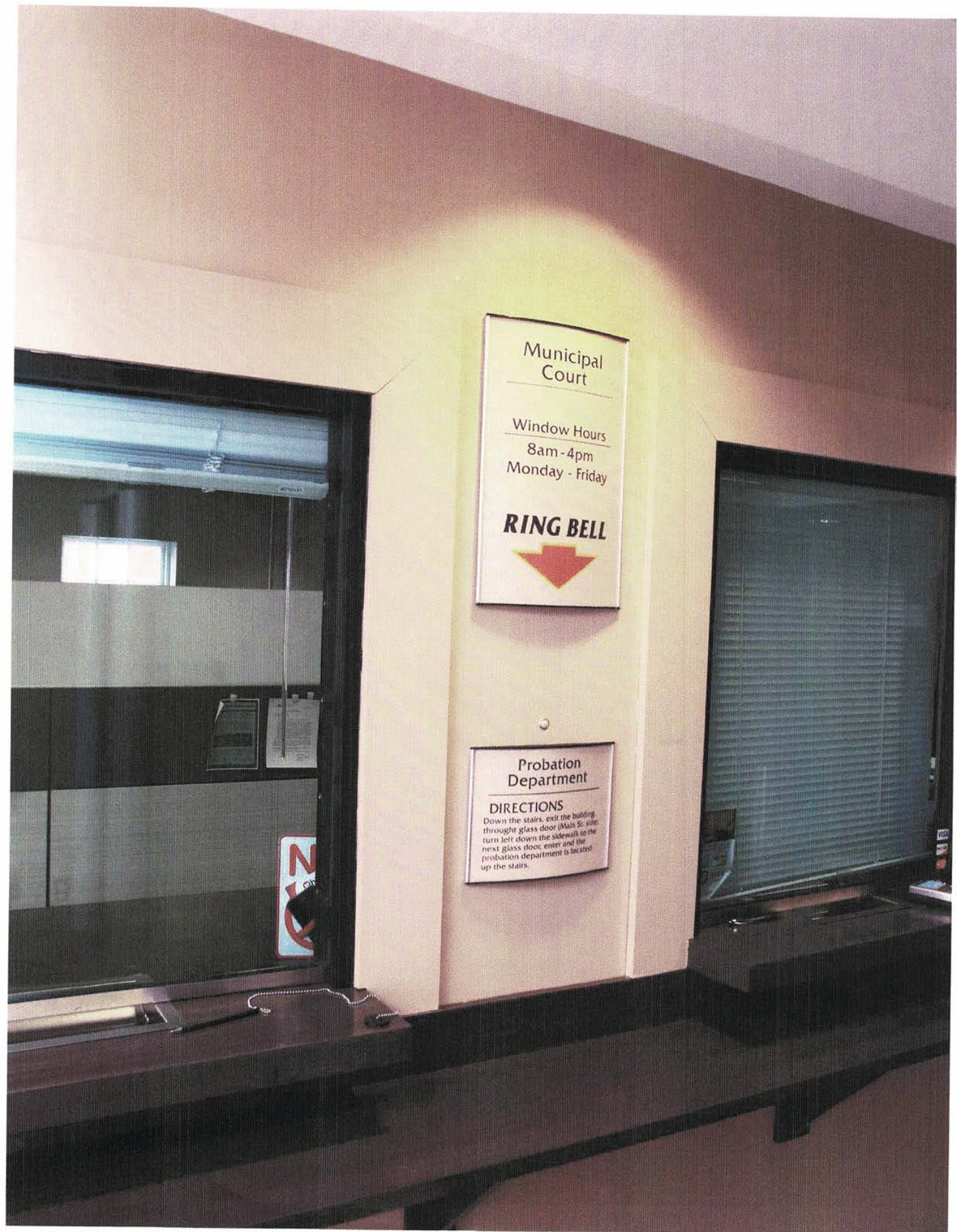
Warren County Bar Association
513-695-1309

Warren County Law Library
513-695-1381

Small Claims & Civil Filing
ARE NOT ACCEPTED
on Monday & Thursday

April 6, 2022

INSIDE SECOND FLOOR
MUNICIPAL COURT
SERVICE WINDOW



April 6, 2022

SECOND FLOOR
DIRECTION SIGN FOR COURT

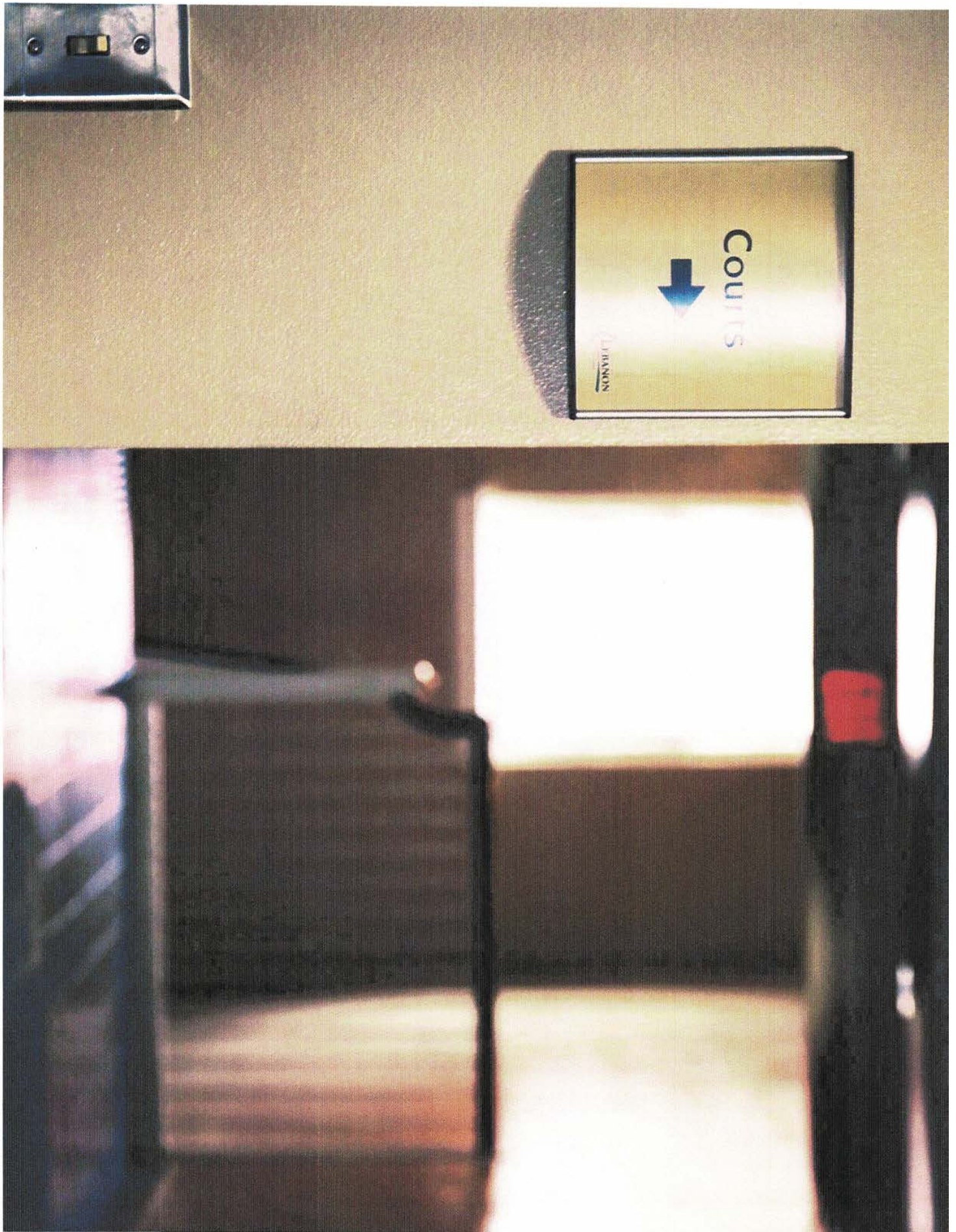


Exhibit D

From: [Mark Yurick](#)
To: [Scott Brunka](#)
Subject: Re: Conceal Carry Signs

That looks fine to me. Thanks.

Get [Outlook for Android](#)

From: Scott Brunka <sbrunka@lebanonohio.gov>
Sent: Friday, March 27, 2020 4:02:21 PM
To: Mark Yurick <myurick@lebanonohio.gov>
Subject: RE: Conceal Carry Signs



Mark,

Just checking to see if the wording below is o.k. to proceed with. We will need to get the sign ordered on Monday.

Scott

From: Scott Brunka
Sent: Wednesday, March 25, 2020 10:52 AM
To: Mark Yurick <myurick@lebanonohio.gov>
Subject: RE: Conceal Carry Signs

Mark,

Thank you - I feel like the sign should state that you can carry properly permitted handgun during non-court hours. What about this?

NOTICE

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

CONCEALED WEAPONS ARE ONLY PERMITTED IN THE BUILDING WHEN 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.

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

From: Mark Yurick

LEBANON0219

Sent: Wednesday, March 25, 2020 10:37 AM
To: Scott Brunka <sbrunka@lebanonohio.gov>
Subject: RE: Conceal Carry Signs

Suggested edits below?

From: Scott Brunka
Sent: Wednesday, March 25, 2020 10:25 AM
To: Mark Yurick <myurick@lebanonohio.gov>
Cc: Dan Burke <dburke@lebanonohio.gov>
Subject: Conceal Carry Signs

Mark,

What do you think about this wording for signage to be posted at our building:

NOTICE

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

ONLY WHEN MUNICIPAL COURT IS NOT IN OPERATION, CONCEALED CARRY PERMIT HOLDERS

MUST COMPLY WITH ALL APPLICABLE PROVISIONS OF THE OHIO REVISED CODE INCLUDING BUT NOT LIMITED TO SECTION 2923.126.

Code Posted Pursuant to Ordinance No. _____ and Chapter 2923 of the Ohio Revised

LEBANON0220

Exhibit E

Exhibit F

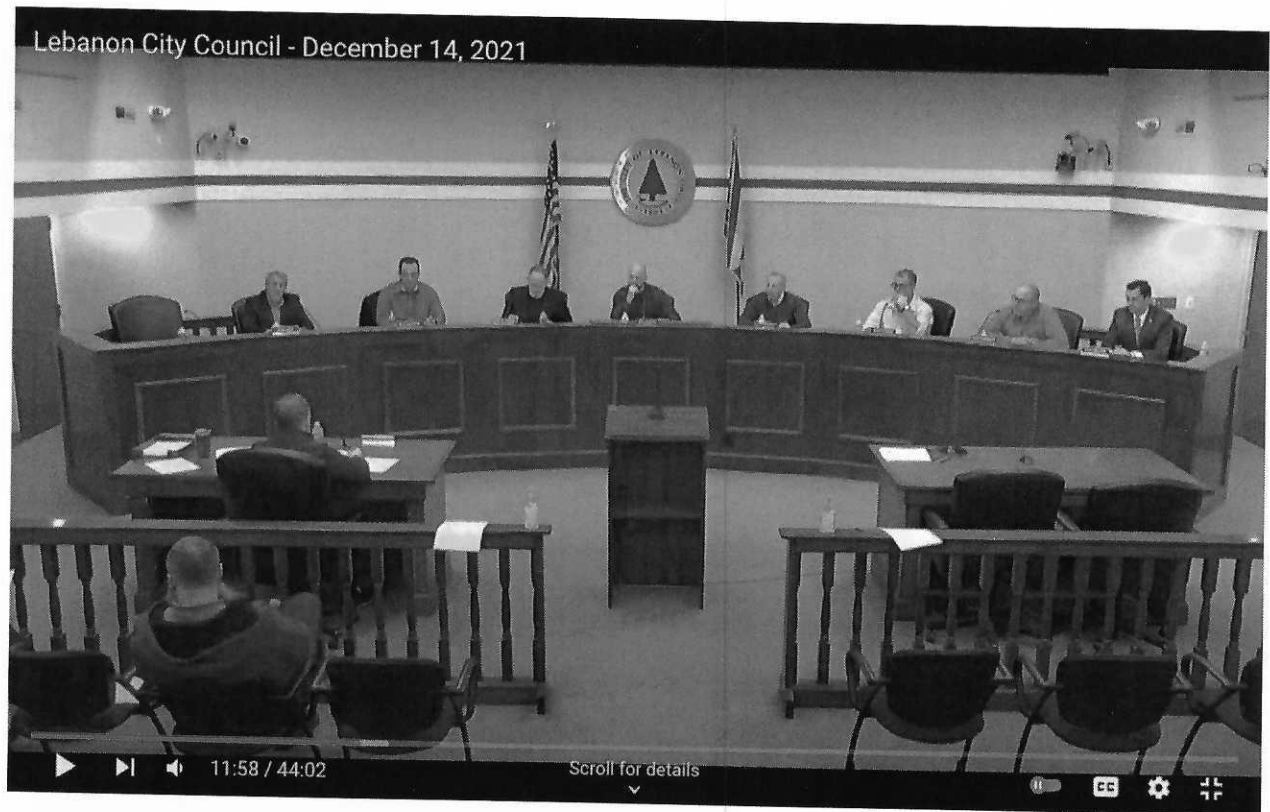


Exhibit G

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

CAROL DONOVAN, et al.	:	CASE NO. 21 CV 094117
	:	
Plaintiffs	:	JUDGE TEPE
	:	MAGISTRATE MOLL
v.	:	
	:	
CITY OF LEBANON, et al.	:	DEFENDANTS' RESPONSES TO
	:	PLAINTIFFS' FIRST SET OF
Defendants.	:	REQUESTS FOR ADMISSION TO ALL
	:	DEFENDANTS
	:	

Defendants City of Lebanon and Mark Yurick in his official capacity as City Attorney of the City of Lebanon ("Defendants") hereby respond to Plaintiffs' First Set of Requests for Admissions to All Defendants ("Plaintiffs' Requests") as follows:

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Requests to the extent they are not reasonably calculated to lead to the discovery of admissible information and/or are irrelevant.
2. Defendants object to Plaintiffs' Requests to the extent they are overly broad, unreasonably burdensome and oppressive, and/or impose an undue expense upon Defendants.
3. Defendants object to Plaintiffs' Requests to the extent they purport to impose upon Defendants obligations which are greater than, or inconsistent with, those imposed by the Rules of Civil Procedure and/or the Rules of this Court.
4. Defendants object to Plaintiffs' Requests to the extent they seek disclosure of opinions, mental impressions, conclusions, or legal theories of Defendants' counsel or other representatives.

5. Defendants state that their investigation into the matters requested herein is ongoing and Defendants reserve the right to supplement their responses.

6. Defendants object to the extent the information requested has already been produced to Plaintiffs, is available to Plaintiffs through other means, or is already in Plaintiffs' possession or control.

All of the foregoing general objections are incorporated in the following responses to Plaintiffs' Requests, whether or not any specific general objection is referenced therein.

REQUESTS FOR ADMISSION

1. Admit that the document produced by Defendants beginning at Bates number LEBANON0072 is a genuine and accurate copy of the currently operative City of Lebanon Employee Handbook.

ANSWER: Admit.

2. Admit that that audio recordings available on the City's website at https://www.lebanonohio.gov/government/agendas__minutes/city_council_work_session_meeting_agendas__minutes/2020.php are genuine and accurate audio recordings, prepared and published by the City, of Council Work Sessions that occurred in 2020.

ANSWER: Admit.

3. Admit that the Work Session Minutes available on the City's website at https://www.lebanonohio.gov/government/agendas__minutes/city_council_work_session_meeting_agendas__minutes/2020.php are genuine and accurate minutes, prepared and published by the City, of Council Work Sessions that occurred in 2020.

ANSWER: Admit.

4. Admit that the floor plans produced by Defendants at Bates numbers LEBANON0242 and LEBANON0243 are true and accurate copies of floorplans that were prepared by Brandstetter Carroll Inc. for and at the direction of the City.

ANSWER: Objection in that Request for Admission 4 is vague and ambiguous in that it is not clear what Plaintiffs mean by “true and accurate floorplans” nor what the term “floorplans” includes (for example, whether it includes dimensions, furniture placement, doors, outlets, etc?). Without waiving these objections, Defendants state that the documents contained in LEBANON0242 and LEBANON243 speak for themselves and otherwise deny Request of Admission 4.

5. Admit that the floor plans produced by Defendants at Bates numbers LEBANON0242 and LEBANON0243 truly and accurately represent the floor plan of the second floor of the City Building.

ANSWER: Objection in that Request for Admission 5 is vague and ambiguous as it includes no temporal limitation and it is not clear what Plaintiffs mean by “floor plans” and/or “floor plan of the second floor of the City Building” (for example, whether those terms include dimensions, furniture placement, doors, outlets, etc?), and as it seeks information that is irrelevant and not proportional to the needs of the case as Plaintiffs can view the portion of the second floor relevant to this case as the multi-purpose room at issue is open to the public, for example, during public meetings and when the room is being used by the Lebanon Municipal Court. Without waiving these objections, Defendants state that the documents contained in LEBANON0242 and LEBANON243 speak for themselves and otherwise deny Request of Admission 5.

6. Admit that the spaces labeled “Court Room” on the floor plans appearing at Bates numbers LEBANON0242 and LEBANON0243 truly and accurately represent the Lebanon Municipal Courtroom floor plan.

ANSWER: Objection in that Request for Admission 6 is vague and ambiguous as it includes no temporal limitation and it is not clear what Plaintiffs mean by “floor plans” and/or “Lebanon Municipal Court floor plan” (for example, whether those terms include dimensions, furniture placement, doors, outlets, etc?), and as it seeks information that is irrelevant and not proportional to the needs of the case as Plaintiffs can view the multi-purpose room at issue as it is open to the public, for example, during public meetings and when the room is being used by the Lebanon Municipal Court. Without waiving these objections, Defendants state that the documents contained in LEBANON0242 and LEBANON243 speak for themselves and otherwise deny Request of Admission 6.

7. Admit that the photographs produced by Plaintiffs at DONOVAN0013 through DONOVAN0050 are genuine and accurate photographs of the interior and exterior, including signage, of the City Building.

ANSWER: Objection, in that Request for Admission 7 is vague and ambiguous in that it provides no temporal limitation, and in that it is unreasonably burdensome and oppressive and seeks information that is already in the possession of Plaintiffs, as Plaintiffs or their agent took the photographs and it is not known to Defendants if the photographs have been altered and it is therefore impossible for Defendants to know if they are genuine and accurate, and it would be unreasonably burdensome and oppressive for Defendants to compare every detail of every

photograph to the area where the purported photograph was taken to determine if each photograph seems to be genuine and accurate. Without waiving these objections, deny.

8. Admit that the document produced by Defendants at Bates numbers LEBANON0146 through LEBANON0202 is a genuine and accurate copy of currently operative policies prepared by the City for the Lebanon Municipal Court, including security, emergency preparedness, and use of force policies.

ANSWER: Deny.

9. Admit that the map produced by Defendants at Bates stamp LEBANON0178 truly and accurately represents the Lebanon Municipal Court facilities floor plan on the second floor of the City Building.

ANSWER: Objection in that Request for Admission 9 is vague and ambiguous as it includes no temporal limitation and it is not clear what Plaintiffs mean by “Lebanon Municipal Court facilities floor plan” (for example, whether those terms include dimensions, furniture placement, doors, etc?), and as it seeks information that is irrelevant and not proportional to the needs of the case as Plaintiffs can view the multi-purpose room at issue as it is open to the public, for example, during public meetings and when the room is being used by the Lebanon Municipal Court. Without waiving these objections, Defendants state that the document contained in LEBANON178 speaks for itself and otherwise deny Request of Admission 9.

10. Admit that the space labeled “Court Room” on the map produced by Defendants at Bates stamp LEBANON0178 represents the Lebanon Municipal Courtroom.

ANSWER: Objection in that Request for Admission 10 is vague and ambiguous as it includes no temporal limitation and it is not clear what Plaintiffs mean by “Lebanon Municipal Courtroom” (for example, whether that terms include dimensions, furniture placement, doors, etc?), and as it seeks information that is irrelevant and not proportional to the needs of the case as Plaintiffs can view the multi-purpose room at issue as it is open to the public, for example, during public meetings and when the room is being used by the Lebanon Municipal Court. Without waiving these objections, Defendants state that the document contained in LEBANON178 speaks for itself and otherwise deny Request of Admission 10.

11. Admit that the document produced by Plaintiffs at DONOVAN0080 through DONOVAN0095 is a genuine and accurate copy of the local rules issued by the Lebanon Municipal Court Judge Martin E. Hubbell and effective on May 1, 2022.

ANSWER: Objection, in that Request for Admission 11 seeks information that is irrelevant and not proportional to the needs of the case, and it is unreasonably burdensome and oppressive and seeks information already in the possession of Plaintiffs, as Plaintiffs prepared DONOVAN0080 through DONOVAN0095 and it is not known to Defendants if Plaintiffs altered the document and it is therefore impossible for Defendants to know if it is a genuine and accurate copy of the local rules issued by Lebanon Municipal Court Judge Martin E. Hubbell effective May 1, 2022 (the “Rules”), and it would be unreasonably burdensome and oppressive for Defendants to compare every word of the Rules to DONOVAN0080 through DONOVAN0095 to determine if it is a genuine and accurate copy of the Rules. Without waiving these objections, Defendants state that a genuine and accurate copy of the Rules can be obtained at <https://court.lebanonohio.gov/pdf/localRules-20220418.pdf>, and Defendants otherwise deny Request for Admission 11.

As to objections,

/s/ Rebecca Simpson Heimlich

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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was served this 27th day of May 2022, via email upon the following:

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Attorneys for Plaintiffs

/s/ Rebecca Simpson Heimlich

Rebecca Simpson Heimlich (0064004)

Exhibit H



Minutes for the Lebanon City Council Meeting (Work Session)
February 4, 2020
7:00 p.m. 50 S. Broadway, Lebanon, Ohio

Council of the City of Lebanon met in a work session meeting in the large conference room at the City Building. The meeting was called to order at 7:00 p.m. on February 4, 2020 with the following members present: Mayor Brewer, Mr. Mathews, Vice Mayor Messer, Mrs. Monroe, Mr. Shafer, Mr. Shope, and Ms. Wyatt. Present from the City Staff was Manager Scott Brunka, Attorney Mark Yurick, Auditor/Clerk Dan Burke, and Police Chief Jeff Mitchell. The Pledge of Allegiance was recited.

Previous Business

None

New Business



Resolution – Approving an amended agreement with the Warren County Drug Task Force. Mr. Brunka stated that a new jurisdiction has been added to the Task Force and that is the only reason for the amendment. Mayor Brewer, Mr. Mathews and Mr. Shafer sponsored legislation for the next City Council meeting.

Resolution – Authorizing the City to participate in the 2020 – 2021 Warren County Salt Purchase Cooperative. Mr. Shope sponsored legislation for the next City Council meeting.

Ordinance – Approving the sale of City-owned parcel #1212481007 located along Neil Armstrong Way to Newman Sanitary Gasket at the appraised value of \$5,000. In response to a question from Mr. Shafer, Mr. Brunka confirmed that the City of Lebanon owns sufficient right-of-way in case it was ever necessary to widen Neil Armstrong Way where it crosses State Route 63. Mayor Brewer and Vice Mayor Messer sponsored legislation for the next City Council meeting.

Ordinance – Authorizing a design – build contract with Conger Construction Group with a guaranteed maximum price of \$1,648,118 to construct a new storage building to replace the existing Electric Division building located on S. Sycamore Street. In response to a question from Mr. Shope, Mr. Brunka confirmed that the project cost is lower than the amount budgeted for 2020. Vice Mayor Messer, Mr. Shope and Ms. Wyatt sponsored legislation for the next City Council meeting.

Ordinance – Approving the record plan for the Autumn Ridge Section One subdivision creating 46 single-family lots as recommended by Planning Commission. In response to a question from Ms. Wyatt, Mr. Brunka stated that he hasn't heard anything about the developer wanting to acquire and remove existing three-story buildings near that property. Mr. Mathews sponsored legislation for the next City Council meeting.

Ordinance – Approving a contract with Newberry Construction for an annual rail tie replacement program and the replacement of the Mechanic St. rail crossing in the amount of \$ 114,025 for year 2020, and establishing unit pricing for years 2021 and 2022. Mr. Brunka stated that the City's goal is to upgrade one railway crossing each year. In response to a question from Mr. Shope, Mr. Brunka stated that the City budgeted \$ 160,000 to

cover the cost of the rail crossing and other routine maintenance. Mayor Brewer sponsored legislation for the next City Council meeting.

General Discussion Topics

Warren County Drug Task Force – Major Steve Arrasmith

Major Arrasmith reviewed the annual report. The Task Force is Warren County's only full-time, multi-jurisdictional drug enforcement operation and includes local, state and federal resources. Sixteen agencies are represented on the policy board and they meet monthly to review strategies and tactics. A typical investigation includes many targets and can take a year or more to result in arrests. There has been a reduction in heroin and fentanyl use over the past two years while methamphetamine use has grown considerably. There was also a spike in L.S.D. use in 2019. Overdose deaths in Warren County peaked in 2017 and dropped significantly in 2018 and 2019. Major Arrasmith believes that the combination of education, treatment and enforcement have helped lower the overdose cases. The Warren County Drug Court began in 2016 and more than 100 cases have been referred to the Drug Court for consideration. City Council thanked Major Arrasmith and the Drug Task Force members for their continued efforts to keep Warren County safer.

2019 City Financial Overview – City Auditor and City Manager Presentation

Mr. Burke distributed a packet to City Council and reviewed departmental workload; earnings tax payment history; earnings tax revenue history; gross earnings tax collections by year dating back to 2011; earnings tax penalty and interest revenue history; summary of the 2019 Municipal Court earnings tax case initiative; a comparison of the year-end General Fund cash balances compared to the annual General Fund budget by year dating back to 2010; a summary of the City's outstanding debt and scheduled payments; and the City's assessed valuation for property by year dating back to 2000. Mayor Brewer thanked everyone in the Finance Department for doing an excellent job.

Mr. Brunka provided an overview of the City's 2019 self-insured medical health plan expenses and savings; changes to the plan's monthly premium structure for 2020; and all of the Wellness Program components. The annual expenses for the health insurance plan were reviewed dating back to 2015. Mr. Brunka is focused on illness prevention and doing everything we can to minimize chronic illnesses.

Waiver of Objection to D-1 Liquor Permit – The Avenue located at 1231 Columbus Ave.

Mr. Brunka reported that the paperwork has not yet been submitted to the City for consideration.

Conceal Carry at City Council Meetings

Mayor Brewer asked Mr. Yurick to outline the process. Mr. Yurick stated that he has not found any established State of Ohio law on this topic. The City of Shelby in Ohio has implemented a similar program and Mr. Yurick has reviewed their legislation. The Lebanon Municipal Court is typically in session during the afternoon a few days each week. However, Lebanon Municipal Court sessions can extend beyond afternoon hours and the support personnel are regularly scheduled to work between 8:00 a.m. and 4:30 p.m. Monday through Friday. Since there is no established State of Ohio law on this topic, Mr. Yurick is recommending that the Lebanon ordinance prohibits concealed carry of firearms any time that Lebanon Municipal Court employees are present in City Hall. This can be accomplished by posting movable signs at the building entrances to designate when conceal carry is prohibited.

The City's insurance company has quoted a deadly weapons protection policy at an annual premium cost of approximately \$ 28,000. Mr. Yurick acknowledged that this is a risk management decision, no insurance policy covers every conceivable event but this policy would provide additional coverage. In response to a question from Mr. Shafer, Mr. Yurick confirmed that the attorney for our insurance broker recommends the

deadly weapons protection policy. Mr. Yurick's primary concern is that there is no established case law and very little information available on this topic; for those reasons Mr. Yurick recommends that City Council seriously considers the additional insurance coverage from a risk management perspective. Mr. Yurick reviewed information from the insurance company indicating that approximately 10 % of these shooting incidents occur in government facilities. After reading the insurance information, Mrs. Monroe does not believe that the additional insurance coverage is necessary and a majority of City Council agreed. Mr. Brunka stated that the cost to post a Patrol Officer at each City Council meeting is approximately \$ 7,500 per year.

Ms. Wyatt stated that she spoke with the City of Monroe and they attempted to only allow City Council Members to carry a concealed weapon and that restriction is not permitted. In response to a question from Mr. Shafer, Mr. Yurick stated that immunity language is available in the law to protect the City of Lebanon but that immunity can still be challenged in court. Relying on that immunity language is risky since no known legal challenges exist. There was a discussion about the existing security measures throughout the building. Police Chief Mitchell clarified that it would be a challenge to schedule an off-duty Patrol Officer for every City Council meeting due to the unknown demand for special details. If this is a security issue, Ms. Wyatt prefers a solution that includes Police protection at the City Council Meetings. City Council asked Mr. Yurick to draft an ordinance for consideration at the next City Council work session.

Open Discussion

In response to a question from Mr. Shafer, Mr. Burke clarified that the earnings tax allocation was changed in 2020 because the City has adequate cash reserves to cover our existing debt obligations and no plans to issue new general obligation debt any time soon. By reducing the debt allocation from 9 % to 7 %, and moving that funding to capital improvements, the City can allocate those funds to additional capital projects including road maintenance and construction. Everyone thanked Chief Mitchell for attending the meeting.

Executive Session

There being no further business to come before this Council a motion to adjourn the meeting was made by Ms. Wyatt, seconded by Mr. Mathews. Roll call vote was approved unanimously. Meeting adjourned at 8:52 p.m.

Passed: *February 25, 2020*

Maya J. Burke
Mayor

Master A. Guich
Clerk
Chadney

Exhibit I

LEBANON CITY COUNCIL

WORK SESSION

- - -

TRANSCRIPT OF AUDIO RECORDED PROCEEDINGS

- - -

Recorded on Tuesday, February 4, 2020.

- - -

APPEARANCES:

Members:

Mayor Amy Brewer
Mr. Adam Mathews
Vice Mayor Mark Messer
Mrs. Wendy Monroe
Mr. Joe Shafer
Mr. Doug Shope
Ms. Krista Wyatt

City Staff:

Manager Scott Brunka
Attorney Mark Yurick
Auditor/Clerk Dan Burke
Police Chief Jeff Mitchell

- - -



Margaret A. Snyder, RPR

Tuesday Evening Session
February 4, 2020
7 p.m.

- - -

MAYOR BREWER: Good evening, everyone, and welcome
to our Lebanon City Council Work Session, February 4, 2020.

Please call the roll.

UNIDENTIFIED SPEAKER: Mayor Brewer.

MAYOR BREWER: Here.

UNIDENTIFIED SPEAKER: Mrs. Monroe.

MRS. MONROE: Here.

UNIDENTIFIED SPEAKER: Ms. Wyatt.

MS. WYATT: Here.

UNIDENTIFIED SPEAKER: Mr. Shope.

MR. SHOPE: Here.

UNIDENTIFIED SPEAKER: Mr. Shafer.

MR. SHAFER: Here.

UNIDENTIFIED SPEAKER: Mr. Messer.

VICE MAYOR MESSER: Here.

UNIDENTIFIED SPEAKER: Mr. Mathews.

MR. MATHEWS: Here.

MAYOR BREWER: All right. Please stand for the
Pledge.

(Pledge of Allegiance.)

MAYOR BREWER: Perfect.

All right. I'll turn it over to you, Scott.

Margaret A. Snyder, RPR

1 liquor permit for The Avenue located on Columbus. So I --

2 MR. BRUNKA: Mayor, real quick. So they -- we had
3 put that on the agenda. They were working on getting that
4 objection paperwork from the State to us. They were not
5 able to do that.

6 MAYOR BREWER: They were not able to?

7 MR. BRUNKA: So -- so -- so, yeah, we would ask to
8 delay.

9 MAYOR BREWER: Get to it. Okay.

10 MR. BRUNKA: We pretty much told them, as soon as
11 you get that, we'll get it on a Council agenda.

12 MAYOR BREWER: Okay.

13 MR. BRUNKA: Yeah.

14 MAYOR BREWER: All right. Sounds good.

15 All right. So let's talk about the conceal carry
16 at our Council meetings. What I thought I would do, kind of
17 get -- get us started, a lot of discussion. I'm sure
18 there's a lot to turn it over first to Mark Yurick to kind
19 of take us through the process first. And from that, we'll
20 -- we can make some discussions; but we're -- we're going to
21 let Mark take over and get us -- get us going to give us
22 some good information.

23 MR. YURICK: So just to -- to review, I was asked
24 to draft an ordinance. The -- and I apologize. I'm a
25 little inarticulate. We had a day-long arbitration hearing

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1 today. I was -- I don't know that all my synapses are
2 firing on full force.

3 So at any rate, Ohio law allows local legislature
4 to permit carrying concealed weapons in government buildings
5 except for certain types of buildings. One of those types
6 of buildings is a courtroom.

7 City Council does not have the discretion to
8 permit concealed carries in court. This building is a
9 multiuse building that is used for court operations a
10 substantial amount of the time but not all of the time.

11 There's no case law in Ohio on this. I was able
12 to locate a letter opinion from the governor's office in
13 Texas that said, essentially, for multiuse buildings, when
14 the building is not in -- in use as a courthouse, local
15 legislatures can permit concealed carry. So the only -- the
16 only ordinance that I found -- I'm going to forget the name
17 of it, the town, but there's one other town in Ohio and I --

18 UNIDENTIFIED SPEAKER: Shelby.

19 MR. YURICK: Shelby. I based this ordinance on
20 Shelby's ordinance, and I -- I drafted it. This would be
21 the ordinance. I drafted it with the understanding that
22 Council was seeking to sort of maximize the amount of time
23 within the building that their people could carry concealed
24 weapons.

25 Now, court operates most of the time between 8:00

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1 and 4:30 but not always. If there's a jury trial, they
2 could be here until 7 or 8 o'clock at night. If they have a
3 docket that goes long on Monday or Thursday, they could go
4 late, well past 4:30. But the -- the court clerks and the
5 probation officers are generally here between the hours of
6 roughly 8:00 and 4:30. So --

7 MAYOR BREWER: Monday through Friday?

8 MR. YURICK: Monday through Friday. And sometimes
9 I think the probation officers will come in on Saturdays.
10 But I -- that's not really regular.

11 That's a good question in terms of court. You
12 know, you can read that different ways. I think that court
13 operations are -- are sort of what make a courthouse, and
14 that means more than just having court in session. Court is
15 only really in session for criminal cases on Monday and
16 Thursday. Although, on Tuesday, there's a civil docket; and
17 that's outside of other times that the courtroom is used as
18 a courtroom.

19 They're not generally but -- it's not universal.
20 They're not generally in operation at night, in the
21 evenings. They're not generally in operation on Saturday or
22 Sunday. Although, I know I've had jury trials that have
23 gone -- started on a Friday and have gone through to
24 Saturday.

25 So the ordinance based on the Shelby ordinance

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1 is -- is fairly general. And I -- I apologize. There's a
2 typo.

3 Pursuant to Ohio Revised Code Section 2923 -- it
4 should be a point instead of a -- a comma. 2923.126, a
5 licensee under Ohio Revised Code Section 2923.125 or
6 Section 2923.1213 is hereby authorized to carry a concealed
7 handgun in the City of Lebanon, Ohio, City Building located
8 at 50 South Broadway, Lebanon, Ohio, except during the
9 operation or any function of Lebanon Municipal Court.

10 In connection with this, I would say that, you
11 know, we have signs. And when court is in session, we could
12 post a sign saying, Lebanon court is in -- is in -- Lebanon
13 court is in operation. Concealed carry of a firearm
14 prohibited during X hours pursuant to whatever ordinance --
15 you know, whatever code section we gave this and the Ohio
16 Revised Code.

17 Again, it's sort of complicated because court
18 doesn't meet just regularly; and court functions, I think,
19 means more than just having court in session. And there's
20 literally zero law in Ohio on this; so I'm using sort of my
21 general knowledge of the law, things like due process, equal
22 protection, you know, just general legal concepts, and
23 trying to work through based on the relative derth of
24 information that's out there, how to get what Council wants
25 done in an efficient way that's consistent with the law.

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1 I've limited to this building because the -- the
2 concern that was voiced to me was essentially security
3 during primarily Council meetings; and, you know, Council
4 only holds meetings in this building. You -- you really
5 wouldn't be able to permit carrying a concealed weapon
6 inside of a police station.

7 And I didn't know that there was any issue with
8 any of the electric buildings or any of the other City
9 buildings, so I've limited to this building. But,
10 basically, when court is not conducting a function here,
11 handgun possession is permitted.

12 Scott and I spoke with our insurance person, and
13 we also spoke to the Police Chief just to get Council some
14 information and some options.

15 Did -- did you --

16 MR. BRUNKA: Yeah. You should have a copy of
17 this.

18 UNIDENTIFIED SPEAKER: I was reading it earlier,
19 yeah.

20 MR. YURICK: So the -- our insurance person
21 recommended that we look at deadly weapons protection, and
22 the -- the issue there is really risk management. The --
23 the question, obviously, becomes: Do we really need this?

24 And it's -- it's roughly \$28,000 per year. I wish
25 I had a definitive answer: Do you need this or don't? But

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Exhibit J

From: George E. Moore, Esq. <celinalawdirector@gmail.com>
Sent: Wednesday, January 8, 2020 2:46 PM
To: Mark Yurick
Cc: omaa@lists.imla.org
Subject: Re: [Omaa] Concealed carry within government buildings

I am interested in all responses as well.

Thank you

George Moore
Law Director, Celina Ohio



Sent from my iPhone

On Jan 8, 2020, at 11:19 AM, Mark Yurick <myurick@lebanonohio.gov> wrote:

Dear Colleagues:

Lebanon Ohio's City Council is considering whether to pass an ordinance to allow concealed carry inside the City Building pursuant to RC 2923.126(B)(7) which prohibits concealed carry within: "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;**" The City Building in Lebanon is a multi- use building, sometimes used as a courtroom by Lebanon's municipal court, and I don't think that Lebanon's City Council may allow weapons in the building when court is in session or when court personnel (clerks, probation officers, ect.) are present and on duty. However, it appears that Council may choose to allow concealed carry in the building at other times. I wondered whether any other jurisdictions have tackled this issue and what has been done in this area. Any help or feedback would be greatly appreciated.

Best. Mark Yurick, City Attorney Lebanon, Ohio.

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