



**CITY OF PITTSBURGH
DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM**

TO: Natalia Rudiak, DEPARTMENT: City Council
Councilwoman, District 4

FROM: Daniel D. Regan, DEPARTMENT: Law
City Solicitor *DDR*

DATE: May 4, 2010

RE: Hunting and Firearm Discharge in the Greenways

This memorandum is written in response to your inquiry regarding hunting and firearm discharge in the Greenways in your District. Specifically, you inquired about what laws are applicable to hunting and firearm discharge in the City of Pittsburgh's (City) Greenways and what entity is charged with enforcement.

Brief Answer

The Pittsburgh Police (Police) currently do not enforce the prohibitions of Pennsylvania's Game and Wildlife Code (Game Code) relating to hunting; they instead alert local Game Wardens for enforcement. However, it is an option for the Police to enforce the Game Code's prohibitions on hunting if they obtain a written delegation of authority from the Game Commission to do so. Regardless, the Police can always enforce the City Code's prohibition on the discharge of firearms within the Greenways during hunting season, so long as the City posts

signs prohibiting hunting and the discharge of firearms within the Greenways in conformance with the Game Code.

Analysis

I. Pittsburgh Code § 607.03 is Not Preempted by the Game Code

Pittsburgh Code § 607.03 (Ordinance) provides, in relevant part, “[n]o person shall discharge any firearm...within the city.” For purposes of enforcement on City-owned property such as the Greenways, the Ordinance is not preempted.¹

The City can restrict firearm discharge and thereby prohibit hunting when a firearm has been discharged without fear of preemption because it will be acting in its capacity as a property owner to regulate City-owned property, not in its capacity as a government entity to regulate hunting and firearm discharge City-wide regardless of ownership. *See Wolfe v. Twp. of Salisbury*, 880 A.2d 62, 67, 68 (Pa. Commw. Ct. 2005)(“concerns giving rise to preemption...are not present” when municipal corporation acts as a landowner as opposed to “regulating behavior as a governmental entity.”)

The City “possess[es] the same...right to restrict hunting on municipally-owned land...as any other property owner” so long as the Game Code’s provisions regarding posting notice of the prohibition are followed. *Wolfe*, 880 A.2d at 66 n.9, 68; *Municipal Control*, 64 Pa. D. & C.2d 233, 237-38 (1974)(*opinion of Commonwealth Attorney General concerning municipal*

¹ It should be noted that the Ordinance is not preempted by the Game Code in general because it contains an exception to the discharge prohibition “in circumstances permitted by Commonwealth law,” which, in effect, only allows enforcement of the Ordinance when not in conflict with the Game Code.

corporations' power to regulate firearms and hunting). The City can post City-owned land such as the Greenways "and thereby prohibit hunting [and firearm discharge] in such areas irrespective of the general authority of the [Commission] to control hunting in all areas of the Commonwealth." 64 Pa. D. & C.2d 233, 237-38 (1974); 34 Pa. C.S.A. §§ 2508(a)(2); 2508 (b).

II. Enforcement of the Hunting and Firearm Discharge Prohibition on the Greenways

A. Game Code Posting Requirements

As previously mentioned, the City must comply with Game Code posting requirements in order to enforce hunting and firearm prohibitions in the Greenways. The Game Code provides, "[I]t is unlawful...to hunt...or to discharge a firearm...into or upon...[t]he lands...set aside for the use of the public where people may congregate in the open for health, recreation, or pleasure" so long as the boundaries of such land are "clearly defined by appropriate...markers calling attention to the fact that the land...within the boundary has been set apart for the specific purpose for which it was intended and that hunting upon or shooting on the property is prohibited." §§ 2508(a)(2); 2508(b). Appropriate signage should designate the property as a Greenway and indicate that hunting and firearm discharge is prohibited.

B. Enforcement by the Pittsburgh Police

Although the Department of Parks and Recreation (Citiparks) is charged with control and supervision of the City's Greenways, Citiparks does not have an enforcement arm, necessitating enforcement by the Police for violations occurring on Greenways. Pittsburgh, Pa., Code § 471.01.

(i) Enforcement of the Game Code's Prohibition on Hunting

If hunting occurs on the Greenways without discharge of a firearm, the Police will have to enforce the Game Code to punish violators because the City has no ordinance prohibiting such conduct. The Game Code provides for imposition of a fine between one and three hundred dollars (\$100.00-\$300.00), and grants jurisdiction to magisterial district judges for violation of § 2508. § 2508(d); 34 Pa. C.S.A. §§ 925(b)(7); 925(a). In addition to the fine, it provides for the assessment of costs of prosecution and further allows for imprisonment following a hearing with the district magistrate for those who fail to pay the fine. §§ 925(b); 925(f)("*[T]he court may imprison the person... one day for each \$40 of the unpaid balance of the fine and costs not to exceed 120 days.*").

Though the City is not preempted from regulating hunting and firearm discharge in the Greenways, enforcement of penalties for violation of § 2508 of the Game Code is vested solely in the Commission and its officers, absent a written delegation of such power from the Director of the Commission. 34 Pa. C.S.A. §§ 322; 903. Because the Police are employed by a municipality, and it is their "duty...to preserve the peace," "make arrests," and "enforce the laws of this Commonwealth," they are eligible for such a designation of power and, before enforcement for violations of § 2508 takes place, such a request must be made and granted. § 903; 58 Pa. Code § 131.3(5).

(ii) Enforcement of the Ordinance

When firearm discharge occurs in a properly posted Greenway, regardless

of whether the discharge is related to hunting, the Police may enforce the Ordinance and issue citations for its violation.

The Ordinance provides for a one thousand dollar fine (\$1,000.00) and costs of prosecution for each violation. § 607.13. If the fine is not paid, the offender may be imprisoned for a maximum of ninety (90) days. § 607.13. The City can enforce its one thousand dollar (\$1,000.00) penalty because its restrictions on City-owned land must merely be "at least as restrictive as those contained in the Game [Code]" and the Game Code only sets the penalty for violation of §2508 between \$100 and \$300. **Wolfe**, 880 A.2d at 69; 34 Pa. C.S.A. § 925(b)(7). Alternatively, if a delegation of authority from the Game Commission is received, the Police could enforce the lesser fine provided for in the Game Code.

Submitted by:



Stephanie Eggar
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cc: John Fournier, Office of Councilwoman Rudiak