

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

**FIREARM OWNERS AGAINST CRIME,
FIREARM POLICY COALITION, INC;
FIREARM POLICY FOUNDATION;
MATTHEW BOARDLEY, SAADYAH
AVERICK, FRED RAK,**

No. GD 19-005330

Plaintiffs,

v.

**CITY OF PITTSBURGH, MAYOR WILLIAM
PEDUTO; COUNCILMAN BRUCE KRAUS,
COUNCILMAN COREY O'CONNOR;
COUNCILMAN R. DANIEL LAVELLE;
COUNCILWOMAN DEB GROSS;
COUNCILWOMAN ERIKA
STRASSBURGER; and COUNCILMAN
RICKY BURGESS,**

OPINION AND ORDER OF COURT

Honorable Joseph M. James

Defendants.

Copies Sent To:

**Joshua Prince, Esquire
Eric Tirschwell, Esquire
William James Tayler, Esquire
Ryan Gerber, Esquire
Kelly K. Iverson, Esquire
John Doherty, Esquire
Wendy Kobee, Esquire**

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DANIEL LAVELLE; COUNCILWOMAN
DEB GROSS; COUNCILWOMAN
ERIKA STRASSBURGER; and
COUNCILMAN RICKY BURGESS,

Defendants.

No. GD 19-005330

OPINION

James, J.

October 29, 2019

Before the Court are two motions. Plaintiffs have filed a Motion for Summary Judgment and the Defendants have filed a Cross Motion for Summary Judgment. For the reasons that follow, the Court finds that Plaintiffs have established standing and that the Uniform Firearms Act 18 Pa. C.S. §§ 6101-6127 precludes the City from passing these Ordinances. As such, the Court will grant Plaintiffs' Motion for Summary Judgment and deny the City's Cross Motion for Summary Judgment.

The Plaintiffs are three organizations: Firearm Owners Against Crime "FOAC", Firearms Policy Coalition, Inc. "FPC", Firearms Policy Foundation "FPF", and three individuals: Saadyah Averick, Matthew Boardley and Fred Rak. The Defendants are Mayor William Peduto, Councilman Bruce Kraus, Councilman Corey O'Connor, Councilman R. Daniel Lavelle, Councilwoman Deb Gross, Councilwoman Erika Strassburger and Councilman Ricky Burgess.

Summary judgment is appropriate when "there is no genuine issue of any material fact as to a necessary element of the cause of action or defense" and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. No. 1035.2. In ruling on a motion for summary judgment, the facts must be viewed in light most favorable to the non-moving party. Ertel v. Patriot News, Co., 674 A.2d 1038, 1041 (Pa. 1996).

The underlying Complaint for Declaratory Judgment and Injunctive Relief was filed contending that the City violated numerous statutory and constitutional provisions by enacting Ordinances 2018-1218, 2018-1219, 2018-1220 and erecting a sign in front of the City-County Building. On or about December 14, 2018, the City announced its intent to introduce three proposals regulating firearms, ammunition and firearm accessories. On January 2, 2019, the City erected a sign outside of the City-County Building declaring it unlawful to possess a firearm within the building. On April 9, 2019, Mayor Peduto signed the Ordinances into law after City Council voted in favor of enactment. On May 20, 2019, this Court indefinitely stayed the effective date of the Ordinances.

Ordinance 2018-1218 regulates the use of assault weapons in any public place within the City. Ordinance 2018-1219 prohibits the use of large capacity magazines in any public place within the City. Ordinance 2018-1220 provides a process by which a

court may enter an order prohibiting a person who poses an imminent risk to themselves or others from possessing or acquiring a firearm. The Ordinances are attached to the Plaintiffs' Complaint as Exhibits C, D and E.

A review of the Interrogatories and Answers thereto establish that all Plaintiffs have Declaratory Judgment Standing to challenge Ordinances 2018-1218, 2018-1219 and 2018-1220.

As its name indicates, the Pennsylvania Uniform Firearms Act ("UFA") 18 Pa. C.S. §§ 6101-6127 regulates the entire field of firearms and ammunition across the state of Pennsylvania. Two types of preemption, express and field, are possibly implicated by a challenge of this Ordinance. The City has expended a large amount of energy attempting to categorize the restricted behavior in such a way that it is not expressly prohibited by § 6120 of the UFA. Despite the City's efforts to avoid the specific preemption set forth in § 6120, they are not able to avoid the obvious intent of the Legislature to preempt this entire field. The UFA purports to regulate firearms and ammunition in the Commonwealth whether a person is using, brandishing, carrying or loading them.

The Supreme Court stated in Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 964 A.2d 855 (Pa. 2009) that "[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations." The Court held "[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field." Id. at 862. "[L]ocal legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow." Id. (*citing* Liverpool Township v. Stephens, 900 A.2d 1030, 1037

(Pa. Cmwlth. 2006)). “[R]egulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” Ortiz v. Commonwealth, 681 A.2d 152, 156 (Pa. 1996). The regulation of anything involving firearms is that “which the General Assembly has assumed sole regulatory power.” Clarke v. House of Representatives of the Commonwealth of Pa., 957 A.2d 361, 364 (Pa. Cmwlth. 2008)

Stated simply, under the doctrine of field preemption, the UFA preempts any local regulation pertaining to the regulation of firearms. The Uniform Firearms Act is a comprehensive statute that evidences an intent by the Legislature to preempt the entire field of firearms and ammunition across the state of Pennsylvania.

Therefore, for the foregoing reasons, the Plaintiffs’ Motion for Summary Judgment is granted and the City’s Cross Motion for Summary Judgment is denied.

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ORDER OF COURT

AND NOW, this 29th day of October 2019, based upon the foregoing
Opinion, Ordinances 2018-1218, 2018-1219, 2018-1220 are void and unenforceable due
to field preemption by the Legislature.

By the Court:

