

## Firearm Regulation and Cities

*Understand how state laws affect a city's ability to prohibit guns on city property. Read options for regulation of city employees carrying firearms at work and restrictions on elected officials or volunteers carrying firearms when conducting city business. Get details about the permitting process and privacy status of permit data.*

### RELEVANT LINKS:

[U.S. v. Lopez](#), 514 US 549 (1995).

[U.S. Const., art. I, § 8.](#)

[US Const., amend. II.](#)

[District of Columbia v. Heller](#), 554 US 570 (2008).

[State v. Craig](#), 826 N.W.2d 789 (Minn. 2013).

See, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) [Publications Library](#).

[ATF Federal Firearms Regulations Reference Guide](#).

## I. Regulation in general

### A. Federal law

The federal government's ability to regulate firearms comes from the commerce clause of the Constitution and the fact that all guns have likely traveled interstate. One significant limitation on federal gun control is the Second Amendment to the Constitution. The Second Amendment states "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In a 2008 opinion, the United States Supreme Court held that the Second Amendment conferred a constitutional right to citizens to possess firearms in their home for traditionally lawful purposes such as self-defense. However, the court stated, and the Minnesota State Supreme Court recognized, that the right to possess a firearm does not extend to "any weapon whatsoever in any manner whatsoever and for whatever purpose."

While most of the gun laws affecting cities are state laws, federal firearm statutes cover many areas. Federal gun laws regulate individuals in the business of buying, selling, or manufacturing firearms, firearm taxation, and interstate transfer of firearms. They also provide for licensure of most firearm vendors. Federal law generally requires those in the business of selling firearms to perform background checks on purchasers, though there are exceptions.

Federal law also limits who may have a gun and what guns people may have. These laws ban certain individuals, such as convicted felons, from buying or possessing a firearm, and block sales of handguns to those under age 21. Federal law currently bans new sales of fully automatic firearms to citizens, as well as sales of firearms containing minimal metal (including 3D-printer made guns). Federal registration is required of silencers (or suppressors), disguised or improvised firearms, and some more powerful firearms.

## RELEVANT LINKS:

[18 U.S.C. § 930.](#)

[26 U.S.C. § 5801 et. seq.](#)

[42 U.S.C. § 3711 et. seq.](#)

[18 U.S.C. § 921 et. seq.](#)

Amending the GCA and NFA; See also [18 U.S.C. § 845](#).

Amending the GCA at [18 U.S.C. § 922\(p\)](#).

Amending the GCA at [18 U.S.C. § 921 et. seq.](#)

Amending the GCA at [18 U.S.C. § 921 et. seq.](#)

[15 U.S.C. § 7901 et. seq.](#)  
Also, amending the GCA at [18 U.S.C. § 921 et. seq.](#)

*McDonald v City of Chicago, Illinois*, 561 U.S. 742 (2010).  
See, ATF publication, *State Laws and Published Ordinances (2010-2011) – Minnesota*.

[Minn. Stat. § 471.633.](#)

See, *State v. Seifert*, 256 N.W.2d 87, 88 (Minn. 1977).  
*Minnesota v. Haywood*, 886 N.W.2d 485 (Minn. 2016).  
*State v. Coquette*, 601 N.W.2d 443, 445 (Minn. Ct. App. 1999).

Firearms and other dangerous weapons are banned from federal facilities. “Dangerous weapon” is defined as a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. It does not include a pocket knife with a blade of less than 2 ½ inches in length. There are exceptions for police and military officers, as well as any possession incidental to hunting or “other lawful purposes.”

The major federal gun laws include the following

- The National Firearms Act
- The Omnibus Crime Control and Safe Streets Act of 1968
- The Gun Control Act of 1968 (GCA)
- The Firearm Owners Protection Act
- The Undetectable Firearms Act
- The Gun-Free School Zones Act
- The Brady Handgun Violence Prevention Act
- The Protection of Lawful Commerce in Arms Act

## B. State regulation and pre-emption of city regulation

State authority to regulate firearms is broader than federal authority as a matter of states’ rights, but it is also limited by the Second Amendment to the federal Constitution. In Minnesota, the state has significantly limited the authority of cities to regulate firearms.

Since 1985, the state legislature has explicitly preempted all cities, counties, towns and other governmental subdivision from regulating “firearms, ammunition or their respective components,” with two exceptions. A governmental subdivision such as a city may regulate the discharge of firearms and it may adopt regulations identical to state law.

The term “firearm” is not defined for the purposes of the law. However, in the context of criminal law, Minnesota courts have relied on a statutory definition pertaining to fish and game. Under this definition, a firearm is “a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air.”

## RELEVANT LINKS:

[Minn. Stat. § 97A.015, subd. 19.](#)

[Minn. Stat. § 624.717.](#)

[Minn. Stat. § 624.714.](#)

[Minnesota Bureau of Criminal Apprehension. Application for permit to carry. Minn. Stat. § 624.712, subd. 2.](#)

[Minn. Stat. § 624.715.](#)

[Minn. Stat. § 624.714, subds. 1a and 11.](#)  
[State v. Hatch](#), 962 N.W.2d 661 (Minn. 2021).  
[Permit to Carry FAQ.](#)

Using this definition, case law has provided that neither BB guns nor paintball guns are considered firearms for purposes of criminal law.

Due to the state preemption, Minnesota cities have no authority to ban assault weapons, high capacity magazines or any other firearm, ammunition or component thereof unless already banned by state law. Whether BB guns and paintball guns may be banned because they are not “firearms” within the context of criminal law is less clear.

## C. Minnesota Citizens’ Personal Protection Act of 2003

With limited exceptions, for many years, cities have been unable to regulate the carrying or possession of pistols. In 2003, the Minnesota Citizens’ Personal Protection Act (MCPA) imposed further limits on city regulation of pistols.

### 1. Firearms regulated by the MCPA

The MCPA governs the carrying of “pistols.” “Pistol” is defined as a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun or having a barrel of a length less than 16 inches in the case of a rifle (1) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or (2) for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor.

“Pistol” does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a “BB gun,” a scuba gun, a stud gun or nail gun used in the construction industry or children’s pop guns or toys.

The MCPA does not apply to antique firearms which are carried or possessed as curiosities or for their historical significance or value, or to ammunition or primers, projectiles, or propellant powder designed solely for use in an antique firearm.

### 2. Conduct protected by the MCPA

The MCPA allows individuals to carry into a “public place” any number of pistols in their motor vehicle, snowmobile or boat; on or about their clothing or person; or otherwise in their possession or control so long as they have a valid permit to do so. The statute requiring that individuals obtain a permit to carry in a public place was upheld as constitutional by the Minnesota Supreme Court in 2021.

## RELEVANT LINKS:

[Minn. Stat. § 624.7181, subd. 1 \(c\).](#)

[Minn. Stat. § 624.7181, subd. 1 \(c\).](#)  
*See also State v. Theng Yang*, 814 N.W.2d 716, 719 (Minn. Ct. App. 2012).

See Section II-b-1-f.

[Minn. Stat. § 624.714, subd. 23.](#)

[Journal of the House](#), May 18, 2005, p. 4113.

[Minn. Stat. § 624.7131.](#)

[Minn. Stat. § 624.714, subd. 2.](#)

A “public place” is defined as property owned, leased, or controlled by a governmental unit and private property that is regularly and frequently open to or made available for use by the public in sufficient numbers to give clear notice of the property's current dedication to public use.

“Public place” does not include: a person's dwelling house or premises, the place of business owned or managed by the person, or land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the purpose of hunting or target shooting or other lawful activity involving firearms.

Further restrictions on public places where a permitted pistol may be carried are discussed later in this memo.

### 3. Authority with respect to city facilities.

There is no general authority for a city to ban permitted pistols from being carried into city facilities. Under an exclusivity provision within the MCPPA, no city official or employee or other person or body acting under color of law or governmental authority may change, modify, or supplement the law, or otherwise limit the exercise of a permit to carry. Any city action to prohibit permitted pistols on public property would likely constitute an additional limit on the permit to carry.

When the MCPPA was reenacted in 2005, an amendment was proposed in the House to give cities authority to “restrict the possession or carry of a firearm, including prohibiting the possession of a firearm in local government property.” The amendment did not pass; accordingly, this legislative history suggests there is an arguable presumption that cities lack authority to prohibit permitted pistols from being carried onto city property.

### 4. Counties as sole permit issuing authority

City police departments lost authority to issue permits to carry in 2003 though they still process permits to purchase or transfer firearms. Since then counties have been the sole authority to issue and process these permits to carry. The sheriff’s office can contract with local police departments to process the permits on behalf of the county. In this case, “the sheriff remains the issuing authority and the police chief acts as the sheriff’s agent.”

The obligations associated with taking applications, conducting background checks and issuing the permits are significant. Accordingly, LMC recommends that cities carefully consider the risks and benefits before entering into such contracts. LMC also recommends that the contract makes it clear that the county would cover the liability for police chiefs’ action. There is potential liability if the chiefs do not follow procedures such as the mandatory background checks.

## RELEVANT LINKS:

[Minn. Stat. § 626.8452, subd. 2.](#)

[Minn. Stat. § 626.8452, subd. 1.](#)  
[Minn. Stat. 626.8452, subd. 1b and 1c.](#)  
[Minn. Stat. § 609.066, subd. 2.](#)  
[18 U.S.C. § 926B.](#)

[18 U.S.C. § 926B.](#)

[Minn. Stat. § 626.84, subd. 2.](#)

[18 U.S.C. § 922.](#)

[ATF Clarification Related to New Minnesota Marijuana Law.](#)

[LMC FAQs on Adult-Use Cannabis: What Cities Need to Know.](#)

[Minn. Stat. § 471.633.](#)

[Minn. Stat. § 97A.137, subd. 4.](#)

## D. Peace officer firearms

Peace officers are authorized to carry firearms while on duty by inherent power of government entities. There are a number of state statutes which refer to this unwritten authority. For instance, firearm training is required by state law before the “agency head issues a firearm to the officer or otherwise authorizes the officer to carry a firearm in the course of employment.”

Additionally, departments must have a “use of force” policy that does not prohibit justified use of deadly force, including use of a firearm.

Departments are also prohibited from retaliation against an employee that interceded or made a report of an officer using excessive force. Federal law allows concealed firearms to be carried if a person, among other things, “is authorized by the agency to carry a firearm.” While cities have very little authority with regard to firearms, it’s important to acknowledge this significant and fundamental power of cities and other government entities.

The city is not required to authorize police officers to carry, and there is a limit to who may be authorized to carry a firearm on behalf of the city. When a city has authorized a licensed officer to carry a firearm while on duty, that officer may carry a firearm while on duty without any further authorization (e.g., permit). Whether the officer is on- or off-duty, that “authorized” officer may still carry a concealed weapon under federal law and regardless of state law unless they are intoxicated. However, despite considerable emergency powers in a crisis, cities cannot authorize an employee or agent to carry a firearm while on duty unless the person is a licensed peace officer.

Federal law prohibits cities from providing firearms or ammunition to an employee it knows or has reason to think is using marijuana. Although there is a legal difference between marijuana products and hemp products, it may not be possible to differentiate the products in a drug test. Officers should be mindful of any substance they ingest because they are ultimately responsible if those products lead to a positive marijuana test.

## II. Valid firearm regulation by cities

Clearly, in most respects state law preempts city regulation of firearms. However, there are some valid regulatory options still available to cities.

### A. Discharge

Cities may regulate the discharge of firearms within the city limits. Some cities prohibit discharge on public lands and roadways. In certain wildlife management areas, restrictions on discharge of shotguns may be invalid. Presumably, the Second Amendment would allow the discharge of firearms for self-defense purposes.

## RELEVANT LINKS:

[Minn. Stat. § 471.633.](#)

[Minn. Stat. § 624.714, subd. 17.](#)

[Minn. Stat. § 609.66, subd. 1g.](#)

*See, e.g., In re: Possession of Firearms and other Weapons in a Courthouse Complex Within the Second Judicial District.*

[Minn. Stat. § 641.165.](#)

[Minn. Stat. § 609.02, subd. 6.](#)

[Minn. Stat. § 243.55, subd. 1.](#)

[Minn. Stat. § 243.55, subd. 3.](#)

## B. Provisions identical to state law

Cities may also adopt firearm regulations identical to state law. Cities cannot ban possession of permitted pistols in city facilities generally, but cities can adopt provisions already in law which prevent carrying firearms into some circumstances. Following are many of the state gun control laws that regulate locations, weapons or people, followed by some offenses specific to permitted pistols.

### 1. Regulation by location

#### a. Private, nongovernmental establishments

Firearms, permitted or otherwise, cannot be carried into a private business if the business has posted placards banning them. Under state statute, a person who carries a pistol into a private, nongovernmental establishment that has a sign at the door banning firearms must follow an order to leave or face a petty misdemeanor.

#### b. Court facilities

Dangerous weapons are prohibited generally in “court complexes,” though this statutory prohibition does not apply to permitted pistols. However, due to the constitutional separation of powers, the judiciary has its own authority, equal to that of the Legislature, to order by decree that all firearms, including permitted pistols, be prohibited from the court’s facilities.

#### c. Jails, lockups, correctional facilities and “state hospitals”

Whoever introduces or in any manner causes the introduction of a dangerous weapon into any jail, lockup, or correctional facility without the consent of the person in charge, or is found in possession of a dangerous weapon while within the facility or upon the grounds thereof commits a felony. Dangerous weapon” includes “any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm.”

It is also a felony to bring, send or in any manner cause to be introduced into a state correctional facility or hospital any firearms, weapons or explosives of any kind. For purposes of this law, “state hospital” or “hospital” means any state-operated facility or hospital under the authority of the commissioner of human services for (a) persons with mental illness, developmental disabilities, or chemical dependency, (b) sex offenders, (c) persons with a sexual psychopathic personality, or (d) sexually dangerous person.



## RELEVANT LINKS:

[Edina Comm. Lutheran Church v. State](#), 745 N.W.2d 194 (Minn. Ct. App. 2008).

[Minn. Stat. § 624.714, subd. 17.](#)

[Minn. Stat. § 624.714, subd. 17.](#)

[Minn. Stat. § 624.7181, subd. 2.](#)

[Minn. Stat. § 624.712, subd. 7.](#)

[Minn. Stat. § 624.7181, subd. 1 \(b\)\(3\).](#)

[Minn. Stat. § 624.714, subd. 1a.](#)

[Minn. Stat. § 624.712, subd. 2.](#)

### d. Polling places (potentially)

There is no law explicitly banning firearms from polling places, and they are possibly considered “public places” under the MCPA. However, it is likely many polling locations are also places where guns are not permitted under other law. Many polling places are held in schools and churches.

As discussed below, there is a statutory prohibition on carrying a firearm on school property. Churches are able to ban firearms from church property, but churches are not required to comply with the posting requirements other private establishments must follow in order to ban the carrying of firearms. Cities should confirm with polling place hosts whether firearms are permitted on the property.

### e. Private use of city property

A private party that leases space in city buildings or facilities for a “private, nongovernmental establishment” may prohibit firearms in the leased space by following the posting and notice requirements described above. However, as a landlord, the city may not restrict the “lawful carry or possession of firearms by tenants or their guests.”

### f. Public places

With some exceptions, it is a crime to carry a BB gun, rifle, or shotgun (but not permitted pistols) to “public places” as defined by law. It is a very severe crime for a person under 21 to carry to a public place a “semiautomatic military-style assault weapon” as defined by the law. It’s important to notice that through the broad exceptions, a lot of “carrying” is still allowed. This is presently a source of confusion in the law.

For example, one law states carrying “a BB gun, rifle, or shotgun” with a permit under the Personal Protection Act is not illegal “carrying” within the meaning of this law. One interpretation of this is that a permit authorizes carrying any BB gun, rifle, or shotgun into a public place. At the same time, the MCPA permits the carrying of only “pistols,” which includes a handgun less than 26 inches, a shotgun with a barrel or barrels less than 18 inches, or a rifle of less than 18 inches. Further, BB guns are explicitly excluded from the definition of “pistol” governed by the Act. As a result, there is ambiguity in the law.

It could be that a permit will authorize carrying of some smaller rifles or shotguns to a public place, but despite the statute, a permit cannot authorize carrying a BB gun to a public place. Given this legal ambiguity, cities are encouraged to consult their legal advisor if they encounter a situation involving carrying in a public place.

## RELEVANT LINKS:

[Minn. Stat. § 624.7181, subd. 1.](#)

[Minn. Stat. § 609.66, subd. 1d.](#)

[Minn. Stat. § 97B.045.](#)

[Minn. Stat. § 97B.045, subd. 3.](#)

See III-A-1.

Again, the exceptions to the prohibition on carrying a BB gun, rifle or shotgun to a public place are broad. Other exceptions include carrying antique firearms, carrying firearms unloaded and in a gun case, and carrying firearms to a place where any lawful activity or ceremony involving firearms occurs.

### **g. Schools and child care property**

It is a felony for an individual to carry any dangerous weapon, including a firearm, while knowingly on “school property.” There are additional crimes for brandishing or possessing a BB gun or gun replica on “school property.” “School property” is defined as including “a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school; a child care center licensed under chapter 245A during the period children are present and participating in child care programs;...and that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school related use.” Accordingly, if city property is being used for any of these defined school related purposes, guns are prohibited.

### **h. Transportation by motor vehicle**

It is generally forbidden to transport a firearm in a motor vehicle, though there are many exceptions. If the weapon is unloaded and kept in a case or the trunk, the transportation is allowed. The law also provides a “handgun” that is an antique or carried in compliance with the Personal Protection Act may be transported in a motor vehicle, though the term “handgun” is not defined. There is an exception under certain circumstances for persons with disabilities.

A person may transport an unloaded, uncased firearm (excluding pistols that are generally permitted) in a motor vehicle while at a shooting range where the person has received permission from the lawful owner or possessor to discharge firearms, while hunting on private or public land or travelling to or from a site the person intends to hunt lawfully or has hunted lawfully that day. However, this rule does not apply in Anoka, Hennepin or Ramsey Counties; within any city of population 2500 or more; on school grounds; or as otherwise restricted by law.

As noted in the context of employment later, a parked motor vehicle may be used to store an employee’s permitted pistol during a work shift if the employer has banned employees from carrying pistols while working.



## RELEVANT LINKS:

[Minn. Stat. § 609.67.](#)

[2015 Minn. Laws Ch. 65, art. 3, sec. 19.](#)  
[Minn. Stat. § 609.66, subd. 1a.](#)

[Minn. Stat. § 624.713.](#)  
[Minn. Stat. § 624.712, subds. 2 and 7.](#)

[Minn. Stat. § 624.713.](#)

[Minn. Stat. § 624.714.](#)

[Minn. Stat. § 624.714, subd. 1a.](#)

[Minn. Stat. § 624.714, subd. 1b.](#)

[Minn. Stat. § 624.714, subd. 7a.](#)

## 2. Regulation by weapon

It is a crime under state law to have certain firearms, regardless of where. With some narrow exceptions, no one in Minnesota may own, possess or operate a machine gun, a trigger activator or machine gun conversion kit or a short-barreled shotgun as defined by the law.

Until 2015, silencers or “suppressors” were illegal in the state. A suppressor is defined as a device for “silencing, muffling, or diminishing’ the sound made by a firearm.” They may now be possessed if a person fills out ATF paperwork, submits to a background check and pays a tax as required by the National Firearms Act.

## 3. Regulation by individual

State law provides many categories of individuals who may not possess ammunition, a pistol, a semiautomatic military-style assault weapon or other firearms. These categories include persons convicted of violent or other crimes, those judicially determined to be mentally ill and generally persons under the age of 18. These categorical prohibitions of individuals do not generally apply to antique firearms which are carried or possessed as curiosities or for historical significance or value, or to ammunition or primers, projectiles, or propellant powder designed solely for use in an antique firearm.

Under state law, employers, including cities, may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment.” This exception does not apply to parking areas. This exception is further discussed below.

## 4. Crimes under the Personal Protection Act

The following are some of the crimes specific to permitted pistols.

- It is a gross misdemeanor for a person to carry a pistol in a public place without a permit.
- It is a petty misdemeanor for a person authorized to carry a gun to not have the “permit card” in immediate possession. The charge must be dismissed if the person later demonstrates in court or in the office of the arresting officer that the person was authorized to carry the pistol at the time of the alleged violation. A violation of this provision does not result in a forfeiture of the person’s gun.
- It is a petty misdemeanor for a permit holder to fail to notify the issuing sheriff of a change of address or a lost or destroyed card. A violation of this provision does not result in a forfeiture of the person’s gun.

## RELEVANT LINKS:

[Minn. Stat. § 624.7142.](#)

[Minn. Stat. § 624.714, subd. 17.](#)

[Minn. Stat. § 624.714, subd. 18.](#)

[Prohibiting Firearms at Work](#), LMC Model Policy.

- It is illegal to carry even a permitted pistol while under the influence of alcohol or a controlled substance. The processes and procedures are very similar to those for driving while under the influence of alcohol or a controlled substance. Any individual with an alcohol concentration of .04 or more can face criminal charges. An individual's permit to carry may also be revoked. If the individual has an alcohol concentration of .10 or more, the gun may also be subject to forfeiture.
- As noted before, it is a petty misdemeanor for a person carrying a permitted pistol to refuse to follow a private establishment's request to leave if the establishment has posted placards banning guns.

### III. The Personal Protection Act and city personnel

#### A. Restricting possession

##### 1. Employees

The Personal Protection Act specifically allows an employer, public or private, to “establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment.” The law also allows the city to discipline employees for violations of the policy.

This means that cities can establish a policy that prohibits employees from carrying or possessing firearms while:

- Working on city property.
- Working in any location on behalf of the city.
- Driving on city business.
- Riding as a passenger on city business.
- Performing emergency or on-call work after hours on behalf of the city.
- Attending training or conferences on behalf of the city.

The law also states that an employer cannot prohibit the lawful carry or possession of firearms in a parking facility or parking area. For many employees, this means that they will leave any firearms in their cars during the workday if the city has a policy prohibiting possession while at work. This could raise issues of security for city parking facilities.

##### 2. City officials

The MCPA does not specifically address whether the city can restrict elected officials from carrying firearms while conducting city business.

## RELEVANT LINKS:

Therefore, it depends on whether elected officials would be considered “employees” of the city under this particular law. This determination could be different from city to city, depending on a number of factors. For example, some cities have specifically taken actions to designate their elected officials as “employees” in order to offer them certain types of benefits such as workers’ compensation coverage, group health and life insurance and coverage in pension and retirement plans. These cities are more likely to be able to make an argument that the elected officials should be treated as employees under this law.

On the other hand, many state and federal employment laws tend to exempt elected officials from coverage. For example, elected officials are not considered employees for purposes of the Fair Labor Standards Act, which governs minimum wage and overtime. They are also specifically exempt from the state law that defines public employees for purposes of collective bargaining rights.

The best practice is for the city to examine how it has treated elected officials in the past on various types of issues and remain consistent with those practices. For example, if the city has designated elected officials as employees for purposes of workers’ compensation coverage and other benefits, it should probably designate them as employees for purposes of this law as well.

### **3. City volunteers**

The city probably cannot restrict volunteers from carrying firearms when performing duties on behalf of the city based on the MCPPA, but a city is not required to use volunteers who carry handguns.

A true “volunteer” probably cannot be restricted from carrying firearms on the basis of being an employee of the city. However, the city may be able to adopt a policy stating that it will not use volunteers unless they sign an agreement that they will not carry a firearm while acting on behalf of the city.

In defining city volunteers, the city should take a particularly careful look at its volunteer firefighters. Many fire departments in the state compensate their volunteer firefighters in a manner that would probably be seen by the Department of Labor as making them ineligible for volunteer status under wage and hour laws. The city should attempt to be consistent in its definition of volunteer firefighters either as true volunteers or as “paid on call” city employees.

## RELEVANT LINKS:

To determine whether an individual is truly a volunteer for purposes of the Fair Labor Standards Act, see LMC information memo, [Fair Labor Standards Act: Police and Fire Employees](#).

[Minn. Stat. § 624.714, subd. 1b.](#)

[Minn. Stat. § 518B.01.](#)  
[Minn. Stat. § 609.2242 subd. 3.](#)  
[Minn. Stat. § 609.749, subd. 8.](#)

[Minn. Stat. § 13.87, subd. 2.](#)

If the city determines that its volunteer firefighters are actually employees, they can be included in the city's general policy prohibiting employees from carrying firearms while on duty. A similar argument could possibly be made with respect to positions such as ambulance attendants, first responders, police reserves, and emergency response volunteers, all of whom are categorized as employees under Minnesota's workers' compensation laws. If they are true volunteers, the city may be able to require them to sign an agreement that they will not carry a firearm while acting on behalf of the city.

## B. Role of city officials

### 1. Peace officers

The MCPA removed permit issuance responsibility from local police chiefs and placed it with the county sheriffs. However, when an application for a permit is filed with the county sheriff, the sheriff is required to notify the chief of police of the municipality where the applicant resides. The chief of police is then authorized, but not required, to provide "any information relevant to the issuance of the permit." While the law does not impose an obligation to provide information, local law enforcement officials may want to adopt policies that articulate what sources of information they will review in responding to notification of a permit application from a county sheriff.

Upon request by an officer, permit holders are required to display their permit card with identification, provide a sample signature in the officer's presence as well as disclose whether they are currently carrying a firearm.

### 2. Prosecutors

When a person is charged with an offense that would, upon conviction, prohibit the person from possessing a firearm, the prosecuting attorney is required to ascertain whether the person is a permit holder. If the person is a permit holder, the prosecutor is required to notify the issuing sheriff that the person has been charged with a prohibiting offense. The prosecutor must also notify the sheriff of the final disposition of the case. In addition to the felony charges that would trigger this reporting obligation for county attorneys, local prosecutors will also have this obligation for certain offenses such as violations of orders for protection; domestic assault; and harassment and stalking. There could be potential liability to the city and its prosecutor if these responsibilities are not carried out.

### 3. Responsible Authority

All permit-application data collected by state agencies, political subdivisions, or statewide systems are classified as private under the Minnesota Government Data Practices Act.

## RELEVANT LINKS:

[Minn. Stat. § 13.02, subd. 12.](#)  
[Minn. R. 1205.0400, subp. 2.](#)

[Minn. Stat. § 624.714, subd. 15.](#)

[Minn. Stat. § 624.714, subd. 20.](#)

See [Minn. Stat. § 624.714, subd. 20](#) for a complete list of information required in the report.

[Minn. Stat. § 624.714, subd. 19.](#)

As a result, only the applicant and individuals within the state or local governmental entity whose work assignments reasonably require access will be able to access this data.

However, law enforcement agencies will be able to verify whether permits are valid. The commissioner of public safety is required to maintain an automated database of persons authorized to carry pistols under this new law that is available 24 hours a day, seven days a week. This database will only be available to law enforcement agencies, including prosecutors verifying the validity of permits.

Limited permit data will also be available to the public. On an annual basis, the commissioner of public safety must report to the legislature specific data regarding permits issued under the new law. Sheriffs and police chiefs are specifically permitted to release private data to the department of public safety for this purpose. The report will be available to the public at its actual cost of duplication. The report will not contain any personally identifiable data. For example, although the report will contain the number of permits applied for, issued, suspended, revoked, and denied, it will only be categorized by the age, sex, and zip code of the applicant or permit holder.

## IV. Municipal liability exposure

There are a number of ways in which municipal liability exposure may arise due to the MCPPA.

### A. Immunity

The law includes an “immunity” section, but it likely does not protect the city from all possible claims or lawsuits that may be brought as a result of the law. The immunity states that “. . . a police chief, any employee . . . of a police chief involved in the permit issuing process, is not liable for damages resulting or arising from acts with a firearm committed by a permit holder unless the person had actual knowledge at the time the permit was issued or the instruction was given that the applicant was prohibited by law from possessing a firearm.” So there is protection from claims or lawsuits where the permit holder shoots someone and the injured party tries to sue the city for the information that it gave to the county to issue the permit.

This immunity does not apply if it can be shown that the city employee had actual knowledge that the applicant was prohibited by law from possessing a firearm. Therefore, if the police knew that the applicant was dangerous or mentally ill and did not say anything to the sheriff after being notified, there may be potential liability. The immunity also does not specifically apply to cities. Cities would have to argue that they are immune through vicarious immunity because of the actions of their employees.

## RELEVANT LINKS:

[Minn. Stat. § 624.714, subd. 4\(b\).](#)

Finally, the immunity does not apply to lawsuits not involving acts with a firearm such as a defamation lawsuit as discussed below.

### **B. Defamation**

Under the law, after notification by the sheriff of a person's application for a permit, the local police chief may provide relevant information on the issuance of the permit.

There is a potential for defamation claims by the applicant. Defamation is where you tell someone something in writing (libel) or orally (slander) that is proved to be false and resulted in damages to the person's reputation or in obtaining some benefit (such as a gun permit). In this situation, damages could also be argued to include physical injury if the person can show that if they had had a gun, they would not have been injured.

### **C. Injuries to third parties**

If a person or a city employee carrying a gun with a permit uses the gun to hurt someone on city premises, the city could be liable for those injuries. Under common law, the city could be liable if the city knew that the person or the employee was dangerous for other reasons. Carrying a gun legally with a permit would not give the city sufficient reason to act on the person's ability to be on the city premises. There must have been some other action indicating danger, such as a threat or a fight.

If the city had such knowledge, it had a duty to protect other users by kicking the dangerous person out of the building or premises at that time or for a period of time. If the city didn't do this, there could be potential liability for negligent supervision of the premises. There also is the argument that the dangerous action was foreseeable because of the past acts of the person. LMC recommends that you have a procedure in place for expelling people or employees who may be a danger to other users of the city premises. The procedure should afford some level of due process.

### **D. Training**

If the city provides training through a certified instructor to people who apply for permits and later use the firearm, is there liability for the city? The certified instructor individually would be immune from these types of claims and the city could argue vicarious immunity if the instructor was working in the course of his or her city employment. As stated before, the immunity doesn't apply if the instructor had actual knowledge that the person was not eligible for a permit at time of application.



## RELEVANT LINKS:

[Minn. Stat. § 624.7143.](#)

[ATF Firearms.](#)

[BCA Firearms.](#)

[Minnesota Legislative  
Reference Library.](#)

[Minneapolis sample.](#)  
[MNSCU sample.](#)

## E. Chemical testing

Under state law there is a specific procedure established for chemical testing to determine if a person is carrying a firearm while under the influence of alcohol or drugs. Is there liability if city police do not follow this procedure? Potentially, if it resulted in wrongful revocation of a permit or wrongful conviction.

## V. Further information

For more information, see the following resources.

- Federal Bureau of Alcohol, Tobacco, Firearms and Explosives
- Minnesota Bureau of Criminal Apprehension
- *Resources on Minnesota Issues: Firearm Carry Laws* from the Minnesota Legislative Reference Library.
- Sample employment policies from Minneapolis and MNSCU