

RED ALERT

FOR IMMEDIATE ATTENTION



Members,

Please see the statement below from FPCA General Counsel David Marsey.

On September 15, 2025, I provided a summary of the wide ranging effects of the *McDaniels* opinion finding Florida's open carry statute unconstitutional. We continue to analyze these effects and experience or question different factual scenarios and how this decision impacts how we move forward. I am writing to provide an update with some clarification of a nuance that impacts how law enforcement enforces Section 790.06(12), Florida Statutes' prohibited places restrictions and how law enforcement handles their own board, council, and commission meetings.

I previously advised, and the intervening Attorney General Guidance Memorandum confirmed, that the decision finding Florida's open carry ban was unconstitutional did not adversely impact the constitutionality nor enforceability of Section 790.06(12), Florida Statutes, "prohibited place" exceptions. This remains the case. However, a more detailed analysis of that subsection has revealed a gap that appears to preclude the enforcement of a ban on open carry of long guns in prohibited places. More specifically, before Section 790.053, Florida Statutes was held unconstitutional, it and Section 790.06(12), Florida Statutes, prohibited places were read in conjunction with one another. With the open carry ban no longer effective, the prohibited places statute is read alone. The statute provides "[a] license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or concealed firearm into [a prohibited place]." § 790.06(12)(a), Fla. Stat. Because the clear and unambiguous language, this statute clearly bans the open carrying of a handgun in the enumerated prohibited places, there is no question in that regard. However, when it comes to "firearms," which necessarily includes long guns, this statute only bans their *concealed carry* into prohibited places. Therefore, with the abrogation of 790.053's open carry ban, the prohibited places statute does not expressly prohibit the open carrying of long guns in prohibited places.

This raises two important issues for Florida's law enforcement. First, the lack of an express prohibition on the open carrying of long guns in prohibited places creates a significant impediment to enforcement. Stated another way, should an officer or

agency arrest someone for open carrying a long gun in a prohibited place, they may be exposed to civil liability. This concern, of course, would not apply where the carrying of long guns is prohibited by federal law. *See* § 790.06(12)(a)(15), Fla. Stat. Second, it creates significant challenges to enforcing a ban on the open carrying of long guns at board, council, or commission meetings, which are a designated prohibited place. *See* § 790.06(12)(a)(7), Fla. Stat. It is equally clear that Florida's Legislature has expressed its intent to preempt any local rule or ordinance in the field of firearms regulation, which includes penalties for local officials that violate legislative preemption. § 790.33, Fla. Stat. The inescapable conundrum is whether local officials can exclude those who open carry long guns from their meetings and whether officers may enforce their edicts, and, if they do, are the local officials subject to sanctions under Florida's preemption statute? This question cannot be answered with certainty at this time.

I have raised this scenario with the Attorney General's Office and will continue to provide additional information as it becomes known. Because this is a new and evolving area of law and the decision to exclude open carry of long guns in board, council, and commission meetings may result in sanctions or civil liability, it is imperative that local counsel is consulted prior to taking any enforcement action and that all related operational decisions are cleared by agency or local counsel prior to implementation.

David Marsey, FPCA General Counsel

Thank you,

Cookie

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