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*Client-Driven. Community-Focused.*

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To: Milwaukee County Board of Supervisors  
Interested Stakeholders

CC: Milwaukee County Clerk George Christensen (c/o Janelle Jensen)

From: Margaret C. Daun, Corporation Counsel  
Judd Taback, Assistant Corporation Counsel

Date: December 11, 2020

Re: File No. 20-196 (Firearms Show)

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At the County Board’s November 5, 2020, meeting, several questions were referred to the Office of Corporation Counsel (OCC) regarding File No. 20-196 (“A resolution amending Chapter 63 of the Milwaukee County Code of General ordinances related to carrying firearms or other dangerous weapons in County buildings to permit facility rentals for gun shows.”). Below are those responses.

**1. Overview of State and Federal Gun Laws**

For an overview of Federal Gun Laws see <https://crsreports.congress.gov/product/pdf/R/R45629>

For an overview of Wisconsin Gun Laws see <http://wilawlibrary.gov/topics/firearms.php>

**2. Imposing Requirements on Vendors**

Information was requested regarding the County’s ability to restrict gun sales to sellers that are federally licensed, to require background checks, to prohibit private sales, and to require waiting periods. Prior to addressing these specific restrictions, it must be understood that state law restricts municipalities from imposing stricter gun laws than those enacted by the state. Wisconsin Statute section 66.0409(2) provides:

[e]xcept as provided in subs. (3) and (4), no political subdivision may enact or enforce an ordinance or adopt a resolution that

regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any knife or any firearm or part of a firearm, including ammunition and reloader components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

Under sub. (2), the legislature prohibited localities from any enacting any law regarding the possession, bearing, or transportation of any firearm unless the legislation is the same as or similar to, and no more stringent than, a state statute.<sup>1</sup> Therefore, Milwaukee County cannot enact any ordinance or adopt any resolution that would provide the sort of restrictions discussed in greater detail below.

The County could add the requested restrictions in a contract or permit. It is unclear whether a court would view government contracting or permitting as “legislative activity.” Notably, the Wisconsin Supreme Court defined “legislative activity” very broadly.<sup>2</sup>

Since state law preempts local laws, below is an explanation of state laws restricting gun sales to sellers that are federally licensed, requiring background checks, prohibiting private sales, and requiring waiting periods. As noted above, the County is prohibited from enacting any additional restrictions or limitations.

**a. May the County enact legislation or adopt a resolution that restricts dealers at the contemplated gun show to only federally licensed firearm dealers?**

No. Wisconsin has no law requiring all firearms dealers to obtain a state or federal license or permit.

However, before a firearms dealer may offer a handgun for sale, the dealer must register each handgun store he or she owns or operates with the Wisconsin Department of Justice (DOJ)<sup>3</sup>. DOJ provides the dealer with a unique dealer identification number for each store.

Under the federal Gun Control Act of 1968, persons “engaged in the business” of dealing in firearms must be licensed<sup>4</sup>. Although Congress did not originally define the term “engaged in the business,” it did so in 1986 as part of the McClure-Volkmer Act (also known as the Firearms Owners’ Protection Act). That act

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<sup>1</sup> See *Wisconsin Carry, Inc. v. City of Madison*, 373 Wis. 2d 543, 564 (2017).

<sup>2</sup> The scope of legislative activity covered by “ordinances” and “resolutions” extends to formal and informal enactments that address matters both general and specific in a manner meant to be either temporary or permanent and that can be characterized as administrative or otherwise, regardless of how they may be denominated. *Id.* at 562.

<sup>3</sup> Wis. Admin. Code Jus § 10.04(1)

<sup>4</sup> 18 U.S.C. § 921(a)(21)(C)

defined the term “engaged in the business,” as applied to a firearms dealer, as “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.” Therefore, only vendors that fall within this definition are required to be federally licensed. Vendors that are private sellers are not required to be licensed. The contemplated gun show intends to have around ten to fifteen percent licensed dealers and eighty-five to ninety percent private sellers.

**b. May the County enact legislation or adopt a resolution that requires all firearm dealers to perform background checks?**

No. Federal law requires federally licensed firearms dealers (but not private sellers) to initiate a background check on the purchaser prior to sale of a firearm. Wisconsin has no law requiring a background check on the purchaser of a firearm when the seller is not a licensed dealer. This is common in many states and is referred to as the “gun show loophole.”

**c. May the County enact legislation or adopt a resolution that closes the “gun show loophole” by prohibiting private firearm sales?**

No. Neither federal law nor Wisconsin state law prohibits the sale of the private sale of guns at gun shows.

**d. May the County enact legislation or adopt a resolution that impose waiting periods before purchasers can take possession of a firearm purchased at the contemplated firearms show?**

No. Wisconsin state law does not require a waiting period for guns sold by private sellers. State law does require licensed gun dealers when selling a handgun to request a records search from the DOJ and receive a confirmation number confirming the request.<sup>5</sup> This law provides that if the DOJ search indicates that it is unclear whether the potential purchaser is prohibited from purchasing a firearm, DOJ must notify the dealer of the results no later than 5 working days after the search was requested.

**3. Enforcing and Auditing Milwaukee County Requirements**

All contracts, whether explicitly stated or not, require counterparty compliance with County ordinances, resolutions, as well as all applicable state and federal laws and regulations. Additionally, by contract, the County could require the show sponsor to agree that they will ensure that all firearm dealers expressly acknowledge and affirm local, state, and federal compliance. The contracts and permits could further state that any violation,

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<sup>5</sup> Wis. Stat. § 175.35

regardless of materiality, may be remedied, at the County's option, by shutting down a firearm vendor or the show in its entirety, without notice to the show operator or vendor, and without providing an opportunity to cure by either the operator or vendor.

#### **4. Potential Liability for Milwaukee County**

There is a low, but nonzero, risk of liability for Milwaukee County related to a firearms show on County property. For Milwaukee County to be liable, there would need to be negligence on the part of the County in its oversight of the show and/or enforcement of its contract requirements. In addition, if the County provided security of some kind during the show and an incident occurred, the County could face liability as is customary when the Milwaukee County Sheriff's deputies are involved in interactions with the public. Of note, no incidents have been reported at any prior gun show on County property.

Also, the County could attempt to shift most, if not all, risks to the show sponsor by contract (or permit).

In Wisconsin, firearm sellers and manufacturers can be held liable for the sale of firearms in a defective condition as unreasonably dangerous to the user or consumer.<sup>6</sup> However, it is virtually certain that the County could not be held liable for the sale of a defective firearm simply because the sale occurred on County property.

Nevertheless, while liability remains low, the County could be named in a lawsuit and would need to defend itself against such suit.

#### **5. Direct and Indirect Costs for Milwaukee County**

Most direct costs incurred for use of the venue could likely be covered by the rental cost. In the past, firearm show operators have provided their own personnel for security and the County did not provide additional security personnel.

However, if the County determined that due to changed circumstances this year, Milwaukee County Sheriff's deputies were required to monitor the event, their cost would be at the special event rates determined by the Sheriff's Office. As reported by the Comptroller's Office, the hourly rate for each Deputy is \$64.46 and \$70.93 for a Sergeant.

Historically, the Parks Department began hosting trades shows and other special events at the Sports Complex over a decade ago when there was no competition from indoor athletics to use the facility. More recently, (pre-COVID) the demand for indoor sports venues (particularly soccer) has led the Parks Department to nearly exclusively rent the facility for athletics because doing so generates as much or more revenue than renting it for special events or trades shows.

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<sup>6</sup> See *Hibbard v. Nelson Hardware, Inc.*, 160 Wis. 2d 689, 698, 708 (1991).

## 6. Potential Economic Costs and Community Impact

Many argue that firearm shows promote the unregulated sale of deadly weapons due to the “gun show loophole” and to otherwise circumvent gun safety laws, as well as background check requirements. As stated above, the contemplated gun show intends to have around eighty-five to ninety percent private sellers. There is no vetting of these private sellers. There will also be vendors for other weapons, such as knives, and vendors for complimentary gear, like hunting and camping equipment. These are indisputable risk factors that attend to any private firearms and weapon sales, which have been shown to increase the potential for firearms and weapons to be used in criminal activity or obtained by those with criminal intent or suicidal ideations

These public health and wellness risks are exacerbated because state law prohibits localities from enacting and enforcing stricter regulations on firearm sales.

Thus, an argument can be made that firearm shows, regardless of the venue, increase the availability of and ease access to firearms in the community, which some argue have negative effects on the community.

Furthermore, if County property is used to host a firearms show, an argument could be made that the County is endorsing or somehow supporting firearms shows, and is turning a blind eye to what many see as a dire risk to community health and safety, for the sake of de minimis profits. This is further evidenced by the Parks Department’s opposition to this resolution.

As alluded to above, one documented and significant public health and wellness risk is that individuals with suicidal ideations in Milwaukee County will have easier access to firearms if a show proceeds locally, particularly one hosted on County property. More than 71% of gun deaths in Wisconsin are suicides, and nearly 50% of all suicide deaths in Wisconsin involve firearms.<sup>7</sup> As all are aware, the current COVID-19 pandemic has had significant and deadly mental health impacts. U.S. adults reported considerably elevated adverse mental health conditions associated with COVID-19. Younger adults, racial/ethnic minorities, essential workers, and unpaid adult caregivers reported having experienced disproportionately worse mental health outcomes, increased substance use, and elevated suicidal ideation.<sup>8</sup> Increasing the availability of firearms during a time of rising mental health concerns in the community can be argued by some to lead to dangerous consequences.

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<sup>7</sup> <https://giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-State-of-Gun-Violence-in-Wisconsin-2020.pdf>

<sup>8</sup> <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>

In addition, the pandemic has also reduced access to help for individuals experiencing intimate partner violence.<sup>9</sup> Firearms increase the likelihood that domestic violence incidents will end in death.<sup>10</sup> Nearly 50% of Wisconsin's intimate partner homicides involve a gun. Increasing availability and easing access to firearms is argued by some to increase the lethality risks faced by individuals experiencing intimate partner violence.

While the negative impacts can be found throughout the community, gun violence has a disproportionate impact on urban communities of color. Black men make up less than 4% of Wisconsin's population, but account for nearly 60% of the state's firearm homicide victims. In Wisconsin, black men ages 18–24 are more than 50 times more likely than white men the same age to be murdered with a firearms.<sup>11</sup> Allowing firearms shows, which increase the availability and ease of access to firearms, is argued by some to only magnify the disproportionate impact of gun violence on communities of color.

Therefore, serious questions can be raised regarding whether allowing a firearms show on County property aligns with the County's mission to become the healthiest County in Wisconsin by achieving racial equity. To the best of OCC's knowledge, this concern was raised by the administration during committee testimony on this item.

## 7. COVID-19 Safety Standards

As with most events held on County property, the event organizers would be required to comply with the Administrative Orders requiring COVID-19 safety precautions. Notably, event organizers would need to submit a reopening plan explaining how the event would comply with County requirements, including but not limited to capacity limits, physical distancing, disinfecting procedures, and ventilation.<sup>12</sup> Currently, the capacity of outdoor events is limited to the lesser of: (1) 25% (pre-COVID) capacity; (2) 1 person per 30 square feet of usable space; or (3) 25 people in the enclosed area at a time in addition to any employees or contractors required to operate. This capacity limit may prohibit gun shows from being a feasible for the operators. Additionally, all vendors, customers, and staff would be required to comply with the County Face Mask Policy<sup>13</sup> and Health Screening Policies and Procedures.<sup>14</sup>

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<sup>9</sup> <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>

<sup>10</sup> <https://giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-State-of-Gun-Violence-in-Wisconsin-2020.pdf>

<sup>11</sup> <https://giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-State-of-Gun-Violence-in-Wisconsin-2020.pdf>

<sup>12</sup> Service Risk and Re-Opening Requirements Administrative Order 20-13v5

<sup>13</sup> Universal Face Mask Policy and Procedure Administrative Order 20-14v3

<sup>14</sup> COVID-19 Health Screening Policies and Procedures Administrative Order 20-17v2

The County, along with the local health department, would have enforcement responsibilities, which based on recent events including the 2020 Milwaukee election recount, would potentially require significant MCSO staffing.

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