

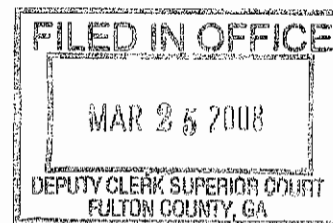
**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC., )  
TAI TOSON, )  
EDAWARD WARREN, )  
JEFFREY HUONG, )  
JOHN LYNCH, )  
MICHAEL NYDEN, and )  
JAMES CHRENCIK, )  
Plaintiffs, )

v. )

FULTON COUNTY, GEORGIA, )  
CITY OF ATLANTA, GEORGIA, )  
CITY OF EAST POINT, GEORGIA, )  
CITY OF MILTON, GEORGIA, )  
CITY OF ROSWELL, GEORGIA, )  
CITY OF SANDY SPRINGS, GEORGIA, )  
and CITY OF UNION CITY, GEORGIA, )  
Defendants. )

Civil Action No. 2007cv138552



**CITY OF ATLANTA'S RESPONSE TO PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT**

**I.**

**INTRODUCTION**

Plaintiffs' bring this action against the City of Atlanta alleging that Atlanta City Ordinance § 110-66 is completely preempted by State law -- O.C.G.A. § 16-11-173(b)(1). Defendant City of Atlanta contends that Plaintiff's interpretation of O.C.G.A. § 16-11-173(b)(1) is strained and narrowly construes the statutes meaning. Atlanta contends that O.C.G.A. § 16-11-173(b)(1) should be read in conjunction with O.C.G.A. § 16-11-173(e) and O.C.G.A. § 12-3-10(o) to fully understand the scope and intent of the Georgia Legislature.

## II.

### LAW AND CITATION OF AUTHORITY

#### **A. Atlanta City Ordinance § 110-66 is Not Preempted by State Law.**

O.C.G.A. § 16-11-173(e) states, “Nothing contained in this Code section shall prohibit municipalities or counties, by ordinance, resolution, or by other enactment, from **reasonably limiting** or prohibiting the discharge of firearms within the boundaries of the municipal corporation or county.”

The Legislature clearly did not intend to completely preempt the field of gun regulation. Georgia law does not prohibit local governments from enacting their own gun regulations within *reasonable limits*. Since 1870, Georgia has had a law in place prohibiting the possession of guns at public gatherings, and the local ordinances are consistent with that provision. At present, individuals are prohibited from carrying “any explosive compound, firearm, or knife designed for the purpose of offense and defense” to public gatherings. O.C.G.A. § 16-11-127(a). The legislature defined “public gatherings” to include “but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises.” O.C.G.A. § 16-11-127(b).

Implicit in the legislature’s definition of public gathering is the need for a public space in which to conduct such gatherings. Local parks frequently provide venues for a wide range of spiritual, political, cultural, and athletic events. Plaintiffs’ preemption argument ignores the legislature’s unambiguous intent to provide municipalities with the

power to enact reasonable laws to prohibit the discharge of firearms. City Ordinance § 110-66 is simply a reasonable restriction to protect individuals gathering in a public space from the dangers, accidental or intentional, of firearms. Therefore, it is well established by legal precedent and public policy that many municipalities and counties *reasonably* regulate the possession and discharge of firearms at public buildings and gatherings, events, etc.

**B. Atlanta City Ordinance § 110-66 is a Reasonable Limitation on the Use of Firearms in Public Parks.**

Just as O.C.G.A. § 16-11-127 proscribes the use of firearms at a public gathering, O.C.G.A. § 12-3-10 regulates firearms in public (state) parks: “It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any firearms, bows and arrows, spring guns, air rifles, slingshots, or any other device which discharges projectiles by any means. . .” O.C.G.A. § 12-3-10(o).

Clearly, the Legislature regards guns and parks as incompatible since it outlaws firearms in state parks and historic sites. So does the City of Atlanta: “No person in any park, except a police officer or other peace officer, shall possess a firearm of any size or description or any instrument, appliance or substance designed, made or adapted for use primarily as a weapon.” Atlanta City Ordinance § 110-66. Furthermore, Plaintiffs’ legal position would lead to an absurd result. Plaintiffs’ argument would prohibit individuals from carrying firearms in state parks while arbitrarily allowing individuals to carry firearms in county and municipal parks. Plaintiffs have provided no evidence in the legislative history to support the proposition that the legislature intended to regulate the

carrying of firearms only in state parks while leaving local law enforcement powerless to construct parallel legislation for county and municipal parks.

Atlanta City Ordinance § 110-66 is merely the flip side of O.C.G.A. § 12-3-10(o) – different sides of the same coin. Like the state statute, Atlanta City Ordinance § 110-66 is limited to public parks, places where the public gathers, where after-school classes are taught, where children play, where families picnic on Sundays. The ordinance is not unreasonable. Atlanta City Ordinance § 110-66 is consistent with O.C.G.A. § 12-3-10(o), especially when read in conjunction with O.C.G.A. § 16-11-173(e). Not only is the City's ordinance consistent with state law, it mirrors the purpose and intent of the Legislature.<sup>1</sup> Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 20 (2005); Grovenstein v. Effingham County, 262 Ga. 45, 47 (1992) (citing City of Atlanta v. Associated Builders and Contractors of Georgia, 240 Ga. 655, 657 (1978)).

### III.

#### CONCLUSION

The City of Atlanta does not seek to infringe upon Plaintiff's individual right to bear arms as set forth in the Second Amendment of the U.S. Constitution. Nor does the City of Atlanta seek to infringe upon the exclusive province of the Georgia Legislature in the regulation of gun rights. Under current Supreme Court doctrine, even the First Amendment rights of speech and assembly are subject to reasonable time, place, and manner regulations. So too, are gun rights as currently defined by the State legislature. The standard for judging a regulation under the Second Amendment or the Georgia

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<sup>1</sup> Defendant City of Atlanta understands Plaintiff's confusion on the proper interpretation of the City's Ordinance especially when read in conjunction with O.C.G.A. § 16-11-173(e) and § 12-3-10(o). Apparently, the Georgia State Legislature has recognized the confusion and is attempting to resolve the issue. See attached as Exhibit 1, HB 1122 *proposed*.

Constitution is whether it is reasonable.<sup>2</sup> Under that standard, prophylactic measures reasonably directed to saving lives or reducing serious crime should be upheld. See, e.g., Lewis v. United States, 445 U.S. 55, 67 (1980). Current state law allows municipalities to enact *reasonable limitations* on the use of firearms. The Atlanta Ordinance mirrors the State statute regulating possession and use of guns in public parks. The Atlanta Ordinance is a reasonable limitation on the possession and use of guns in places where the public gathers.

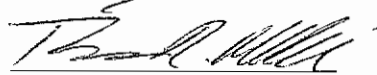
The City of Atlanta respectfully submits: Plaintiff's Motion for Summary Judgment should be DENIED.

Respectfully submitted this 25<sup>th</sup> day of March, 2008.

Elizabeth Chandler  
City Attorney  
City of Atlanta



Dennis M. Young  
Sr. Asst. City Attorney  
Georgia Bar No. 781744



Thomas R. Mondelli  
Associate City Attorney  
Georgia Bar No. 141543  
Attorneys for City of Atlanta

City of Atlanta Department of Law  
68 Mitchell Street, S.W., Suite 4100  
Atlanta, Georgia 30303  
(404) 330-6400  
(404) 658-6894 (facsimile)

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<sup>2</sup> Of course, all other constitutional limits that apply to governmental regulation – such as the Privileges and Immunities Clause, the Equal Protection Clause, substantive due process, and the “void-for-vagueness doctrine – would also continue to apply.

**EXHIBIT "A"**

House Bill 1122

By: Representatives Gardner of the 57<sup>th</sup>, Abrams of the 84<sup>th</sup>, Ashe of the 56<sup>th</sup>, Murphy of the 120<sup>th</sup>, Kaiser of the 59<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 16-11-173 of the Official Code of Georgia Annotated, relating to  
2 legislative findings and preemption of local regulation and lawsuits, so as provide for local  
3 authority with respect to parks or recreation areas owned by a municipality or county; to  
4 provide for related matters; to provide for an effective date; to repeal conflicting laws; and  
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 SECTION 1.

8 Code Section 16-11-173 of the Official Code of Georgia Annotated, relating to legislative  
9 findings and preemption of local regulation and lawsuits, is amended by adding a new  
10 subsection to read as follows:

11 "(f) Nothing contained in this Code section shall prohibit municipalities or counties, by  
12 ordinance, resolution, or other enactment, from regulating or prohibiting the possession,  
13 transport, or carrying of firearms in any park or recreation area owned by a municipality  
14 or county."

15 SECTION 2.

16 This Act shall become effective upon its approval by the Governor or upon its becoming law  
17 without such approval.

18 SECTION 3.

19 All laws and parts of laws in conflict with this Act are repealed.

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CITY OF ROSWELL, GEORGIA,	)	
CITY OF SANDY SPRINGS, GEORGIA,	)	
and CITY OF UNION CITY, GEORGIA,	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on March 25, 2008, I served a true and correct copy of the foregoing **THE CITY OF ATLANTA'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** by depositing the same with the United States Postal Service, adequate postage affixed thereto and addressed to the following:

John R. Monroe, Esq.  
9640 Coleman Road  
Roswell, Georgia 30075  
Attorney for Plaintiffs

Judge Nina Hickson  
City of East Point  
2777 East Point Street  
East Point, Georgia 30344

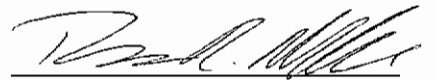
David Brent Davidson, Esq.  
City Attorney, City of Roswell  
38 Hill Street, Suite 110  
Roswell, Georgia 30075



Steven Eric Rosenberg, Esq.  
Matthew C. Welch, Esq.  
Fulton County Attorney's Office  
141 Pryor Street, SW, Suite 4038  
Atlanta, Georgia 30303

Dennis A. Davenport  
McNally, Fox & Grant, P.C.  
100 Habersham Drive  
Fayetteville, Georgia 30214

Wendell K. Willard, Esq.  
Two Ravinia Drive, Suite 1630  
Atlanta, Georgia 30346



THOMAS R. MONDELLI  
Associate City Attorney  
Georgia Bar No. 141543

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