



**March 27, 2020**

**VIA E-MAIL**

Mayor Barron Casteel  
550 Landa Street  
New Braunfels, TX 78130

RE: Stay Home-Work Safe Order

Dear Mayor Casteel,

I write to you on behalf of Firearms Policy Coalition (“FPC”) and its members, who include a gun store and individuals in the community who are concerned about the City’s “Stay-Home, Work Safe Order” which you issued on March 24, 2020.

The Order requires “non-essential” businesses to cease operations until the Local State of Disaster is terminated or rescinded, superseded, or amended by a subsequent Order or action taken by City Council. Notably, the Order fails to provide a carve out for firearms retailers. Such a failure to include firearms retailers burdens the ability of citizens to exercise their Second Amendment rights by stifling their ability to acquire arms and ammunition.

Furthermore, earlier today, the Texas Attorney General issued Opinion No. KP-0296, which opined that:

Subsections 229.001(a) and 236.002(a) of the Local Government Code prohibit a municipality or county from adopting regulations related to the transfer, possession, or ownership of firearms, or commerce in firearms. These provisions apply to municipal and county regulation “notwithstanding any other law.” Thus, while municipal and county officials possess general emergency authority to control the movement of persons and the occupancy of premises in a local disaster area under Government Code section 418.108, such orders may not regulate or restrict the sale of firearms.

Moreover, the Supreme Court of the United States stated the right to keep and bear arms “guarantee[s] the individual right to possess and carry” firearms and “elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *D.C. v. Heller*, 554 U.S. 570, 635 (2008). The Court continued to define the term “bear arms” to mean “wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready

for offensive or defensive action in a case of conflict with another person.” 554 U.S. at 584.

To be sure, the Supreme Court confirmed that the rights protected by the Second Amendment are “among those fundamental rights necessary to our system of ordered liberty,” and incorporated to the states by the Due Process Clause of the Fourteenth Amendment.

Despite the current State of Emergency and global pandemic, the Constitution of the United States makes no exceptions to the Bill of Rights simply because day to day life is no longer in a state of normalcy. Depriving residents of New Braunfels the ability to purchase firearms and ammunition, directly impedes their ability to protect themselves and their families, as guaranteed by their Second Amendment right. The right to self-defense, along with the constitutionally protected right to keep and bear arms, does not wane at the first hint crisis or social instability. To suspend the rights of the people at the very time those rights become relevant is to render those rights mere theater.

With the Covid-19 situation rapidly evolving, and many of the nations’ police departments already limiting their community exposure and the crimes for which they will even respond, it is entirely conceivable that this virus may wreak havoc on the New Braunfels Police’s ability to serve and protect their community, leaving the individual to defend their hearth and home.

Within the past week, FPC has filed lawsuits against the Governor of Pennsylvania, Governor of New Jersey, and the Sheriff of Los Angeles for similar acts. Should you fail to amend your Order, FPC is prepared to bring legal action against you and those acting in concert with you to enforce such a policy. For your convenience I’ve attached a copy of the Attorney General’s Opinion. It is my hope that you will amend your order in a timely manner to avoid unnecessary litigation.

Thanking you for your time and consideration, I am

Yours truly,

Adam Kraut  
*Director of Legal Strategy*  
Firearms Policy Coalition  
akraut@fpclaw.org



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 27, 2020

The Honorable Dustin Burrows  
Chair, House Ways and Means Committee  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

**Opinion No. KP-0296**

Re: Whether sections 229.001 and 236.002 of the Local Government Code prohibit municipal or county officials from restricting the sale of firearms through an emergency declaration (RQ-0341-KP)

Dear Representative Burrows:

You ask whether city or county officials may prohibit the sale of firearms through an emergency declaration that excludes firearms retailers as essential businesses.<sup>1</sup>

Multiple provisions within the Government Code recognize governmental entities in Texas may require additional authority during times of disaster to address emergency situations. *See* TEX. GOV'T CODE §§ 418.001–.261. Relevant here, the Legislature authorized the presiding officer of a governing body of a municipality or county to declare a local state of disaster. *Id.* § 418.108(a); *see id.* § 418.004(6).<sup>2</sup> Once a local state of disaster has been declared, the “county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.” *Id.* § 418.108(g). Pursuant to that authority, some counties and municipalities in Texas, in recent days, declared local disasters due to the spread of the disease COVID-19 and issued orders requiring all non-essential businesses to limit or cease operations.<sup>3</sup> You indicate that some of these orders exclude firearms retailers as essential

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<sup>1</sup>*See* Letter from Honorable Dustin Burrows, Chair, House Comm. on Ways & Means, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Mar. 24, 2020), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

<sup>2</sup>Your question is limited to municipal or county authority to restrict the sale of firearms. Request Letter at 1. You do not ask about, and we do not address, any emergency authority the Governor has to limit or suspend the sale of firearms during a disaster declaration. *See* TEX. GOV'T CODE § 418.019 (“The governor may suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.”).

<sup>3</sup>*See, e.g.*, Order of the Mayor of the City of Austin Steve Adler (Mar. 24, 2020), *available at* <http://www.mayoradler.com/wp-content/uploads/2020/03/Order-20200324-007-Stay-Home-Work-Safe.pdf>.

businesses, thereby prohibiting or restricting those retailers from operating their businesses. *See* Request Letter at 1.

While the Legislature granted local officials certain emergency powers to address disaster situations, that local authority is not without limitation. Relevant to your question, provisions in the Local Government Code prohibit municipalities and counties from regulating, among other things, the transfer, possession, ownership, or sale of firearms, “notwithstanding any other law.” *See* TEX. LOC. GOV’T CODE §§ 229.001(a), 236.002(a). Section 229.001 of the Local Government Code prohibits certain municipal regulation:

*Notwithstanding any other law, . . . a municipality may not adopt regulations relating to:*

- (1) the transfer, possession, wearing, carrying, ownership, storage, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories;
- (2) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or
- (3) the discharge of a firearm or air gun at a sport shooting range.

TEX. LOC. GOV’T CODE § 229.001(a) (emphasis added). Using almost identical language, section 236.002 of the Local Government Code prohibits counties from adopting regulations related to the same matters. *Id.* § 236.002(a). Texas courts recognize that the phrase “relating to” is a “very broad term.” *RSR Corp. v. Siegmund*, 309 S.W.3d 686, 701 (Tex. App.—Dallas 2010, no pet.); *see also Kirby Highland Lakes Surgery Ctr., L.L.P. v. Kirby*, 183 S.W.3d 891, 898 (Tex. App. — Austin 2006, no pet.) (explaining that courts have construed the phrase “related to” within the arbitration context to be “extremely broad” and “capable of expansive reach” (citations and quotation marks omitted)). In addition, when the Legislature uses the phrase “notwithstanding any other law,” courts construe that language as “an express, unambiguous conflicts-of-law provision.” *Molinet v. Kimbrell*, 356 S.W.3d 407, 414 (Tex. 2011). Thus, although section 418.108 of the Government Code may generally allow municipal and county officials to “control the movement of persons and the occupancy of premises” in a local disaster area, notwithstanding that general authority, emergency orders from local officials may not relate to the transfer, possession, ownership or sale of firearms.<sup>4</sup>

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<sup>4</sup>Some local disaster declarations and related orders restrict the operation of business to delivery or curbside service for certain retail operations. However, federal regulations governing the purchase of firearms generally require in-person transactions with licensed dealers. *See, e.g.*, 27 C.F.R. § 478.124(a) (requiring a licensed dealer to record all firearms transactions on a firearms transaction record, Form 4473); *see also* Bureau of Alcohol, Tobacco, Firearms & Explosives, Form 4473, *available at* <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download> (requiring form preparation “in original only at the licensed premises” of the dealer). Thus, limiting retail sales of firearms to delivery or curbside service will effectively prohibit firearms sales from licensed dealers.

In addition to prohibiting county or municipal regulation in these areas, the Legislature articulated the effect of a municipal or county regulation related to the transfer, possession, ownership or sale of firearms. Any attempt to adopt or enforce an “ordinance, resolution, rule, or policy . . . , or an official action, including in any legislative, police power, or proprietary capacity” taken in violation of subsection 229.001(a) or 236.002(a) “is void.” TEX. LOC. GOV’T CODE §§ 229.001(a-1), 236.002(b).<sup>5</sup> The statutes’ unambiguous words disclose the Legislature’s intent: if a municipality or county adopts a regulation related to the transfer, possession, ownership or sale of firearms, that regulation will be void to the extent of a conflict with section 229.001(a) or section 236.002(a). See *Tex. Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628, 639 (Tex. 2010). Thus, municipal and county officials may not use their emergency powers under section 418.108 of the Government Code to regulate or restrict the sale of firearms.

Section 229.001 of the Local Government Code recognizes municipal authority under other law to “regulate the *use* of firearms, . . . in the case of an insurrection, riot, or natural disaster if the municipality finds the regulations necessary to protect public health and safety.” TEX. LOC. GOV’T CODE § 229.001(b)(4) (emphasis added). Thus, municipal governments possess limited authority to regulate firearms during a disaster. *Id.* § 229.001(a). However, the action of using a firearm is distinct from the transfer, ownership, or sale of the firearm, each of which can be accomplished without actual use. Thus, municipal authority to regulate the use of firearms during a disaster does not grant authority to also regulate the transfer, possession, ownership or sale of firearms.

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<sup>5</sup>The Legislature authorized the Attorney General to “bring an action in the name of the state to obtain a temporary or permanent injunction” against a municipality or county adopting a regulation in violation of these provisions. TEX. LOC. GOV’T CODE §§ 229.001(f), 236.002(f).

**S U M M A R Y**

Subsections 229.001(a) and 236.002(a) of the Local Government Code prohibit a municipality or county from adopting regulations related to the transfer, possession, or ownership of firearms, or commerce in firearms. These provisions apply to municipal and county regulation “notwithstanding any other law.” Thus, while municipal and county officials possess general emergency authority to control the movement of persons and the occupancy of premises in a local disaster area under Government Code section 418.108, such orders may not regulate or restrict the sale of firearms.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

RYAN L. BANGERT  
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER  
Chair, Opinion Committee