

Ord. 23-5828

COUNCIL ACTION

Item 1. R.

Approved B-B

Choriki, Tidswell & MAY 22 2023 Purinton

Opposed

db CITY CLERK

City Council Regular

Date: 05/22/2023
Title: Third/Final Reading - Ordinance amending BMCC section 18-204
Presented by: Gina Dahl
Department: Legal
Presentation: No
Legal Review: Not Applicable

RECOMMENDATION

Staff recommends Council approve third and final reading of the ordinance amending section 18-204 of Billings Montana City Code prohibiting weapons and firearms in city buildings.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Montana is an "open carry" state and there are no state laws restricting or regulating open carry. Anyone may openly carry anywhere except within school buildings as prohibited by local school districts (MCA 45-8-361) and within a publicly owned and occupied building as prohibited by the local government (MCA 45-8-351).

SB 357 in 2019 directed LR130 be placed on the ballot. LR 130, which became effective on January 1, 2021, limited local government's ability to prevent or regulate unpermitted concealed weapons to only an occupied building under its jurisdiction.

HB 102, passed in the 2021 session and fully effective as of June 1, 2021, further limited local governments' ability to restrict both concealed and permitted concealed weapons. The legislation generally allows unpermitted concealed carry to any person who is eligible to possess a firearm under state or federal law anywhere in the state, restricted local governments' authority over permitted concealed weapons carriers, and provided limited exceptions to both.

HB 102 removed the existing list of people/places restricted from conceal carry and replaced with a new provision allowing persons with a permit to conceal carry anywhere in Montana except:

- detention facilities,
- federally owned buildings,
- school buildings,
- within a courtroom or an area of a courthouse in use by court personnel (by order of the judge), or
- on private property at the discretion of the owner or possessor (45- 8-328, MCA.)

Three limitations remain on unpermitted concealed carry:

1. A person must still undergo the federal background check and waiting period (45-8-330, MCA)
2. If the local government has restricted unpermitted concealed carry in publicly owned and occupied buildings within its jurisdiction, they cannot conceal carry in those facilities (45-8-351, MCA)
3. A person cannot conceal carry in portions of a building used for state or local government offices. State law still prohibits unpermitted concealed carry in those locations (45-8-328(a), MCA)

As a result of the legislation (LR-130, which was effective January 1, 2021), local governments may no longer:

- Restrict any carrying of firearms at public assemblies
- Restrict any carrying of firearms at parks
- Restrict any carrying of firearms on school grounds
- Restrict any carrying of firearms in public buildings that are not publicly owned and occupied.
- Restrict permitted concealed carry of firearms in publicly owned and occupied buildings

Council held a public hearing on March 27, 2023, and approved first reading of the ordinance amending BMCC section 18-204. Second reading of the ordinance was scheduled on April 10, 2023, and Council voted to postpone second reading to consider additional amendments sought by Councilmember Neese. Council directed the matter to the Council Operations Committee, which met on April 20, 2023. The Committee agreed to forward the following changes to the proposed ordinance:

1. Several recitals were added to the ordinance explaining the constitutional rights of individuals and the statutory authority and limitations of local governments.

2. Several definitions were added including:

- "Building"
- "City building" (instead of "city facility")
- "Concealed weapon"
- "Permitted concealed weapon"
- "Unconcealed weapon"
- "Unpermitted concealed weapon"

3. The prohibitions listed under subsection (b) were re-formatted into further subsections to provide clarity.

4. The subsection referring to "signage" was deleted.

BMCC section 2-233 currently requires that "when a prior ordinance or code section is amended, all new matter which is proposed to be enacted shall be underlined and all matter which is proposed to be omitted shall be set forth and structured in such manner as to remain legible." Therefore, the original version of 18-204 is attached as well as a red-lined version of the proposed ordinance amendment as recommended by the Council Operations Committee. The version presented on second reading as amended by the Council Operations Committee was approved on May 8, 2023.

STAKEHOLDERS

City staff, city council members, and all members of the public using city facilities.

ALTERNATIVES

City Council may:

- Approve;
- Amend; or,
- Not Approve

If Council does not approve the amendment, section 18-204 will not comport with state law regarding permitted concealed firearms.

FISCAL EFFECTS

There are no significant fiscal effects as a result of this amendment to city code.

SUMMARY

The City may restrict unconcealed/open carry and unpermitted concealed carry in publicly owned and occupied buildings within the City. The City may continue to restrict permitted concealed carry in certain areas of a public building or in courtrooms, detention facilities, etc.

Attachments

Current version of BMCC 18-204

Proposed Ordinance amending 18-204 - redlined

Proposed Ordinance amending 18-204 - clean copy

Sec. 18-204. Prohibiting weapons, firearms and explosives at city council proceedings.

(a) *Statement of authority and purpose.*

- (1) Section 45-8-351, MCA authorizes cities to prevent and suppress the carrying of concealed or unconcealed weapons to public assemblies under its jurisdiction;
- (2) Section 45-8-328 (1) (a), MCA prohibits the carrying of concealed weapons with or without a permit in any building owned or leased by a local government;
- (3) Section 45-8-333, MCA prohibits the possession of explosives where such possession intimidates, terrifies or endangers another human being; and
- (4) The security of city council proceedings and the safety of its participants are of paramount concern.

(b) *Definitions.*

- (1) *Council proceedings* means all regularly scheduled meetings of the Billings City Council, all specially-called meetings of the city council and all agenda meetings of the city council wherever such meetings may be held.
- (2) *Destructive device* means:
 - a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;
 - b. A bomb, grenade, explosive missile or similar device or a launching device therefore;
 - c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;
 - d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket, rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;
 - e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.
- (3) *Firearm* means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer or any destructive device.
- (4) *Law enforcement personnel* means:
 - a. Any sworn peace officer of the City of Billings;
 - b. Any sworn peace officer of the State of Montana;
 - c. Any officer of the United States Government authorized to carry a concealed weapon;
 - d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;
 - e. A person summoned to the aid of any of the persons named in subsections a. through d.;

-
- f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;
 - g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;
 - h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.
- (5) *Weapon* means a dirk, dagger, pistol, revolver, rifle, shotgun, firearm, slingshot, sword, cane, billy, knuckles made of any metal or hard substance, razor (not including a safety razor) or other deadly weapon or destructive device.
- (c) *Prohibition of weapons, firearms, and destructive devices at city council meetings.* The carrying or possession of weapons, firearms or destructive devices at Billings city council proceedings by any person except law enforcement personnel is prohibited.
 - (d) *Signing.* Suitable signs giving notice that weapons, firearms and destructive devices are prohibited at city council proceedings will be posted in appropriate areas.
 - (e) *Penalties.* A person convicted of carrying or possessing weapons, firearms or destructive devices at city council proceedings shall be fined not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months or both.

(Ord. No. 98-5068, § 1, 9-28-98)

ORDINANCE 23-5828

**AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING
THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE
AMENDED BY REVISING SECTION 18-204**

WHEREAS, the Montana Constitution, Article II, Section 12, declares the "right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons"; and

WHEREAS, the Montana legislature has prohibited local government units with self-government powers to exercise any power that applies to or affects the right to keep or bear arms in MCA 7-1-111(9); and

WHEREAS, the Montana legislature has expressly stated the policy of the state that the citizens of the state should be aware of, understand, and comply with any restrictions on the right to keep or bear arms that the people have reserved to themselves in Article II, section 12, of the Montana constitution, and that to minimize confusion the legislature withholds from local governments the power to restrict or regulate the possession of firearms in MCA 45-8-310; and

WHEREAS, the Montana legislature has created in MCA 45-8-328 a criminal offense for a person, other than a person issued a permit pursuant to MCA 45-8-321 or a person recognized pursuant to MCA 45-8-329, to carry a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in portions of a building used for state or local government offices and related areas in the building that have been restricted; and

WHEREAS, the Montana legislature has provided that a person with a current and valid permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329 may not be prohibited or restricted from exercising that permit anywhere in the state with limited exceptions provided in MCA 45-8-356; and

WHEREAS, the Montana legislature has, however, expressly provided that a city or local government unit has the power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons to a publicly owned and occupied building under its jurisdiction in MCA 45-8-351.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Section 18-204 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

Sec. 18-204. - Prohibiting weapons, firearms and explosives at city buildings.

(a) *Definitions.*

(1) *Building* means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property and any part or parts of the foregoing as provided in MCA 50-60-101.

(2) *City building* is any city-owned and occupied building under the jurisdiction of the city where a governmental use, function, public service, or public event occurs or is held. A city building includes adjacent facilities related to the building, including exterior entrance and exit areas serving the building.

The use of a city building by city employees or members of the public, even if for limited periods of time, is considered occupation of the building for government purposes.

(3) *Concealed weapon* means a firearm that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon as provided in MCA 45-8-315 or as otherwise determined to be concealed in accordance with Montana law.

- a. *Permitted concealed weapon* means a concealed weapon for which the person carrying the weapon has a permit issued pursuant to MCA 45-8-321 or is a person recognized pursuant to MCA 45-8-329.
- b. *Unpermitted concealed weapon* means a concealed weapon for which the person carrying the weapon does not have a permit issued pursuant to MCA 45-8-321 nor recognized pursuant to MCA 45-8-329.

(4) *Destructive device* means:

- a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;
- b. A bomb, grenade, explosive missile or similar device or a launching device therefore;
- c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;
- d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket,

rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

- e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(5) *Firearm* means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes, but is not limited to, a pistol, revolver, rifle, shotgun or machine gun as defined by MCA 45-8-302.

(6) *Law enforcement personnel* means:

- a. Any sworn peace officer of the City of Billings;
- b. Any sworn peace officer of the State of Montana;
- c. Any officer of the United States Government authorized to carry a concealed weapon;
- d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;
- e. A person summoned to the aid of any of the persons named in subsections a. through d.;
- f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;
- g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;
- h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.

(7) *Other weapon* means a knife with a blade four or more inches long, dirk, dagger, slingshot, sword, cane, billy, straight razor (not including a safety razor), throwing star, nun-chucks/nun-chuks, brass or metal knuckles, or other deadly weapon or "destructive device" as defined in MCA 45-8-332.

(8) *Unconcealed weapon* means a firearm that is not covered by the clothing or wearing apparel of the person carrying or bearing the weapon and is not otherwise considered to be concealed under Montana law. This is also known as "open carry".

(b) *Prohibition of firearms, other weapons, and destructive devices at city buildings.*

(1) Carrying an unconcealed weapon/firearm ("open carry") by any person in a city building is prohibited.

- (2) The possession of an unpermitted concealed firearm by any person in a city building is prohibited.
- (3) A person with a valid permit to carry a concealed firearm issued pursuant to MCA 45-8-321, or recognized pursuant to MCA 45-8-329, is prohibited from carrying a concealed firearm in the following restricted areas of city buildings as set forth in MCA 45-8-356:
 - i. a municipal courtroom in use by the court,
 - ii. other area in use by municipal court personnel pursuant to a court order,
 - iii. secure areas of a law enforcement facility owned and operated by the city, or
 - iv. areas at or beyond a security screening checkpoint regulated by the Transportation Security Administration in a publicly owned, commercial airport.
- (4) The possession of other weapons and destructive devices by any person in a city building is prohibited (open or concealed carry).
- (5) Subsections (1) through (4) above do not apply to law enforcement personnel.

- (c) *Screening.* Screening for firearms and other weapons at city buildings is permissible. The city administrator may determine the circumstances and locations where screening is required and may establish standards for such screening

The city may, in the discretion of its employees or officials acting within their official capacity, deny entrance into a city building to a person who violates or attempts to violate this Article.

The city may require a person to present proof of a valid permit to carry a concealed firearm in a city building. Refusing to provide a city employee or official proof of a valid permit to carry a concealed firearm is the basis for denial of entry to the city building.

- (d) *Penalties.* A person convicted of violating this Article shall be fined not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months or both.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading the 27th day of March, 2023.

PASSED by the City Council on second reading the 8th day of May, 2023.

PASSED, ADOPTED and APPROVED on third reading this 22nd day of May, 2023.



CITY OF BILLINGS

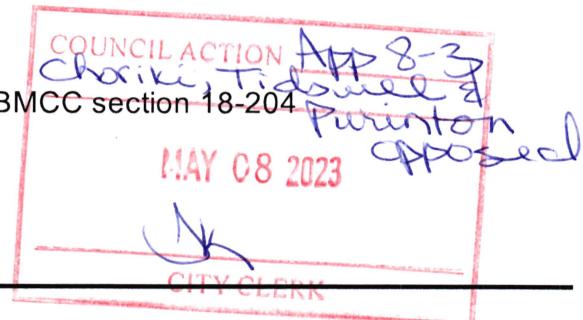
BY: William A. Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk

City Council Regular

Date: 05/08/2023
 Title: Second reading - Ordinance amending BMCC section 18-204
 Presented by: Gina Dahl
 Department: Legal
 Presentation: No
 Legal Review Not Applicable

**RECOMMENDATION**

Staff recommends Council approve second reading of the ordinance amending section 18-204 of Billings Montana City Code prohibiting weapons and firearms in city buildings.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Montana is an "open carry" state and there are no state laws restricting or regulating open carry. Anyone may openly carry anywhere except within school buildings as prohibited by local school districts (MCA 45-8-361) and within a publicly owned and occupied building as prohibited by the local government (MCA 45-8-351).

SB 357 in 2019 directed LR130 be placed on the ballot. LR 130, which became effective on January 1, 2021, limited local government's ability to prevent or regulate unpermitted concealed weapons to only an occupied building under its jurisdiction.

HB 102, passed in the 2021 session and fully effective as of June 1, 2021, further limited local governments' ability to restrict both concealed and permitted concealed weapons. The legislation generally allows unpermitted concealed carry to any person who is eligible to possess a firearm under state or federal law anywhere in the state, restricted local governments' authority over permitted concealed weapons carriers, and provided limited exceptions to both.

HB 102 removed the existing list of people/places restricted from conceal carry and replaced with a new provision allowing persons with a permit to conceal carry anywhere in Montana except:

- detention facilities,
- federally owned buildings,
- school buildings,
- within a courtroom or an area of a courthouse in use by court personnel (by order of the judge), or
- on private property at the discretion of the owner or possessor (45- 8-328, MCA.)

Three limitations remain on unpermitted concealed carry:

1. A person must still undergo the federal background check and waiting period (45-8-330, MCA)
2. If the local government has restricted unpermitted concealed carry in publicly owned and occupied buildings within its jurisdiction, they cannot conceal carry in those facilities (45-8-351, MCA)
3. A person cannot conceal carry in portions of a building used for state or local government offices. State law still prohibits unpermitted concealed carry in those locations (45-8-328(a), MCA)

As a result of the legislation (LR-130, which was effective January 1, 2021), local governments may no longer:

- Restrict any carrying of firearms at public assemblies
- Restrict any carrying of firearms at parks
- Restrict any carrying of firearms on school grounds
- Restrict any carrying of firearms in public buildings that are not publicly owned and occupied.
- Restrict permitted concealed carry of firearms in publicly owned and occupied buildings

Council held a public hearing on March 27, 2023, and approved first reading of the ordinance amending BMCC section 18-204. Second reading of the ordinance was scheduled on April 10, 2023, and Council voted to postpone second reading to consider additional amendments sought by Councilmember Neese. Council directed the matter to the Council Operations Committee, which met on April 20, 2023. The Committee agreed to forward the following changes to the proposed ordinance:

1. Several recitals were added to the ordinance explaining the constitutional rights of individuals and the statutory authority and limitations of local governments.

2. Several definitions were added including:

- "Building"
- "City building" (instead of "city facility")
- "Concealed weapon"
- "Permitted concealed weapon"
- "Unconcealed weapon"
- "Unpermitted concealed weapon"

3. The prohibitions listed under subsection (b) were re-formatted into further subsections to provide clarity.

4. The subsection referring to "signage" was deleted.

BMCC section 2-233 currently requires that "when a prior ordinance or code section is amended, all new matter which is proposed to be enacted shall be underlined and all matter which is proposed to be omitted shall be set forth and structured in such manner as to remain legible." Therefore, the original version of 18-204 is attached as well as a red-lined version of the proposed ordinance amendment as recommended by the Council Operations Committee. For purposes of review and comparison, the version of the ordinance that was approved on first reading is also attached.

If Council approves the amendments proposed by the Council Operations Committee on second reading, this matter will be placed on another agenda for a third and final reading to give the public further opportunity to comment on the amendments.

STAKEHOLDERS

City staff, city council members, and all members of the public using city facilities.

ALTERNATIVES

City Council may:

- Approve;
- Amend; or,
- Not Approve

If Council does not approve the amendment, section 18-204 will not comport with state law regarding permitted concealed firearms.

FISCAL EFFECTS

There are no significant fiscal effects as a result of this amendment to city code.

SUMMARY

The City may restrict unconcealed/open carry and unpermitted concealed carry in publicly owned and occupied buildings within the City. The City may continue to restrict permitted concealed carry in certain areas of a public building or in courtrooms, detention facilities, etc.

Attachments

Current version of BMCC 18-204

Proposed Ordinance - approved on first reading - redlined

Proposed Ordinance - approved on first reading - clean copy

Amendments proposed by Council Operations Committee - redlined

Amendments proposed by Council Operations Committee - clean copy

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING
THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE
AMENDED BY REVISING SECTION 18-204

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Section 18-204 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

Sec. 18-204. Prohibiting weapons, firearms and explosives in city facilities at city council proceedings.

Statement of authority and purpose.

~~Section 45-8-351, MCA authorizes cities to prevent and suppress the carrying of concealed or unconcealed weapons to public assemblies under its jurisdiction;~~

~~Section 45-8-328 (1) (a), MCA prohibits the carrying of concealed weapons with or without a permit in any building owned or leased by a local government;~~

~~Section 45-8-333, MCA prohibits the possession of explosives where such possession intimidates, terrifies or endangers another human being; and~~

~~The security of city council proceedings and the safety of its participants are of paramount concern.~~

(f)(a) Definitions.

(1) *City facility* is any city owned and occupied building or structure, and any building or structure leased and occupied by the city where a governmental function, public service, or public event is held. The use of a city owned or leased building or structure by employees or members of the public, even if for limited periods of time, is considered continual occupation of the building or structure. The term "city facility" includes the grounds immediately adjacent to city owned or leased buildings or structures, including pathways leading to entrances. "Building" shall have the meaning prescribed in MCA 50-60-101.

(1) *Council proceedings* means all regularly scheduled meetings of the Billings City Council, all specially-called meetings of the city council and all agenda meetings of the city council wherever such meetings may be held.

(2) *Destructive device* means:

- a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;
- b. A bomb, grenade, explosive missile or similar device or a launching device therefore;
- c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;
- d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket, rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;
- e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

|

| (3) *Firearm* means any weapon, -(including a starter gun), which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer or any destructive device. "Firearm" includes, but is not limited to, a pistol, revolver, rifle, shotgun or machine gun as defined by MCA 45-8-302.

| (4) *Law enforcement personnel* means:

- a. Any sworn peace officer of the City of Billings;
- b. Any sworn peace officer of the State of Montana;
- c. Any officer of the United States Government authorized to carry a concealed weapon;
- d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;

- e. A person summoned to the aid of any of the persons named in subsections a. through d.;
- f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;
- g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;
- h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.

(5) *Other Weapon* means a knife with a blade four or more inches long, dirk, dagger, pistol, revolver, rifle, shotgun, firearm, slingshot, sword, cane, billy, knuckles made of any metal or hard substance, straight razor (not including a safety razor), throwing star, nun-chuks, brass or metal knuckles, or other deadly weapon or destructive device.

- (bc) *Prohibition of weapons, firearms, other weapons, and destructive devices at city council meetingsfacilities.* The open carry of a firearm or carrying or possession of an unpermitted concealed firearm by any person in a city facility is prohibited. The open or concealed carry of other weapons and destructive devices by any person in a city facility is prohibited. A person with a valid permit to carry a concealed firearm issued pursuant to MCA 45-8-321, or MCA 45-8-329, is prohibited from carrying a concealed firearm in restricted areas of a city facility as set forth in MCA 45-8-356, which includes a courtroom or other area used by court personnel pursuant to a court order, secure areas of a law enforcement facility owned and operated by the city, and areas at or beyond a security screening checkpoint regulated by the transportation security administration in a publicly owned, commercial airport, firearms or destructive devices at Billings city council proceedings by any person except law enforcement personnel is prohibited.
- (cd) *Signingsignage.* Suitable signs giving notice that weapons, firearms and destructive devices are prohibited at city council proceedingsfacilities will be posted in appropriate areas.
- (d) *Screening.* Screening for firearms and other weapons at city facilities is permissible. The city administrator may determine the circumstances and locations where screening is required and may establish standards for such screening. The city may, in the discretion of its employees or officials acting within their official capacity, deny entrance into a city facility to a person who violates this Article. The city may require a person to present

proof of a valid permit to carry a concealed firearm in a city facility.
Refusing to provide a city employee or official proof of a valid permit to
carry a concealed firearm is the basis for denial of entry to the city facility.

- (e) Exceptions. The provisions of subsection (b) do not apply to law enforcement personnel defined in subsection (a)(5).
- (f) Penalties. A person convicted of carrying or possessing weapons, firearms or destructive devices at city council proceedings violation of a prohibition of this Article shall be fined not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months or both.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading the _____ day of _____, 2023.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2023.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest:

BY: _____
Denise R. Bohlman, City Clerk

City Council Regular

Date: 04/10/2023
Title: Second reading - Ordinance amending BMCC section 18-204
Presented by: Gina Dahl
Department: Legal
Presentation: No
Legal Review Not Applicable

RECOMMENDATION

Staff recommends Council approve second reading of the ordinance amending section 18-204 of Billings Montana City Code prohibiting weapons and firearms in city facilities.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Montana is an "open carry" state and there are no state laws restricting or regulating open carry. Anyone may openly carry anywhere except within school buildings as prohibited by local school districts (MCA 45-8-361) and within a publicly owned and occupied building as prohibited by the local government (MCA 45-8-351).

SB 357 in 2019 directed LR130 be placed on the ballot. LR 130, which became effective on January 1, 2021, limited local government's ability to prevent or regulate unpermitted concealed weapons to only an occupied building under its jurisdiction.

HB 102, passed in the 2021 session and fully effective as of June 1, 2021, further limited local governments' ability to restrict both concealed and permitted concealed weapons. The legislation generally allows unpermitted concealed carry to any person who is eligible to possess a firearm under state or federal law anywhere in the state, restricted local governments authority over permitted concealed weapons carriers, and provided limited exceptions to both.

HB 102 removed the existing list of people/places restricted from conceal carry and replaced with a new provision allowing persons with a permit to conceal carry anywhere in Montana except:

- detention facilities,
- federally owned buildings,
- school buildings,
- within a courtroom or an area of a courthouse in use by court personnel (by order of the judge), or
- on private property at the discretion of the owner or possessor (45-8-328, MCA.)

Three limitations remain on unpermitted concealed carry:

1. A person must still undergo the federal background check and waiting period (45-8-330, MCA)
2. If the local government has restricted unpermitted concealed carry in publicly owned and occupied buildings within its jurisdiction, they cannot conceal carry in those facilities (45-8-351, MCA)
3. A person cannot conceal carry in portions of a building used for state or local government offices. State law still prohibits unpermitted concealed carry in those locations (45-8-328(a), MCA)

As a result of the legislation (LR-130, which was effective January 1, 2021), local governments may no longer:

- Restrict any carrying of firearms at public assemblies
- Restrict any carrying of firearms at parks
- Restrict any carrying of firearms on school grounds
- Restrict any carrying of firearms in public buildings that are not publicly owned and occupied.
- Restrict permitted concealed carry of firearms in publicly owned and occupied buildings

Council held a public hearing on March 27, 2023, and approved first reading of the ordinance amending BMCC section 18-204.

Postponed
COUNCIL ACTION *App UN*

APR 10 2023

[Signature]
CITY CLERK

STAKEHOLDERS

City staff, city council members, and all members of the public using city facilities.

ALTERNATIVES

City Council may:

- Approve;
- Amend; or,
- Not Approve

If Council does not approve the amendment, section 18-204 will not comport with state law regarding permitted concealed firearms.

FISCAL EFFECTS

There are no significant fiscal effects as a result of this amendment to city code.

SUMMARY

The City may restrict open carry and unpermitted concealed carry in publicly owned and occupied buildings within the City. The City may continue to restrict permitted concealed carry in certain areas of a public building or in courtrooms, detention facilities, etc.

Attachments

Ordinance - redlined

Ordinance amending 18-204 Clean Copy

City Council Regular

Date: 03/27/2023
Title: Public Hearing and First Reading of Ordinance amending BMCC 18-204
Presented by: Gina Dahl
Department: Legal
Presentation: Yes
Legal Review Not Applicable

RECOMMENDATION

Staff recommends Council conduct a public hearing and approve first reading of the ordinance amending section 18-204 of Billings Montana City Code prohibiting weapons and firearms in city facilities.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Montana is an "open carry" state and there are no state laws restricting or regulating open carry. Anyone may openly carry anywhere except within school buildings as prohibited by local school districts (MCA 45-8-361) and within a publicly owned and occupied building as prohibited by the local government (MCA 45-8-351).

SB 357 in 2019 directed LR130 be placed on the ballot. LR 130, which became effective on January 1, 2021, limited local government's ability to prevent or regulate unpermitted concealed weapons to only an occupied building under its jurisdiction.

HB 102, passed in the 2021 session and fully effective as of June 1, 2021, further limited local governments' ability to restrict both concealed and permitted concealed weapons. The legislation generally allows unpermitted concealed carry to any person who is eligible to possess a firearm under state or federal law anywhere in the state, restricted local governments authority over permitted concealed weapons carriers, and provided limited exceptions to both.

HB 102 removed the existing list of people/places restricted from conceal carry and replaced with a new provision allowing persons with a permit to conceal carry anywhere in Montana except:

- detention facilities,
- federally owned buildings,
- school buildings,
- within a courtroom or an area of a courthouse in use by court personnel (by order of the judge), or
- on private property at the discretion of the owner or possessor (45- 8-328, MCA.)

Three limitations remain on unpermitted concealed carry:

1. A person must still undergo the federal background check and waiting period (45-8-330, MCA)\
2. If the local government has restricted unpermitted concealed carry in publicly owned and occupied buildings within its jurisdiction, they cannot conceal carry in those facilities (45-8-351, MCA)
3. A person cannot conceal carry in portions of a building used for state or local government offices. State law still prohibits unpermitted concealed carry in those locations (45-8- 328(a), MCA)

As a result of the legislation (LR-130, which was effective January 1, 2021), local governments may no longer:

- Restrict any carrying of firearms at public assemblies
- Restrict any carrying of firearms at parks
- Restrict any carrying of firearms on school grounds
- Restrict any carrying of firearms in public buildings that are not publicly owned and occupied.
- Restrict permitted concealed carry of firearms in publicly owned and occupied buildings.

STAKEHOLDERS

City staff, city council members, and all members of the public using city facilities.

ALTERNATIVES

City Council may:

COUNCIL ACTION Approved
 7-3, Choriki, Tidwell +
 Purinton Opposed
 MAR 27 2023
 Neese absent / excused
 db
 CITY CLERK

- Approve;
- Amend; or,
- Not Approve.

If Council does not approve the amendment, section 18-204 will not comport with state law regarding permitted concealed firearms.

FISCAL EFFECTS

There are no significant fiscal effects as a result of this amendment to city code.

SUMMARY

The City may restrict open carry and unpermitted concealed carry in publicly owned and occupied buildings within the City. The City may continue to restrict permitted concealed carry in certain areas of a public building or in courtrooms, detention facilities, etc.

Attachments

Ordinance - red lined

Ordinance - clean version

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING
THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE
AMENDED BY REVISING SECTION 18-204

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Section 18-204 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

**Sec. 18-204. Prohibiting weapons, firearms and explosives in city facilities
at city council proceedings.**

Statement of authority and purpose.

~~Section 45-8-351, MCA authorizes cities to prevent and suppress the carrying of concealed or unconcealed weapons to public assemblies under its jurisdiction;~~

~~Section 45-8-328 (1) (a), MCA prohibits the carrying of concealed weapons with or without a permit in any building owned or leased by a local government;~~

~~Section 45-8-333, MCA prohibits the possession of explosives where such possession intimidates, terrifies or endangers another human being; and~~

~~The security of city council proceedings and the safety of its participants are of paramount concern.~~

(a) *Definitions.*

(1) *City facility* is any city owned and occupied building or structure, and any building or structure leased and occupied by the city where a governmental function, public service, or public event is held. The use of a city owned or leased building or structure by employee or members of the public, even if for limited periods of time, is considered continual occupation of the building or structure. The term "city facility" includes the grounds immediately adjacent to city owned or leased buildings or structures, including pathways leading to entrances. "Building" shall have the meaning prescribed in MCA 50-60-101.

(2) *Council proceedings* means all regularly scheduled meetings of the Billings City Council, all specially called meetings of the city council and all agenda meetings of the city council wherever such meetings may be held.

(3)(2) *Destructive device* means:

- a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;
- b. A bomb, grenade, explosive missile or similar device or a launching device therefore;
- c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;
- d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket, rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;
- e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(4)(3) *Firearm* means any weapon, ~~including a starter gun~~, which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer ~~or any destructive device~~.
"Firearm" includes, but is not limited to, a pistol, revolver, rifle, shotgun or machine gun as defined by MCA 45-8-302.

(5)(4) *Law enforcement personnel* means:

- a. Any sworn peace officer of the City of Billings;
- b. Any sworn peace officer of the State of Montana;
- c. Any officer of the United States Government authorized to carry a concealed weapon;
- d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;

- e. A person summoned to the aid of any of the persons named in subsections a. through d.;
- f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;
- g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;
- h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.

(6)(5) *Other* *Weapon* means a knife with a blade four or more inches long, dirk, dagger, pistol, revolver, rifle, shotgun, firearm, slingshot, sword, cane, billy, knuckles made of any metal or hard substance, straight razor (not including a safety razor), throwing star, nun-chuks, brass or metal knuckles, or other deadly weapon or destructive device.

- (be) *Prohibition of weapons, firearms, other weapons, and destructive devices at city council meetingsfacilities.* The open carry of a firearm or carrying or possession of an unpermitted concealed firearm by any person in a city facility is prohibited. The open or concealed carry of other weapons and destructive devices by any person in a city facility is prohibited. A person with a valid permit to carry a concealed firearm issued pursuant to MCA 45-8-321, or MCA 45-8-329, is prohibited from carrying a concealed firearm in restricted areas of a city facility including a courtroom or other area used by court personnel, pursuant to a court order, and secure areas of a law enforcement facility owned and operated by the city., firearms or destructive devices at Billings city council proceedings by any person except law enforcement personnel is prohibited.
- (cd) *Signingsignage.* Suitable signs giving notice that weapons, firearms and destructive devices are prohibited at city council proceedingsfacilities will be posted in appropriate areas.
- (d) *Screening.* Screening for firearms and other weapons at city facilities is permissible. The city administrator may determine the circumstances and locations where screening is required and may establish standards for such screening. The city may, in the discretion of its employees or officials acting within their official capacity, deny entrance into a city facility to a person who, in a city facility:
- i. possesses an openly visible firearm;
 - ii. possesses an unpermitted concealed firearm;
 - iii. possesses any other weapon or destructive device; or

- iv. possesses a permitted concealed weapon in locations of city facilities that have been restricted pursuant to court order or state law. The city may require a person to present proof of a valid permit to carry a concealed firearm in a city facility. Refusing to provide a city employee or official proof of a valid permit to carry a concealed firearm is the basis for denial of entry to the city facility.
- (e) Exceptions. The provisions of subsection (b) do not apply to law enforcement personnel defined in subsection (a)(5).
- (f) Penalties. A person convicted of carrying or possessing weapons, firearms or destructive devices at city council proceedingsviolation of a prohibition of this Article shall be fined not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months or both.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading the _____ day of _____, 2023.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2023.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest:

BY: _____
Denise R. Bohlman, City Clerk