

LANCASTER COUNTY
DISTRICT COURT

NEBRASKA FIREARMS OWNERS ASSOCIATION, et al., <i>Plaintiffs,</i> v. CITY OF LINCOLN, et al., <i>Defendants.</i>	Case No. CI 23-4254 Plaintiffs' Memorandum in Support of Motion for Summary Judgment
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MEMORANDUM IN SUPPORT

Introduction

2023 Neb. Laws, L.B. 77 (“LB 77”) is Nebraska’s comprehensive state firearm law, enacted to establish statewide uniformity in firearm regulation. To achieve this goal, LB 77 nullifies and prohibits all municipal firearm regulations except those expressly authorized by state law. Nevertheless, the City of Lincoln enacted new firearm regulations through a mayoral executive order, adding to the firearm regulations already contained in its municipal code. Because these local laws are preempted by LB 77, they are “null and void.” *Id.* (codified at Neb. Rev. Stat. § 13-330(3)). Moreover, Lincoln’s firearm executive order regulation is invalid because the Mayor lacks authority to issue executive orders with the force of law.

Legal Standard

Summary judgment should be granted when the record evidence shows “there is no genuine issue as to any material fact . . . and that the moving party is entitled to judgment as a matter of law.” *Palmtag v. Republican Party of Neb.*, 315 Neb. 679, 695, 999 N.W.2d 573, 586-87 (Neb. 2024).

Argument

I. State law preempts municipal law.

“State preemption arises with respect to municipal ordinances or township laws and flows from the principle that municipal legislation is invalid if it is repugnant to, or inconsistent with, state law.” *State v. Albarenga*, 313 Neb. 72, 83, 982 N.W.2d 799, 810 (Neb. 2022).

“Preemption of municipal ordinances by state law is based on the fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state.” *Id.* at 83–84, 982 N.W.2d at 810.

Here, LB 77 declares regulation of firearms “a matter of statewide concern,” and expressly removes “the power” of “any home rule charter, counties, cities, and villages” to: (1) “Regulate the ownership, possession, storage, transportation, sale, or transfer of firearms or other weapons, except as expressly provided by state law,” or (2) “Require registration of firearms or other weapons.” Evid. Ind., Ex. 1 (codified at Neb. Rev. Stat. §§ 13-330(1)–(2)). Therefore, “[a]ny county, city, or village ordinance, permit, or regulation” that regulates the ownership, possession, storage, transportation, sale, or transfer of firearms or other weapons, except as expressly provided by state law, or requires registration of firearms or other weapons “is declared to be null and void.” *Id.* (codified at Neb. Rev. Stat. § 13-330(3)).

II. State law preempts Lincoln’s executive order and city parks law.

Lincoln has a municipal restriction prohibiting the possession of a firearm on city property and an ordinance prohibiting the possession of a firearm in parks and park facilities. Under the threat of criminal and civil penalties, Executive Order 97985 prohibits the possession of a firearm “in or on any City property” or causing the presence of firearm to occur in or on City property. Evid. Ind., Ex. 2. City property includes “owned or leased property or property contracted to be managed by the City, and commons areas including, but not limited to the approach sidewalks, steps verandas, parking lots, parks, vestibules, interior hallways and atriums.” *Id.* It does not include “any public street or the public sidewalk that runs parallel to a public street.” *Id.*

And under the threat of criminal penalty, Lincoln Municipal Code § 12.08.200 makes it “unlawful for any person to possess or discharge, or cause to be discharged, within any park or park facility, any firearm.” Evid. Ind., Ex. 3; Ex. 4.

The Nebraska legislature removed the power of Lincoln and its mayor to regulate the possession of firearms. *See* Neb. Rev. Stat. § 13-330(2)(a). It also declared all of Lincoln’s firearm regulations “to be null and void.” Neb. Rev. Stat. § 13-330(3).

Executive Order 97985 and Lincoln Municipal Code § 12.08.200 regulate the possession of firearms. Because state law preempts municipal law, *see Albarenga*, 313 Neb. at 83–84, 982 N.W.2d at 810, Executive Order 97985 and Lincoln Municipal Code § 12.08.200 are invalid.

These local regulations do not fall under LB77’s express exceptions. *See* Neb. Rev. Stat. §13-330(2)(a). Although LB 77 allows the city to regulate firearms on city property, *see* Neb. Rev. Stat. § 28-1202.01(2), this exception applies only to buildings where government business is conducted, like those listed in Neb. Rev. Stat. § 28-1202.01(3), not to public parks, trails, and all sidewalks (not just sidewalks that run parallel to public streets). “[W]hen the government is acting in its proprietary capacity . . . , rather than as a steward of public land, it may prohibit guns without offending [LB 77].” *Kipke v. Moore*, 165 F.4th 194, 209 (4th Cir. 2026). The issue is determining where the government is “operating a space in its propriety capacity.” *Id.*

Nebraska state law provides that the person or entity “in control of the place or premises” may “prohibit[] the carrying of concealed handguns into or onto the place or premises.” Neb. Rev. Stat. § 28-1202.01(2).

But Executive Order 97985 and Lincoln Municipal Code § 12.08.200 are examples of government acting as regulators—not property proprietors. Though municipalities may hold legal title to pieces of real property like parks, trails, and sidewalks or otherwise exercise control over them, these spaces are held in trust for public use and are presumptively open to and accessible by the public at large. *See Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939); *see also United States v. Kokinda*, 497 U.S. 720, 743-74 (1990) (Brennan, J., dissenting) (“Public access [to streets, sidewalks, parks, and other similar public spaces] is not a matter of grace by government officials but rather is inherent in the open nature of the locations.”).

“[T]here is a crucial difference . . . between the government exercising the power to regulate or license, as lawmaker, and the

government acting as proprietor, to manage its internal operation[s].” *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 598 (2008) (cleaned up). For example, in the First Amendment context, the government may regulate commercial advertising on its transit system but not speech in a traditional public forum like a “park, street corner, or other public thoroughfare.” *Kokinda*, 497 U.S. at 725 (discussing *Lehman v. City of Shaker Heights*, 418 U.S. 298, 303 (1974) (plurality)) (internal quotation marks and citation omitted).

A municipality that regulates behavior in places held in public trust must, with limited exception, exercise regulatory, not proprietary power, because these places are not the city’s private property. “Wherever the title of streets and parks may rest . . . [the] use of [these] public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.” *Hague*, 307 U.S. at 515. “A park is for the benefit of and is held in trust by a city for the public.” *Abboud v. Lakeview, Inc.*, 237 Neb. 326, 335, 466 N.W.2d 442, 449 (Neb. 1991). And, indeed, acting on behalf of the public at large is the purpose of Executive Order 97985 (it is “intended to protect and promote the health, safety, and welfare of all community residents”). Accordingly, the true owner of the property is the public at large. And acts done for “public health or public welfare” are “regulations” by nature, issued pursuant to and within the bounds of a sovereign’s police powers. *Smiley v. MacDonald*, 42 Neb. 5, 13, 60 N.W. 355, 357 (Neb. 1894); *see also Chi., B. & Q. R. Co. v. State*, 47 Neb. 549, 574, 66 N.W. 624, 630 (Neb. 1896).

A city cannot manage land held in public trust as it pleases. The *Hague* Court rejected a municipality’s argument that because “the city’s ownership of streets and parks is as absolute as one’s ownership of his home” its ownership interest carried with it the “consequent power [to] altogether . . . exclude citizens from the use thereof.” 307 U.S. at 514. Exercising a proprietary “right to exclude,” is incompatible with the concept of a space that is “held in trust for the use of the public,” which necessarily makes such spaces open to the public at large. *Id.* at 515.

Likewise, “a municipality may not sell property held for public use without legislative authority.” *Abboud*, 237 Neb. at 335, 466 N.W.2d at 449. “Municipal corporations hold all property in which the public is interested, such as streets, wharves, parks, and public squares, in trust for the use of the public, and these properties may only be disposed of by the municipality if it is authorized to do so by statute.” *Id.* “The statutory authorization functions as the terms of the trust.” *Id.*

At bottom, municipalities do not possess proprietary powers over the public streets, parks, trails, sidewalks, or the like. “They only possess regulatory powers.” *Am. Tel. & Tel. Co. v. Vill. of Arlington Heights*, 156 Ill. 2d 399, 409, 620 N.E.2d 1040, 1044 (Ill. 1993). Prohibiting firearms from these places has nothing to do with the government’s “internal operation[s].” *Engquist*, 553 U.S. at 598.

Because defendants are attempting to regulate firearms on Lincoln parks and sidewalks—and therefore do not fit under LB77’s exceptions—Executive Order 97985 and Lincoln Municipal Code § 12.08.200 are “null and void.” Neb. Rev. Stat. § 13-330(3).

The Nebraska Attorney General agrees. *See* Evid. Ind. Ex. 10 § I.

III. State law preempts Lincoln’s firearm sale and registration law

Lincoln Municipal Code § 9.36.030 is the city’s firearms sale and registration law. Evid. Ind., Ex. 5. Under the threat of criminal and civil penalties, *see* Evid. Ind., Ex. 9, Lincoln requires “[a]ny person, firm, association, or corporation dealing in firearms of any type shall, on the same day of the sale of any firearm, . . . report the sale to the Police Department on forms as prescribed and furnished by the Police Department. The report shall contain all the information requested thereon.” Evid. Ind., Ex. 5.

The Nebraska legislature removed the power of Lincoln and its mayor to regulate the “sale, or transfer of firearms.” Neb. Rev. Stat. § 13-330(2)(a). The state legislature also removed the power of Lincoln

and its mayor to “[r]equire registration of firearms.” Neb. Rev. Stat. § 13-330(2)(b). Under state law, all these types of municipal laws are “null and void.” Neb. Rev. Stat. § 13-330(3).

Lincoln Municipal Code § 9.36.030 regulates the sale of firearms. It also requires firearm registration. Because state law preempts municipal law, *see Albarenga*, 313 Neb. at 83–84, 982 N.W.2d at 810, Lincoln Municipal Code § 9.36.030 is invalid. There is no exception for these types of municipal laws provided by state law.

IV. State law preempts Lincoln’s multiburst trigger law.

Defendants cannot regulate multiburst trigger activators because that is the functional equivalent of regulating firearms.

Lincoln Municipal Code § 9.36.035 (“Trigger Law”) makes it “unlawful for any person to sell, give away, or furnish to another person” or “to have in his or her possession, custody, or control” a “multiburst trigger activator.” Evid. Ind., Ex. 7. A violation of this law is subject to criminal and civil penalties. *See* Lincoln Municipal Code § 1.24.010 (Evid. Ind., Ex. 9).

A “multiburst trigger activator” is defined as either:

- (a) a device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device; or
- (b) a trigger-activating device, whether manual or power-driven, that is constructed and designed so that when such device is attached to a semiautomatic firearm the rate of fire of such firearm is increased.

Lincoln Municipal Code § 9.36.150 (Evid. Ind., Ex. 8).

Some firearms are designed and manufactured with a multiburst trigger activator as a necessary component part so that the firearm cannot function without the multiburst trigger activator.

Plaintiffs' expert, Mr. Matthew Larosiere, qualifies as a firearm design, function, and engineering expert due to his experience as a firearms manufacturer and designer. *See* Evid. Ind., Ex. 13 at 6:19–8:10, 9:23–13:15, 14:3–22:19, 31:10–32:17, 97:7–100:17 & Ex.13-5, Ex. 13-6 § I.

The parties stipulated that Mr. Larosiere's CV, reproduced as Exhibit 5 to his deposition (Evid. Ind., Ex. 13), and his expert report, reproduced as Exhibit 6 to his deposition (Evid. Ind., Ex. 13), are accurate copies of these documents, and meet the authenticity requirements of the Nebraska rules of evidence and should not be excluded from evidence as hearsay. *See* Evid. Ind., Ex. 13 at 32:18–25, 78:19–81:24, 101:1–13.

Mr. Matthew Larosiere, concluded in his report and deposition testimony that some firearms (*e.g.*, Tippmann revolving firearms, gatling guns, Arsenal Firearms AF2011-A1 double barrel pistols, Agar guns, and Gardner guns) cannot function without a multiburst trigger activator as it is defined by the Trigger Law. *See* Evid. Ind. Ex. 13 at 85:18–87:4, 89:24–92:23; Ex. 13-6 at 3–5 & n.12. It is an essential component of these firearms.

There is a fundamental difference between firearm accessories and essential firearm components. Firearm accessories “are not an essential aspect of the functionality of a firearm.” *United States v. Alsenat*, 734 F. Supp. 3d 1295, 1309 (S.D. Fla. 2024). But “[t]he frame or receiver of a firearm for example, just as with ammunition, is a fundamental component part of a firearm's basic functionality.” *Id.* Self-loading handguns need a slide to operate, and nearly all firearms cannot function without a fire control component, barrel, or firing pin. *See* Evid. Ind., Ex. 13 at 83:12–85:17. If Lincoln attempted to ban these firearm components it would be the functional equivalent of banning firearms. Likewise, because a multiburst trigger activator is an essential component of some firearms, *id.* at 85:18–87:4, 89:24–92:23; Ex. 13-6 at 3–5 & n.12, it is the functional equivalent of banning these firearms. And because state law forbids Lincoln from regulating

firearms, the Trigger Law is null and void. *See* Neb. Rev. Stat. § 13-330(3).

V. State law preempts Lincoln’s switchblade knife law.

Lincoln Municipal Code § 9.36.040 is the city’s prohibition on the sale and possession of switchblade knives. Evid. Ind., Ex. 6. Under the threat of criminal and civil penalties, *see* Evid. Ind., Ex. 9, it is “unlawful for any person to sell, give away, or furnish to another person any switch-blade knife; and it shall be unlawful for any person to have in his or her possession, custody, or control any switch-blade knife.” Evid. Ind., Ex. 6.

The Nebraska legislature removed the power of Lincoln and its mayor to regulate switchblade knives. Under LB 77 and Neb. Rev. Stat. § 13-330(2), a switchblade knife is a weapon. And only state government may regulate the “ownership, possession, storage, transportation, sale, or transfer of . . . weapons.” Neb. Rev. Stat. § 13-330(2)(a).

Indeed, Section 7 of LB 77 amended Neb. Rev. Stat. § 28-1201, which provides the definition of “knife.” Under Section 7 and Neb. Rev. Stat. § 28-1201(8), “knife” means:

Any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury; or [a]ny other dangerous instrument which is capable of inflicting cutting, stabbing, or tearing wounds and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.

Section 8 of LB 77 amended Neb. Rev. Stat. § 28-1202, which regulates who cannot carry a concealed weapon. The list of items considered weapons includes “a knife.” *See* LB 77, § 8; Neb. Rev. Stat. § 28-1202(1).

And Section 13 of LB 77 amended Neb. Rev. Stat. § 28-1205, which defines the criminal offense of “use of a deadly weapon to commit a felony” and “possession of a deadly weapon during the commission of a felony.” The list of items considered deadly weapons includes “a knife.” *See* LB 77, § 13; Neb. Rev. Stat. §§ 28-1205(1)–(2).

Accordingly, because the definition of knife includes any knife and a knife is considered a weapon, a switchblade knife is a weapon. *See* LB 77, §§ 7, 8, 13; Neb. Rev. Stat. §§ 28-1201(8), 28-1202(1), 28-1205(1)–(2). Consequently, the term “weapons” in Section 1 of LB 77 and Neb. Rev. Stat. § 13-330(2)(a) includes switchblade knives.

Lincoln Municipal Code § 9.36.040 regulates the sale and possession of switchblade knives. Because Neb. Rev. Stat. § 13-330(2)(a) preempts municipal law, *see Albarenga*, 313 Neb. at 83–84, 982 N.W.2d at 810, Lincoln Municipal Code § 9.36.040 is invalid. *See* Neb. Rev. Stat. § 13-330(3). There is no exception for these types of municipal laws provided by state law.

VI. The mayor has no power to issue executive orders.

Executive Order 97985 purports to be an edict from the Mayor with the force and effect of law. It does not simply adopt a city policy for city officials and employees to follow. The order applies to everyone located in Lincoln whether that person is a resident or not. Failure to comply results in criminal and civil penalties. But the mayor does not have the authority to issue any edict with the force of law. Thus, Executive Order 97985 is invalid.

The Nebraska Constitution “prohibits one branch of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives.” *Clemens v. Harvey*, 247 Neb. 77, 82, 525 N.W.2d 185, 189 (Neb. 1994) (citation omitted).

In Lincoln, the City Council has all lawmaking authority. The Lincoln City Charter states:

All legislative powers of the city shall be *exclusively* vested in the council and shall be exercised by it in the manner and subject to the limitations set forth in this charter. The council shall have the power to pass, amend, and repeal any and all ordinances and other enactments necessary or proper to execute or carry into effect any of the provisions of this charter or any of the powers herein granted, except as otherwise provided in this charter.

Lincoln City Charter Art. IV, § 8. (Evid. Ind., Ex. 11) (emphasis added).

Conversely, the City Charter does not vest any lawmaking authority in Lincoln's mayor. It is a pure administrative role. The Lincoln City Charter states, "The executive and administrative power of the city shall be vested in and exercised by a mayor, who shall also be the ceremonial head of the city government." *Id.* at § 12. (Evid. Ind., Ex. 12). The "power" and responsibilities vested in the mayor are: (1) supervise and coordinate all activities of the city's departments and agencies; (2) enforce municipal law; (3) appoint and remove "certain [city] officers, employees, and members of boards and commissions; (4) recommend city budgets to the city council; (5) supervise city purchases and contracts; (6) provide an annual report on the actions of city departments and agencies; (7) promote, develop, and encourage city government, Lincoln's economic growth, and the well-being of its residents; and (8) perform "such other duties" as directed by the City Charter. *Id.* The mayor also has the authority to appoint officers and employees to city departments and investigate the operation of city department and agencies. *Id.* But the Lincoln Charter does not give the mayor any authority to issue executive orders with the force of law, much less any order that carries criminal or civil penalties for violations of those orders.

And there is no state law that can grant the Mayor the authority to issue edicts with the force of law. Executive Order 97985's "Authority" section cites the City's "inherent property rights to regulate the property owned and/or controlled by it," under Neb. Rev. Stat. § 28-

1202.01. But as discussed above in Section II, *supra*, this argument is invalid for property held in public trust, such as city parks. But even if state law granted Lincoln the right to ban firearms from land held in public trust, the City Council is the only lawmaking authority in the City. Likewise, for any law that prohibits weapons from buildings where government business is conducted, e.g., those listed in Neb. Rev. Stat. § 28-1202.01(3), the City Council must issue all Lincoln laws—not the Mayor. Therefore, Executive Order 97985 is invalid.

Conclusion

LB 77 expressly preempts all local government laws from regulating firearms. And the Mayor has no authority to issue any edict with the force of law. Therefore, Plaintiffs' motion should be granted.

Dated: June 11, 2026

Respectfully submitted,

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Certificate of Compliance

Pursuant to Neb. Ct. R. § 6-1505(A) and Neb. Ct. R. App. P. § 2-103(C)(4), this brief was prepared using Microsoft Word 365 in 12-point Century Schoolbook font.

Pursuant to Neb. Ct. R. § 6-1505(A) and Neb. Ct. R. App. P. § 2-103(A) and (C)(3), according to Microsoft Word, this brief contains 3,366 words.

/s/ Seth Morris

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Certificate of Service

I hereby certify that on Thursday, June 11, 2026 I provided a true and correct copy of the Memorandum to the following:

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