

O-11-17

Electronic Weapons

Staff Report

The purpose of O-11-17 is to repeal Section 11.44.070 of the City Code concerning possession and discharge of electronic weapons.

In January, an Annapolis resident filed a Federal lawsuit against the City of Annapolis in a move to strike the City's Taser ban law as being unconstitutional. Currently, under Section 11.44.070, possession, or use of any electronic weapon, stun gun or any similar device is unlawful with exceptions for law enforcement.

Several other similar lawsuits are pending in Maryland wherein each plaintiff has stated a desire to have available a non-lethal weapon to avoid using deadly force against an attacker, if possible.

Another recent Plaintiff took the District of Columbia to task over its ban on Tasers last August. The case is on hold while the City Council considers changes to bring the law in line with the Constitution. In that case, and in the Maryland suits, the Plaintiffs argue that the Second Amendment extends "to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," citing the 2008 *Heller* ruling as well as the more recent *Caetano* case.

In *Caetano*, the Massachusetts Supreme Judicial Court upheld the conviction of a woman who bought and used a stun gun in self-defense from an abusive ex-boyfriend, citing the device "is not the type of weapon that is eligible for Second Amendment protection" because it was "not in common use at the time of [the Second Amendment's] enactment." In March of 2016, the U.S. Supreme Court unanimously rejected the state's argument and determined that "the right to bear arms, Second Amendment protection of stun guns does not depend on whether Congress contemplated such weapons in 1789." *Caetano v. Massachusetts*, U.S.Mass.2016, 136 S.Ct. 1027, 194 L.Ed.2d 99 (2016).

In Maryland, while a local government is not prohibited from adopting "a restriction or requirement concerning the possession of an electronic control device that is more stringent than the requirements of the Maryland statute on possession and use of electronic control devices," the Supreme Court ruling in *Caetano* sends a clear message to jurisdictions that attempt to enforce absolute prohibitions on possession and use of such devices.

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