

**Village of Colfax**  
**Public Safety Committee Meeting Agenda**  
**Monday, June 28<sup>th</sup>, 2021**  
**5:30 p.m.**  
**Village Hall, 613 Main Street, Colfax, WI**

1. Call to Order
2. Roll Call
3. Constitutional Rights Resolution
  - a. Discussion and possible recommendation to the Village Board
4. Adjournment

Any person who has a qualifying disability as defined by the American With Disabilities Act that requires the meeting or materials at the meeting to be in an accessible location or format must contact: Lynn M. Niggemann, Administrator-Clerk-Treasurer's Office, 613 Main Street, Colfax, (715) 962-3311 by 2:00 p.m. the day prior to the meeting so that any necessary arrangements can be made to accommodate each request.

It is possible that members of and possibly a quorum of members of the governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information - no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

# VILLAGE OF COLFAX, WISCONSIN

Resolution 2021- \_\_\_\_\_

## Constitutional Rights Protection Resolution

WHEREAS, the Constitution of the United States is the Supreme Law of our nation; and;

WHEREAS, the Bill of Rights added the first 10 amendments to the United States Constitution in order to provide specific guarantees of personal freedoms, clearly defined limitations on the government's power, and explicit declarations that all rights and powers not granted to the U.S. Congress are reserved for the States or the people; and;

WHEREAS, the Right of the People to Keep and Bear Arms is guaranteed as an Individual Right under the Second Amendment to the United States Constitution; reads "A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed;" and under the Constitution of the State of Wisconsin, Article 1, Section 25, reads "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose;" and;

WHEREAS, the Right of the People to Keep and Bear Arms for the defense of Life, Liberty, and Property is regarded as an Inalienable Right by the People of Village of Colfax, Wisconsin, and;

WHEREAS, the People of Village of Colfax, Wisconsin derive an economic benefit from all safe forms of firearms recreation, hunting and shooting ~~conducted within Village of Colfax~~ using all types of firearms allowable under the United States Constitution and the Constitution of the State of Wisconsin, and;

WHEREAS, the Village of Colfax Board of Trustees, being elected to represent the People of Village of Colfax and being duly sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of Wisconsin, and;

WHEREAS, the Village of Colfax Board of Trustees is concerned about the passage of any bill containing language which could be interpreted as infringing the rights of the citizens of Village of Colfax to keep and bear arms, and;

WHEREAS, the Village of Colfax Board of Trustees wishes to express its deep commitment to the rights of all citizens of Village of Colfax to keep and bear arms, and;

WHEREAS, the Village of Colfax Board of Trustees wishes to express opposition to any law that would unconstitutionally restrict the rights of the citizens of Village of Colfax to keep and bear arms, and;

WHEREAS, the Wisconsin State Assembly and the Wisconsin State Senate, being elected by the People of the State of Wisconsin and being duly sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of Wisconsin, and;

## VILLAGE OF COLFAX, WISCONSIN

WHEREAS, any legislation considered by the Wisconsin State Legislature, ~~or~~ Executive Orders ~~are not mentioned~~ that would infringe upon the Right to Keep and Bear Arms and would ban the possession and/or use of any weapons including firearms, magazines, ammunition or body armor now employed by individual citizens of Village of Colfax for their defense of Life, Liberty and Property or for the purposes of hunting, recreation or other lawful purposes or would require a firearms owner I.D. card or tax the possession of firearms or ammunition or require the registration and/or confiscation of said weapons and ammunition within Village of Colfax, Wisconsin; would be a violation of the Second Amendment of the United States Constitution and of Article 1, Section 25 of the Wisconsin Constitution, therefore;

BE IT RESOLVED, the people of Village of Colfax, Wisconsin hereby declare it to be a Second Amendment Sanctuary Village.

BE IT FURTHER RESOLVED, the People of Village of Colfax, Wisconsin affirms its support of the Colfax Police Department to exercise sound discretion to not enforce against any citizen an unconstitutional firearms law.

BE IT FURTHER RESOLVED, that the Village of Colfax Board will not appropriate any funds for any enforcement of unconstitutional laws against the people of Village of Colfax, Wisconsin.

NOW, THEREFORE, IT BE AND IS HEREBY RESOLVED that the People of Village of Colfax, Wisconsin, do hereby oppose the enactment of any legislation that would infringe upon the Right of the People to keep and bear arms and consider such laws to be unconstitutional and beyond lawful legislative authority and to be an act of tyranny.

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PASSED BY THE VILLAGE PRESIDENT AND THE VILLAGE BOARD OF TRUSTEES on \_\_\_\_\_, 2021.

RESOLUTION SUMMARY: Village of Colfax advocates the constitutional rights of its citizens.

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Jody Albricht, Village President

ATTEST:

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Lynn M. Niggemann, Administrator-Clerk-Treasurer

## MEMORANDUM

To: Lynn Niggemann

From: Anders Helquist

Date: May 21, 2021

Re: **Constitutional Rights Resolution**

In response to the proposed Constitutional Rights Protection Resolution proposed at the previous May Village Board meeting, the Village requested our opinion regarding the Resolution. That is, the Village asked us to put together a quick overview of our primary questions that may need to be addressed in the Resolution if it is considered for approval.

First, we take no opinion on whether, as a policy matter, the Village should or should not pass this Resolution. Passing this Resolution, or a modified version of it, is a policy call for the Village and is subject to the Village Board's discretion.

With that in mind, below are several brief, "10,000 foot overview" thoughts regarding the Resolution for the Village Board's review and consideration:

- Some terms in the Resolution are unclear and overbroad. If the Board seeks to pass this Resolution, before doing so, we recommend clarifying certain terms or phrases. For example, some of the unclear or overbroad language includes the following:
  - Page 2, first Whereas Clause: This clause provides a list of "legislation considered by the Wisconsin State Legislature" and concludes that the list of potential legislative infringements "would be a violation of the Second Amendment of the United States Constitution and Article 1, Section 25 of the Wisconsin Constitution." If the Village is essentially going to declare a broad categorical list of things to be a constitutional violation, we advise the Village carefully define what it is defining as unconstitutional.

For example, the Resolution says legislation that would "ban the possession and/or use of any weapons including firearms, magazines, ammunition or body armor now employed by individual citizens of [the] Village of Colfax for their defense . . ." is declared unconstitutional (emphasis added). The use of "any" is very broad.

Does that mean a firearm ownership restriction on a person convicted of a felony (see Wis. Stat. § 941.29) is now deemed "unconstitutional" and that the Village Board is prohibited under its resolution from allocating funds to the police department to arrest a violent felon in possession of a firearm? There are similar restrictions on possessing body armor if you are a convicted violent felon (see Wis. Stat. § 941.291). Is that state law deemed "unconstitutional" because it bans the possession of "any" body armor? What about the state prohibition on possessing/operating weaponized drones? (see Wis. Stat. § 941.292)?

The Resolution also seeks to declare as unconstitutional the confiscation of said weapons and ammunition within the Village. We believe this part of the Resolution is likely intended to prohibit law enforcement from entering into a house without a warrant and confiscating a lawfully-possessed firearm, but as written, the Resolution has the effect of declaring as unconstitutional the confiscation of a firearm possessed by a convicted felon that was found during a lawfully-issued search warrant on his/her home. Some clarity in the language may be useful if the Village is going to pass this Resolution.

- Page 2, Be it Resolved: “Second Amendment Sanctuary Village” is undefined.
- Page 2, second Be it Further Resolved: The Village does not allocate money to enforce unconstitutional laws. As noted above, it is unclear what the resolution intends to have the Village declare as an “unconstitutional” law. If a law is passed and there is a question regarding its constitutionality, that law will be challenged in court and the court will make a decision whether or not the law is unconstitutional. If the law is deemed unconstitutional, then the Village naturally will not allocate money to enforce a law deemed unconstitutional, whether or not it is contained in a resolution.
- This Resolution will have less binding effect and is more general in nature in that it affirms support for a position regarding the Second Amendment. That is, if the Village chooses to pass this Resolution, there is no penalty for the failure to follow the Resolution’s terms. This Resolution can be amended, repealed, or modified by a subsequent Village Board.
- If there is consensus by the Board to pass this Resolution, there are additional case citations that it may want to add to the “Whereas” clauses to provide additional support for its position, e.g., the U.S. Supreme Court’s Heller decision.
- If there is consensus to pass this Resolution, the Board may want to consider whether the Resolution should only apply to legislation, as it currently does, or whether the Resolution should be expanded in its scope so that it applies to enactments beyond legislation, e.g., executive orders.

After your review and discussion, please let us know if you would like us to revise/clarify the resolution or whether you would like to further discuss this matter with us and thanks in advance.



# OFFICE OF CORPORATION COUNSEL

*Attorneys for the Municipal Corporation of Dunn County*

**Nicholas P. Lange**  
Corporation Counsel

**Barbara Anne Fagan**  
Assistant Corporation Counsel

## **MEMORANDUM**

TO: David Bartlett, County Board Chair  
FROM: Nicholas P. Lange, Corporation Counsel  
DATE: 6/7/2021  
RE: Constitutional Rights Protection Resolution

### **Introduction**

You have asked me to review the citizen-drafted document titled "Constitutional Rights Protection Resolution" [hereinafter "resolution"], recommend which committee would be appropriate for bringing the resolution forward, and provide guidance regarding the resolution. The resolution is a variation of a "2nd Amendment Sanctuary" template originally prepared by firearms lobbyists that has been circulating around the United States for several years.

As the County's legal counsel, I can provide an opinion/review for consideration by Supervisors; however, it is not within my authority to direct how individual Supervisors act on any particular issue or decision.

### **Review of Resolution**

- Dunn County has administrative home rule authority pursuant to Wis. Stat. § 59.03(1) to "exercise any organizational or administrative power, subject only to the constitution or to any enactment of the legislature which is of statewide concern and uniformly affects every county." Regulation of the sale, purchase, ownership and possession of firearms is entirely a matter that falls under control of state and federal laws, with the exception of a local government's ability to prohibit the possession of firearms in/on certain facilities/properties. In other words, Dunn County's authority on any other type of state or federal law will necessarily be subordinate to that law. A declaration that a county resolution controls the effectiveness or enforceability of a state or federal law is therefore meaningless. Moreover, to the extent that the resolution declares the county must follow the law, it is unnecessary. All elected officials, county officers, and county employees are required to follow the law. All county elected officials and many appointed officers must take an oath of office supporting the constitution and state law and to faithfully discharge their duties under them. Interestingly, these resolutions are often characterized as "symbolic" by proponents, which actually is a confirmation that they have no legal force or efficacy.
- The resolution contains "resolved" clauses expressing "support of the Sheriff to exercise sound discretion not to enforce against any citizen an unconstitutional firearms law" and that the "Dunn County Board will not appropriate any funds for any enforcement of

unconstitutional laws against the people of Dunn County, Wisconsin.” Local governments cannot decide that if they don’t agree with a particular state or federal law, they just won’t enforce it or follow it. This includes the Sheriff, who takes an oath to follow the law. No county official, officer, or employee has any authority to disregard a law they believe is unconstitutional. All statutes are legally presumed to be constitutional, and only the courts have authority to declare a law unconstitutional.

- All persons are subject to the rule of law. That is, we must all follow the laws as enacted until the legislature amends or repeals laws or the court strikes down a law as unconstitutional. It is bad public policy for any local government to declare that it will ignore laws that its elected officials don’t like or don’t agree with, even if it is done as a symbolic gesture. How would/could such a policy statement actually be applied to a law that doesn’t even exist, without knowing what that law requires or prohibits?
- The kinds of legislative enactments that give rise to the concerns expressed by the resolution – red flag laws, uniform background checks, restrictions on assault weapons and large capacity magazines – have already existed for years throughout the United States. They are widely popular, and have withstood legal challenges in the past.
- Having a policy that authorizes county officials, officers, and employees to disregard a law *they don’t like or don’t agree with* could expose the County to liability in cases where local officials refuse to follow a law and someone is damaged, injured, or killed as a result.
- If citizens disagree with state or federal laws, there are democratic mechanisms for changing laws. The action for challenging existing laws is through the court and/or not vote for electors who sponsored the legislation. If citizens are concerned about legislation that may be passed in the future, then the engagement should be with those who will be voting on the legislation.

#### **Committee Recommendation**

Given the breadth of the suggested policy and the legislative nature of the resolution the Executive Committee would be the committee with the most aligned committee responsibility for formally considering the resolution and advancing it to the County Board of Supervisors.