

City of Fayetteville Staff Review Form

2019-0494

Legistar File ID

9/3/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Byron Humphry

8/14/2019

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

City Council Resolution to Amend Chapter 97.066 of the Fayetteville City Ordinances to reflect state law with regards to the right to carry a concealed handgun in a public park with a special concealed handgun permit.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>NA</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF SEPTEMBER 3, 2019

TO: Mayor and City Council

THRU: Kit Williams, City Attorney
Connie Edmonston, Parks and Recreation Director

FROM: Byron Humphry, Park Maintenance Superintendent

DATE: August 14, 2019

SUBJECT: Amend Chapter 97.066 of the City of Fayetteville Code of Ordinances to reflect state law with regards to the right to carry a concealed handgun in a public park with a special concealed handgun permit.

RECOMMENDATION:

Amend Chapter 97.066 of the City of Fayetteville Code of Ordinances to reflect state law with regards to the right to carry a concealed handgun in a public park with a special concealed handgun permit.

BACKGROUND:

For decades, the City of Fayetteville has prohibited firearms in City Parks under Chapter 97.066 of the City of Fayetteville Code of Ordinances.

“97.066 Hunting and Firearms – No person in a park shall hunt, trap or pursue wildlife at any time; provided that the trapping of muskrats, beavers or other burrowing animals may be permitted on city reservoirs and waterways upon approval of the Mayor for the protection of earthen dams. No person except city police and Animal Control Officers shall use, carry, or possess firearms of any description or air rifles, spring guns, slings, traps, or other weapons or devices potentially inimical to wildlife or dangerous to human safety. Bows and arrows will be permitted on archery ranges so designated and supervised by the city.”

DISCUSSION:

Recent discussion concerning whether open carry of firearms is allowed in parks has brought attention to the fact that the State Legislature has taken away the City’s power to ban concealed handguns in city parks if carried by a person who has obtained the special concealed carry permit.

While open carry of a firearm in a park (including trails) is still legally prohibited by 97.066, the Code needs to be amended to comply with the concealed carry exception.

The following statement should be added to Chapter 97.066 of City Code:

“A.C.A. 5-73-322(h) allows a person with the special concealed carry permit authorized by A.C.A. 5-73-322(g) to carry a concealed handgun in a city park.”

BUDGET/STAFF IMPACT:

The amendment to the City Code has no budget impact.

Attachments:

City Attorney Memo date June 3, 2019



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan

CC: Don Marr, Chief of Staff
Chief Greg Tabor
Connie Edmonston, Director of Parks & Recreation

FROM: Kit Williams, City Attorney

DATE: June 3, 2019

RE: **Only Concealed Firearms Carried By A Person With A Special Concealed Carry Permit Must be Allowed in Fayetteville City Parks**

Arkansas State law has long allowed Fayetteville to prohibit firearms in our parks.

“(a)(1) Except as provided in § 5-73-322 and § 5-73-306, it is unlawful for any person other than a law enforcement officer or a security guard in the employ of the state or an agency of the state, or any city or county, or any state or federal military personnel, to knowingly carry or possess a loaded firearm or other deadly weapon in any publicly owned building or facility or on the State Capitol grounds.”

“(4) As used in this section, ‘facility’ means a municipally owned or maintained park, football field, baseball field, soccer field, or another similar municipally owned or maintained recreational structure or property”

Act 562 of 2017 amending A.C.A. § 5-73-122 and 5-73-322.

Using its previous power the Fayetteville Council has for decades prohibited firearms in our city parks.

“97.066 Hunting And Firearms

No person in a park shall hunt, trap or pursue wildlife at any time; provided that the trapping of muskrats, beavers or other burrowing animals may be permitted on city reservoirs and waterways upon approval of the Mayor for the protection of earthen dams. No person except city police and

Animal Control Officers shall use, carry, or possess firearms of any description or air rifles, spring guns, slings, traps, or other weapons or devices potentially inimical to wildlife or dangerous to human safety. Bows and arrows will be permitted on archery ranges so designated and supervised by the city."

The Legislature took away the City's power to ban **concealed** handguns in city parks if carried by a person who has obtained the special concealed carry permit authorized by A.C.A. § 5-73-322(g) when it enacted Act 562 of 2017 and which codified new subsection (h) in A.C.A. § 5-73-322.

"(h) A licensee who completes a training course and obtains an endorsement under subsection (g) of this section is exempted from the prohibitions and restrictions on:

(1) Carrying a firearm in a publicly owned building or facility under § 5-73-122, **if the firearm is a concealed handgun.**" (emphasis added)

Open carry of a firearm is still legally prohibited in our parks (including trails) by §97.066 of the *Fayetteville Code* (which should still be amended as I suggested in my August 2017 memo to comply with the concealed carry exception). I would add a final sentence to that code section: "A.C.A. §5-73-322(h) allows a person with the special concealed carry permit authorized by A.C.A. §5-73-322(g) to carry a '**concealed handgun**' in a city park."

5-73-103. Possession of firearms by certain persons.**CASE NOTES****ANALYSIS**

Constructive Possession.
Evidence.
Preservation for Review.

Constructive Possession.

Motion for a directed verdict was properly denied because the State presented sufficient evidence that defendant constructively possessed a firearm; although there was joint occupancy of a vehicle, the State presented other evidence linking defendant to the gun. The gun was found in the backseat, where defendant was the sole passenger, the compartment where the gun was found was immediately and exclusively accessible to defendant, and defendant behaved suspiciously before and during the traffic stop. *Lambert v. State*, 2017 Ark. 31, 509 S.W.3d 637 (2017).

Evidence.

Circuit court did not err in denying defendant's motions for directed verdict because there was sufficient evidence to find that defendant, a convicted felon, possessed a firearm; the testimony of two witnesses indicated that defendant brought a gun to a residence where the victim used it to shoot himself. *McCormick v. State*, 2016 Ark. App. 330 (2016).

Preservation for Review.

Defendant did not challenge the sufficiency of the evidence concerning his conviction under this section in his motion for dismissal as required, and thus his argument was not preserved for review and his conviction was affirmed. *Oliver v. State*, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

Cited: *Mosley v. State*, 2016 Ark. App. 353, 499 S.W.3d 226 (2016).

5-73-107. Possession of a defaced firearm.

(a) A person commits the offense of possession of a defaced firearm if he or she knowingly possesses a firearm with a manufacturer's serial number or other identification mark required by law that has been removed, defaced, marred, altered, or destroyed.

(b) It is a defense to a prosecution under this section that:

(1) The person reported the possession to the police or other governmental agency prior to arrest or the issuance of an arrest warrant or summons; or

(2) The firearm was manufactured prior to January 1, 1968.

(c)(1) Possession of a defaced firearm is a Class D felony.

(2) However, possession of a defaced firearm is a Class A misdemeanor if the manufacturer's serial number or other identification mark required by law is merely covered or obstructed, but still retrievable.

History. Acts 1975, No. 280, § 3107; A.S.A. 1947, § 41-3107; Acts 1995, No. 1202, § 1; 2017, No. 73, § 1.

Amendments. The 2017 amendment redesignated part of former (b) as (b)(1); and added (b)(2).

5-73-122. Carrying a firearm in publicly owned buildings or facilities.

(a)(1) Except as provided in § 5-73-322, § 5-73-306(5), § 16-21-147, and this section, it is unlawful for any person other than a law enforcement officer or a security guard in the employ of the state or an

agency of the state, or its personnel, to knowingly possess a deadly weapon in any publicly owned building or facility on Capitol grounds.

(2) It is unlawful for any person to be a security guard in a publicly owned building or facility on any city or county, or to knowingly carry or possess a firearm in a publicly owned building or facility on the State Capitol Building grounds in Little Rock.

(3) However, this section does not apply to a person who is lawfully possessing a firearm in a publicly owned building or facility on Capitol grounds.

(A) For the purpose of this section, "publicly owned building or facility" means a building or facility owned by the state or a political subdivision of the state.

(B) If necessary to complete a law enforcement or security course conducted on the State Capitol grounds, a person may carry a firearm on the State Capitol grounds.

(C)(i) If the person is carrying a firearm in a motor vehicle under § 5-73-301 et seq., the firearm must be locked and unattended in a publicly owned maintained parking lot or designated area or street.

(ii)(a) As used in this section, "designated area or street" means a parking area or street designated by the Department of Transportation for the parking of motor vehicles.

(b) "Parking lot" does not include a parking area or street otherwise controlled by the Department of Transportation.

(D) If the person has a concealed carry endorsement, the person may carry a firearm in a publicly owned building or facility on Capitol grounds.

(i) A courtroom or other facility used for a court proceeding conducted by a state or political subdivision of the state under § 5-73-306(6);

(ii) A public school building or public prekindergarten facility operated under subdivision (b) of this section;

(iii) A facility operated by the Department of Community Development or the Department of Community Services;

(iv) A posted firearm-free zone established by the Department of Arkansas State Police or the Department of Arkansas State Police;

(a) The Arkansas State Police;

(b) The University of Arkansas System;

(c) A collegiate athletic team;

(E) If the person has a concealed carry endorsement, the person may carry a firearm in a publicly owned building or facility on Capitol grounds under § 5-73-301 et seq., is a

persons.

It did not err in denying motions for directed verdict where there was sufficient evidence to establish that defendant, a convicted felon, knowingly carried a firearm; the testimony of two witnesses indicated that defendant went to a residence where the victim was to shoot himself. *McCord v. State*, 2016 Ark. App. 330 (2016).

Standard for Review.

The court did not challenge the sufficiency of the evidence concerning his conviction under this section in his motion for judgment of acquittal, and thus his argument is preserved for review and his conviction is affirmed. *Oliver v. State*, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

Sley v. State, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

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section that: police or other government officials may issue an arrest warrant or

January 1, 1968.

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is a Class A misdemeanor or other identification number is obliterated, but still retrievable.

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5-306(5), § 16-21-147, on other than a law enforcement officer or an employee of the state or an

agency of the state, or any city or county, or any state or federal military personnel, to knowingly carry or possess a loaded firearm or other deadly weapon in any publicly owned building or facility or on the State Capitol grounds.

(2) It is unlawful for any person other than a law enforcement officer or a security guard in the employ of the state or an agency of the state, or any city or county, or any state or federal military personnel, to knowingly carry or possess a firearm, whether loaded or unloaded, in the State Capitol Building or the Arkansas Justice Building in Little Rock.

(3) However, this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building or facility or on the State Capitol grounds:

(A) For the purpose of participating in a shooting match or target practice under the auspices of the agency responsible for the publicly owned building or facility or State Capitol grounds;

(B) If necessary to participate in a trade show, exhibit, or educational course conducted in the publicly owned building or facility or on the State Capitol grounds;

(C)(i) If the person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in a publicly owned and maintained parking lot.

(ii)(a) As used in this subdivision (a)(3)(C), "parking lot" means a designated area or structure or part of a structure intended for the parking of motor vehicles or a designated drop-off zone for children at school.

(b) "Parking lot" does not include a parking lot owned, maintained, or otherwise controlled by the Department of Correction or the Department of Community Correction;

(D) If the person has completed the required training and received a concealed carry endorsement under § 5-73-322(g) and the place is not:

(i) A courtroom or the location of an administrative hearing conducted by a state agency, except as permitted by § 5-73-306(5) or § 5-73-306(6);

(ii) A public school kindergarten through grade twelve (K-12), a public prekindergarten, or a public daycare facility, except as permitted under subdivision (a)(3)(C) of this section;

(iii) A facility operated by the Department of Correction or the Department of Community Correction; or

(iv) A posted firearm-sensitive area, as approved by the Department of Arkansas State Police under § 5-73-325, located at:

(a) The Arkansas State Hospital;

(b) The University of Arkansas for Medical Sciences; or

(c) A collegiate athletic event; or

(E) If the person has a license to carry a concealed handgun under § 5-73-301 et seq., is a justice of the Supreme Court or a judge on the

"described in § 5-73-311 (a)(2)" in (c).

5-73-315. Authority to carry concealed handgun — Identification of licensee.

(a) Any licensee possessing a valid license issued pursuant to this subchapter may carry a concealed handgun.

(b) The licensee shall:

(1) Carry the license, or an electronic copy of the license in an acceptable electronic format, together with valid identification, at any time when the licensee is carrying a concealed handgun; and

(2) Display both the license, or an electronic copy of the license in an acceptable electronic format, and proper identification upon demand by a law enforcement officer.

(c) The presentment of proof of a license to carry a concealed handgun in electronic form does not:

(1) Authorize a search of any other content of an electronic device without a search warrant or probable cause; or

(2) Expand or restrict the authority of a law enforcement officer to conduct a search or investigation.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 2007, No. 827, § 102; 2013, No. 419, § 2.

added "or an electronic copy of the license in an acceptable electronic format" in (b)(1) and (b)(2); and added (c).

Amendments. The 2013 amendment

5-73-316. Fees.

Any fee collected by the Department of Arkansas State Police pursuant to this subchapter shall be deposited into the Department of Arkansas State Police Fund.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2.

5-73-317. Rules and regulations.

The Director of the Department of Arkansas State Police may promulgate rules and regulations to permit the efficient administration of this subchapter.

History. Acts 1995, No. 411, § 8; 1995, No. 419, § 8.

5-73-318. Instructor review of applications.

(a) An instructor authorized to conduct a training course required by this subchapter shall check the application of a student for completeness, accuracy, and legibility.

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5-73-322. Concealed handguns in a university, college, or community college building.

(a)(1) As used in this section, "public university, public college, or community college" means an institution that:

(A) Regularly receives budgetary support from the state government;

(B) Is part of the University of Arkansas or Arkansas State University systems; or

(C) Is required to report to the Arkansas Higher Education Coordinating Board.

(2) "Public university, public college, or community college" includes without limitation a public technical institute.

(3) "Public university, public college, or community college" does not include a private university or private college solely because:

(A) Students attending the private university or private college receive state-supported scholarships; or

(B) The private university or private college voluntarily reports to the Arkansas Higher Education Coordinating Board.

(b) A licensee who has completed the training required under subsection (g) of this section may possess a concealed handgun in the buildings and on the grounds of a public university, public college, or community college, whether owned or leased by the public university, public college, or community college, unless otherwise prohibited by this section or § 5-73-306.

(c)(1) A licensee may possess a concealed handgun in the buildings and on the grounds of a private university or private college unless otherwise prohibited by this section or § 5-73-306 if the private university or private college does not adopt a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college.

(2)(A) A private university or private college that adopts a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college shall post notices as described in § 5-73-306(18).

(B) A private university or private college that adopts a policy only allowing carrying of a concealed handgun under this section shall post notices as described in § 5-73-306(18) and subdivision (c)(2)(C) of this section.

(C) If a private university or private college permits carrying a concealed handgun under this section, the private university or private college may revise any sign or notice required to be posted under § 5-73-306(18) to indicate that carrying a concealed handgun under this section is permitted.

(d) The storage of a handgun in a university or college-operated student dormitory or residence hall is prohibited under § 5-73-119(c).

(e)(1) A licensee who may carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community

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college under this section may not carry a concealed handgun into a location in which an official meeting lasting no more than nine (9) hours is being conducted in accordance with documented grievance and disciplinary procedures as established by the public university, public college, or community college if:

(A) At least twenty-four (24) hours' notice is given to participants of the official meeting;

(B) Notice is posted on the door of or each entryway into the location in which the official meeting is being conducted that possession of a concealed handgun by a licensee under this section is prohibited during the official meeting; and

(C) The area of a building prohibited under this subdivision (e)(1) is no larger than necessary to complete the grievance or disciplinary meeting.

(2) A person who knowingly violates subdivision (e)(1) of this section upon conviction is guilty of:

(A) A violation for a first offense and subject to a fine not exceeding one hundred dollars (\$100); and

(B) A Class C misdemeanor for a second or subsequent offense.

(f) This section does not affect a licensee's ability to store a concealed handgun in his or her vehicle under § 5-73-306(13)(B)(v).

(g)(1) A licensee who intends to carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college is required to complete a training course approved by the Director of the Department of Arkansas State Police.

(2)(A) Training required under this subsection shall:

(i) Not be required to be renewed;

(ii) Consist of a course of up to eight (8) hours;

(iii) Be offered by all training instructors and at all concealed carry training courses; and

(iv) Cost no more than a nominal amount.

(B) The Director of the Department of Arkansas State Police may waive up to four (4) hours of training required under this subsection for a licensee based on the licensee's prior training attended within ten (10) years of applying for the endorsement provided for under subdivision (g)(3) of this section on appropriate topics.

(3) A licensee who completes a training course under this subsection shall be given a concealed carry endorsement by the Department of Arkansas State Police on his or her license to carry a concealed handgun that the person is permitted to possess and carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college.

(h) A licensee who completes a training course and obtains a concealed carry endorsement under subsection (g) of this section is exempted from the prohibitions and restrictions on:

(1) Carrying a firearm in a publicly owned building or facility under § 5-73-122, if the firearm is a concealed handgun; and