

Meeting Date
June 18, 2007

AGENDA REQUEST
City of Woodstock City Council

Agenda Item Number
6C

Public Hearing? Yes No (If yes, attach copy of ad)

Subject: Revision to City of Woodstock Code of Ordinances [58-32 and 6-107]

Ord # 012-2007

SUMMARY EXPLANATION AND BACKGROUND: A conflict between Woodstock ordinances 58-32 and 6-107 and OCGA 16-11-173(b)(1) pertaining to the carrying of firearms by civilian personnel in the city limits. This issue was reviewed by the City Attorney who recommends the ordinance be omitted from the code.

REQUESTED ACTION: Revise 58-32 and delete 6-107

FINANCIAL IMPACT: na

ATTACHMENTS: Letter from City Attorney / Ordinance 58-32 / OCGA 16-11-17

BUDGET INFORMATION:

Budget Amendment Required: Yes No If yes, complete below:

Transfer \$ _____ From Acct #: _____ To Acct #: _____

Adopted Budget Amount: \$ _____ Account Name: _____
Amount Spent to Date: \$ _____
Encumbered Balance: \$ _____
Amount of Request: \$ _____ Account Number: _____
Budget Remaining: \$ _____

REQUESTED BY:

Richard S. Moss Ext: 6010
Department Head Phone

City Manager Phone

Elected Official(s)

Approved Denied Tabled

As adopted or ordained by the City Council on this _____ day of _____, 20_____.

Mayor

Attest: _____
City Clerk (Seal)

Distribution: Muni-Code Elected Officials City Manager Department Heads Staff Media
 Code Enforcement City Attorney Other: _____ Distribution Date: _____ By: _____

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May 25, 2007

Chief Moss
Woodstock Police Department
103 Arnold Mill Road
Woodstock, GA 30188

RE: CONFLICT IN CITY ORDINANCES WITH O.C.G.A. §16-11-173

Dear Ric:

I received the memorandum prepared by Sgt. O'Keefe and supporting documentation. I do recall some publicity regarding the adoption of §16-11-173 and my recollection was that it was adopted when the City of Atlanta was considering joining New York and other cities which had sued gun manufacturers contending that the gun manufacturers were liable for the wrongs done by felons using guns. I agree that the enactment of that legislation does create a conflict with a portion of §58-32 and §6-107. The last sentence of §58-32 which reads "no loaded firearms shall be carried on the streets, except in the case of law enforcement officers" and all of §6-107 conflict with §16-11-173 (b)(1) which states in part that no municipal corporation by ordinance shall regulate in any manner the possession or carrying of firearms.

I would recommend that this be brought to the Council's attention with a recommendation that the conflicting provisions be omitted from the code.

Please call me if you have any questions.

Very truly yours,
Moore Ingram Johnson & Steele, LLP


Eldon L. Basham

ELB/cbm

Cc: Jim Gleason, City Manager
Donnie Henriques, Mayor

(Code 1989, § 9-1-65; Res. No. 95-01-10, 1-10-1995)

Sec. 6-105. Lewd dancing prohibited.

No licensee under this division shall permit professional belly dancers, strip dancing, exotic dancing or any exhibitions of any like kind by whatever name called in connection with the operation of a restaurant, lounge or private club.

(Code 1989, § 9-1-66; Res. No. 95-01-10, 1-10-1995)

State law references: Prohibited conduct on licensed premises, O.C.G.A. § 3-3-40 et seq..

Sec. 6-106. On-premises consumption only allowed in central business district.

Only sale of liquor for consumption on premises will be allowed in a central business district, provided that at least 50 percent of the licensee's gross annual income will be derived from the sale of food, and provided that the proposed place of business is located within the distance boundaries charted in section 6-25. Existing businesses will be required to submit to the city proof that their food sales are 50 percent or greater before an on-premises consumption or Sunday sales license will be issued. Required proof shall be in the form of a notarized certified letter by a state licensed certified public accountant.

(Code 1989, § 9-1-67; Res. No. 95-01-10, 1-10-1995; Ord. No. 05-09-13, § 9-13-2005)

State law references: Sale of alcoholic beverages near sites, O.C.G.A. § 3-3-21.

Sec. 6-107. Dangerous weapons prohibited.

(a) No person, either employee or patron, shall have on his person any firearm or other dangerous weapon while on any premises licensed under this article.

(b) It shall be the responsibility of the owners, operators, managers and their employees to immediately report all violations of this section to the police department. Failure to report these violations shall be a violation of this section.

(c) This section shall not apply to city police officers.

(Code 1989, § 9-1-68; Res. No. 95-01-10, 1-10-1995)

Sec. 6-108. Premises.

Premises means the definite closed or partitioned-in locality, whether room, shop, or building wherein alcoholic beverages are sold, and may include an attached patio or deck when:

(1) It is separated from the general public by a permanent wall, fence, hedge or similar approved device, and access to the patio or deck is limited only through the main premises;

(2) The location of the patio or deck does not encroach upon any public sidewalk, right-of-way, or other common area customarily used for ingress, egress, pedestrian or vehicular traffic;

(3) The location and plans shall first have been approved by the director of planning and economic development, fire marshal, and building official.

ARTICLE II. OFFENSES*

***Editor's note:** Municipalities are prohibited by law from enacting ordinances covering matters which have been preempted by general law and are prevented from regulating conduct which has been made a violation of any criminal law of the state. See Ga. Const. of 1983, art. III, § VI, ¶ IV; O.C.G.A. § 36-35-6(a)(2).

Charter references: Specific powers, § 1.13.

State law references: Abandonment of airtight containers, O.C.G.A. § 16-11-100; fireworks, O.C.G.A. § 25-10-1 et seq.; disorderly houses, O.C.G.A. § 16-11-44; disorderly conduct, O.C.G.A. § 16-11-39; public intoxication, O.C.G.A. § 16-11-41; peeping Toms, O.C.G.A. § 16-11-61; gambling, O.C.G.A. § 16-12-20 et seq.; cruelty to animals, O.C.G.A. § 16-12-4; criminal trespass, O.C.G.A. § 16-7-21; Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-1 et seq.; damaging, injuring or interfering with property of public utility companies or municipalities, O.C.G.A. § 16-7-25; obscene publications, O.C.G.A. § 16-12-80 et seq.; jurisdiction of municipal courts over certain marijuana cases, O.C.G.A. § 36-32-6.

Sec. 58-31. Disorderly conduct.

It shall be unlawful and disorderly conduct for any person to:

- (1) Act in a violent or tumultuous manner toward another, whereby a reasonable person would be placed in fear of safety for life or limb;
- (2) Place the property of another in serious danger of being destroyed or damaged;
- (3) Use fighting words directed toward another, who becomes outraged and thus creates a turmoil;
- (4) Violently interfere with another's pursuit of a lawful occupation; or
- (5) Congregate with others to halt the flow of vehicular or pedestrian traffic and refuse to clear the way when ordered by lawful authority to do so.

(Code 1989, § 11-1-1)

State law references: Authority to punish disorderly conduct, O.C.G.A. § 16-11-39.

Sec. 58-32. Discharging firearms.

No person shall shoot or fire any firearms such as pistols or shotguns, except law enforcement officers in the execution of their duty and/or persons participating in special events held in accordance with a valid city permit. No firearms shall be pointed toward any person while such firearms are either loaded or unloaded. No loaded firearms shall be carried on the streets, except in the case of law enforcement officers.

(Code 1989, § 11-1-2)

O.C.G.A. § 16-11-173

Legislative findings; preemption of local regulation and lawsuits; exceptions

(a)(1) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern.

(2) The General Assembly further declares that the lawful design, marketing, manufacture, and sale of firearms and ammunition to the public is not unreasonably dangerous activity and does not constitute a nuisance per se.

(b)(1) No county or municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner gun shows; the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or components of firearms; firearms dealers; or dealers in firearms components.

(2) The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association, or dealer by or on behalf of any governmental unit created by or pursuant to an Act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public shall be reserved exclusively to the state. This paragraph shall not prohibit a political subdivision or local government authority from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or express warranty as to firearms or ammunition purchased by the political subdivision or local government authority.

(c) A county or municipal corporation may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with such local unit of government.

(d) Nothing contained in this Code section shall prohibit municipalities or counties by ordinance, resolution, or other enactment, from requiring the ownership of guns by heads of households within the political subdivision.

(e) Nothing contained in this Code section shall prohibit municipalities or counties, by ordinance, resolution, or other enactment, from reasonably limiting or prohibiting the discharge of firearms within the boundaries of the municipal corporation or county.

HISTORY: Code 1981, § 16-11-173, enacted by Ga. L. 1995, p. 139, § 2; Ga. L. 2005, p. 613, § 1/SB 175.