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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE

...in cooperation with the Tennessee Municipal League

#184
HOT topic

June 23, 2009

LOCAL OPT-OUT PROHIBITING HANDGUNS IN MUNICIPAL PARKS

Josh Jones, Legal Consultant

The recently passed Public Chapter No. 428 authorizes handgun carry permit holders to lawfully possess handguns in federal, state and local parks. Cities may exclude their parks by passing a resolution and other compliance procedures. This publication details the requirements of the new law and the process cities must undertake to prohibit handguns in parks they own or operate. A sample resolution is attached.

Residents who meet certain requirements can obtain a handgun carry permit under the provisions of T.C.A. § 39-17-1351. Tennessee law authorizes handgun carry permit holders to lawfully carry concealed firearms in public, subject to statutory restrictions. One of those restrictions is found in T.C.A. § 39-17-1311(a), which makes it an offense to:

> possess or carry, whether openly or concealed, with the intent to go armed, any weapon prohibited by § 39-17-1302(a), not used solely for instructional, display or sanctioned ceremonial purposes, in or on the grounds of any public park, playground, civic center or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.

Public Chapter No. 428 exempts lawful carry permit holders from this prohibition under certain circumstances, allowing them to possess a handgun:

> while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, a county, a municipality or instrumentality thereof ...

The provisions allowing carry permit holders to possess handguns in municipal parks go into effect on September 1, 2009. Locally enacted prohibitions on possessing or carrying in nonrecreational municipal property, such as city hall, still apply.

Local governments have the ability to opt out of the new provisions and prohibit the possession of handguns while or within public parks owned or operated by the city. This can be accomplished through adoption of a resolution by the governing body. Adoption

of the resolution requires a majority vote. In the case of parks jointly owned or operated by two or more municipalities or counties, every governing body must adopt a resolution to effect the prohibition.

In Section 2 of the new legislation, an adopting municipality may elect to prohibit carry permit holders from "possessing such handgun while or within or on a public park that is owned or operated by a county, a municipality or instrumentality thereof." This language mentions only public parks, leading a reader to believe that a local government may exempt only parks. However, the new legislation also amends T.C.A. § 39-17-1314, which covers the construction of these statutes. The new language explicitly states that an opt-out resolution allows municipalities to:

> prohibit the possession of handguns while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by a county, a municipality or instrumentality thereof

This language suggests that the legislative intent of the bill is to authorize cities not only to prohibit handguns in public parks, but also to prohibit them in the aforementioned similar places if owned or operated by a municipality.

Seemingly, a municipality could amend the model resolution language and elect to prohibit handguns in specific parks, while allowing them in others. A city electing to prohibit handguns in specific parks should describe clearly and accurately the properties to be covered. According to the new legislation, when a legislative body elects to prohibit handguns in a park, the prohibition applies to the entire park. Hence, no park may be partitioned into handguns-allowed and handguns-prohibited sections.

Well before the passage of this new legislation, the provisions of T.C.A. § 39-17-1311(b)(1)(A)-(H) allowed for the possession of weapons by certain people under certain circumstances in recreational areas. They include law enforcement, reserve officers in training, private police, lands designated as open to hunting, persons conducting or attending gun or knife shows, persons delivering or picking up passengers who do not use the weapon in any manner. These exceptions will be unaffected by the new legislation, thus the activities will be allowed in municipal parks regardless of a resolution.

Upon the prohibition of handguns in a park, a municipality is charged with displaying prominent signage, in accordance with T.C.A. § 39-17-1311(c)(1), giving notice of the prohibition. The signage provision states:

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Each chief administrator of public recreational property shall display in prominent locations about the public recreational property a sign, at least six inches (6") high and fourteen inches (14") wide, stating:

MISDEMEANOR. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF ELEVEN (11) MONTHS AND TWENTY-NINE (29) DAYS AND A FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500) FOR CARRYING WEAPONS ON OR IN PUBLIC RECREATIONAL PROPERTY.

To ensure compliance, cities should post signs with this language in prominent locations. According to the statute, prominent locations include but are not limited to all entrances to the property and any building or structure on the property.

Cities that want to enact a resolution prohibiting the possession of handguns in their parks would be wise to act quickly. The September 1, 2009, effective date is approaching rapidly, and on that date carry permit holders may possess handguns in a city's parks until that city passes a resolution and complies with the signage requirements. If you have any questions, please contact your UT MTAS municipal management consultant.

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The Municipal Technical Advisory Service (MTAS) is a statewide agency of the University of Tennessee Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League to provide technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and water and wastewater management.

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RESOLUTION NO. _____

A RESOLUTION TO PROHIBIT HANDGUNS IN PUBLIC MUNICIPAL PARKS, NATURAL AREAS, HISTORIC PARKS, NATURE TRAILS, CAMPGROUNDS, FORESTS, GREENWAYS, WATERWAYS, OR OTHER SIMILAR PUBLIC PLACES.

WHEREAS, prior to September 1, 2009, *Tennessee Code Annotated*, § 39-17-1311, essentially made carrying weapons in municipally owned parks, playgrounds, civic centers, or other building facilities a Class A misdemeanor; and

WHEREAS, Public Chapter No. 428 (House Bill 716 and Senate Bill 976) of the 106th General Assembly, as adopted, removed the above mentioned prohibitions in public parks for persons authorized to carry handguns pursuant to *Tennessee Code Annotated*, § 39-17-1351; and

WHEREAS, Public Chapter No. 428 of the 106th General Assembly permits municipal and county governments to prohibit, by resolution, the carrying of handguns while within a public park that is owned or operated by a county, a municipality, or their instrumentalities; and

WHEREAS, the _____ of the city/town of _____
(governing body)
desires to continue prohibiting the carrying of handguns in municipal parks; now, therefore:

BE IT RESOLVED BY THE _____
(governing body)
OF THE CITY/TOWN OF _____ THAT:

SECTION 1. Any person authorized[1] to carry a handgun under *Tennessee Code Annotated*, § 39-17-1351, is prohibited from possessing any handgun while within a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place that is owned or operated by the city/town of _____ or any of its instrumentalities. This prohibition of handguns within any municipal park applies to the entire park, notwithstanding the provisions of T.C.A. § 39-17-1311(b)(1)(I).[2] However, this resolution does not prohibit lawful possession of any handgun in accordance with T.C.A. § 39-17-1311(b)(1)(A)-(H).[3]

SECTION 2. The city/town of _____ shall display signs in prominent locations about the public recreational property, at least six inches (6") high and fourteen inches (14") wide, stating:

> MISDEMEANOR. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF ELEVEN (11) MONTHS AND TWENTY-NINE (29) DAYS AND A FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500) FOR CARRYING WEAPONS ON OR IN PUBLIC RECREATIONAL PROPERTY.

SECTION 3. If a part of this Resolution is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Resolution is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION 4. This resolution takes effect from and after its passage, the welfare of the city/town of _____ requiring it.

Adopted: _____

_____ _____

Mayor City Recorder

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[1]Any person who is not authorized to carry a handgun under state law and who possesses a handgun in a park or other public area with the intent to go armed would be in possible violation of T.C.A. § 39-17-1307, which is a Class E felony.

[2]The state statute requires the prohibition of handguns to apply to the entire park. The statute does not mention the other recreational areas in this proviso.

[3]The state statute allows for the lawful possession of handguns in numerous circumstances, including but not limited to military personnel, civil officers, reserve officer training corps pupils and law enforcement officers in discharge of their official duties; private police employed by the municipality; persons who are either hunting on municipal land designated as open to hunting, traversing municipal property to gain access to hunting lands, conducting or attending a gun show, picking up or delivering passengers who do not use the weapon in any way, or a person permitted to sport or target shoot; or a security guard who meets the requirements of T.C.A. Title 62, Chapter 35.