

Date:	Reference No.:	Agenda Item No.:
10/21/2011	Ordinance No. 2011-26	08.01.

Subject: Approval of Ordinance Amending Section 37.16 of the Code of Ordinances As It Relates to Deadly Weapons

Summary of Request:

The issue has been raised by an Indianapolis area attorney that the Town's current ordinance regarding the carrying of firearms in Town buildings may attempt to unnecessarily restrict the rights of gun owners under Indiana Law. That current ordinance restricts the carrying of guns in all Town buildings and this language is inconsistent with State Law. The Town can only restrict the carrying of firearms in a building that houses a Court or may restrict the public display of firearms. The proposed ordinance amends the language of the Town ordinance to mirror that of State Law.

Financial Summary:

Budget Funds Available	If Yes, Amount
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	

	Line Item Name	Line Item Number
Budget Fund Information:		

Recommend Bid/Contract Amount: N/A

Estimated Project Costs: (whole numbers)	Architecture/Engineering	N/A
	Construction/Procurement	N/A
	Contingency	N/A
	Miscellaneous Costs	N/A
	TOTAL ESTIMATE	N/A
	Future Expenses (if any)	N/A
	Revenue Generated (if any)	N/A

Department Head Approval:

Date:

Assistant Town Manager Approval: *Shant A. McKinstry*

Date: 10/18/2011

ATM Comments:

After reviewing the ordinance, it appears that the language satisfies the intent of the State Law. I recommend that the Town Council holds 1st reading on the proposed ordinance.

Supporting Documentation:

Ordinance 2011-26, Memo from Town Attorney, Current Town Ordinance

Action Requested:

Holding of 1st Reading on Ordinance #2011-26 Amending Section 37.16 of the Code of Ordinances As It Relates to Deadly Weapons.

Town Manager Approval: *Jac*

Date: 18 Oct 11

TM Comments:

AN ORDINANCE AMENDING SECTION 37.16 OF THE CODE OF ORDINANCES AS IT RELATES TO DEADLY WEAPONS

WHEREAS, the Town of Brownsburg, Indiana through the Town Council desires to amend and update its Ordinances relating to the carrying of deadly weapons in public buildings.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BROWNSBURG, INDIANA AS FOLLOWS:

Section I. Title III, Chapter 37, Section 37.16, of the Brownsburg Town Code is hereby amended as follows:

§ 37.16 DEADLY WEAPONS PROHIBITED.

Except as provided for in Section 37.17, a person shall not:

- (1) Possess a deadly weapon on or about his person in any building that contains a courtroom of a Circuit, Superior, Town, or Small Claims Court; or
- (2) Intentionally display a deadly weapon at any public meeting.

Section II. All prior Ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed.

Section III. This Ordinance is hereby passed by the Town Council for the Town of Brownsburg, Indiana this ____ day of _____, 2011.

Matthew S. Bowles, President

ATTEST:

Jeanette M. Brickler
Clerk-Treasurer



FOUNDED 1937

MEMORANDUM

RE: Brownsburg Town Ordinances regarding firearms

- I. **Issue:** The issue has been raised with the Town that its current ordinance regarding firearms may attempt to unnecessarily restrict the rights of gun owners under Indiana law. The question then, is whether the Town's Ordinance regarding Firearms is overly restrictive, thereby subjecting the Town to potential lawsuits as have been filed in Evansville and other communities.
- II. **Short Answer:** In short, the Town's Ordinance is overly restrictive as currently drafted, and accordingly, should be revised to more narrowly define the restrictions placed upon the carrying of firearms in Town buildings.
- III. **Discussion:** As currently written the Town's Ordinance regarding firearms (the "Ordinance") prohibits the carrying of firearms in any Town building.¹ This language however, is inconsistent with State law, specifically, the provisions of I.C. 35-47-11.1-4. Specifically, State law is crafted to provide that a political subdivision may not regulate firearms except in certain fairly narrow circumstances as more fully discussed below.²

Specifically, the Town can restrict firearms: (1) from any building that contains a circuit, superior, town, or small claims courtroom (with certain provisions for partitions in buildings that contain residential units as a part of that building); and (2) from being intentionally displayed at a public meeting. There is a provision that would allow the Town to more generally restrict firearms in any Town building, provided however; that to do so, the Town would need to install metal detection devices at each public entrance to the building. Each public entrance would then need to be staffed by at least one law

¹ Section 37.17

² IC 35-47-11.1-2, 4

enforcement officer who has been adequately trained: (1) conduct inspections of persons entering the building by use of metal detection devices; (2) proficient in physical pat-down searches when the building is open to the public; and (3) search and inspect all bags, containers, or packages carried by each individual who enters the building through the public entrance when the building is open to the public.³ Even then, the prohibition is contingent on the building containing a court room.⁴

So then, leaving aside the issue of restricting firearms in schools or hospitals, or by town employees, unless the Town is interested in dedicating the resources necessary for metal detection devices and police officers at any building they would wish to restrict the guns from, the easiest way to provide for the restriction, is a restriction on guns in any building used as a courtroom by the Town, along with clear signs that the *intentional display* of a firearm at a public meeting is prohibited.⁵

As you can see from the attached draft Ordinance, I have attempted to revise the Ordinance so that it will comply with the state provisions. Please note that the lawsuits against other towns in this regard seem to be motivated, at least in part, by the new language added to the Indiana Code which provides that a prevailing plaintiff in an action against the unit of government shall be entitled to recover from that political subdivision the following: (1) the greater of actual damages, including consequential damages or (2) liquidated damages of three times the plaintiff's attorneys fees, court costs, including fees and (3) reasonable attorney fees.⁶ As such, the Town could be subject somewhat significant liability if the Town were to restrict a member of the public from carrying a firearm on a town building prior to the Ordinance change. Please let me know if you have additional questions or would like the Ordinance in a way that would contemplate the installation of metal detectors at the entrances.

³ IC 35-47-11.1-4(13)

⁴ Id.

⁵ Please note that the language of the Code provides for the intentional display of firearms presumably to guard against a circumstance in which a firearm may be inadvertently displayed in a non-intentional manner.

⁶ IC 35-47-11.1-7

Brownsburg, Indiana Code of Ordinances
DEADLY WEAPONS IN GOVERNMENT BUILDINGS.

§ 37.15 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

DEADLY WEAPON.

(1) A loaded or unloaded firearm.

(2) A weapon, device, taser or electronic stun gun, equipment, chemical substance, or other material that in the manner it is used, could ordinarily be used or is intended to be used, is readily capable of causing serious bodily injury.

FIREARM. Any weapon which is capable of, designed to or that may be readily converted to expel a projectile, whether by means of an explosion, by the use of compressed air, compressed gas, or otherwise.

TOWN OF BROWNSBURG GOVERNMENT BUILDING. Includes, without limitation, the Town Hall, Police Station, Fire Station No. 2 and the Police/Fire Facility (Fire Station No. 1). ('92 Code, § 6-166) (Ord. 96-10, passed 4-11-96)

§ 37.16 DEADLY WEAPONS PROHIBITED.

Except as provided in § 37.17, a person shall not possess on or about his person within any Town government building, any deadly weapon.

('92 Code, § 6-167) (Ord. 96-10, passed 4-11-96) Penalty, see § 37.99

§ 37.17 EXCEPTIONS.

Section 37.16 does not apply to the following persons while on duty or while appearing in court to testify in an official capacity: Law Enforcement Officers, Indiana Department of Corrections Officers, court personnel, or employees of the United States duly authorized to carry deadly weapons.

('92 Code, § 6-168) (Ord. 96-10, passed 4-11-96)