

# Memorandum

**TO:** Mayor Bob Murphy  
Lakewood City Council

**FROM:** Janet Young, Deputy City Attorney  
Office of the City Attorney

**DATE:** July 20, 2009

**SUBJECT:** Updates to Chapter 9.32 Pertaining to Parks and Recreation

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## Background Information

Lakewood's regulations concerning parks and recreation, Chapter 9.32 of the Lakewood Municipal Code, have not been updated for nearly a decade. The Department of Community Resources and the Police Department are proposing numerous revisions to this Chapter to address current issues and to reflect changes in state law.

## Alcohol in Parks

The consumption of fermented malt beverages (three and two-tenths percent (3.2% alcohol by weight or less) or malt liquors (more than three and two-tenths percent (3.2% alcohol by weight) is currently legal in all city parks (but not on public streets or sidewalks). A problem has developed in Walker Branch Park involving intoxicated transients. The transients buy alcohol at nearby liquor stores and walk to Walker Branch Park to drink, sometimes becoming highly intoxicated. They gather in large numbers, drinking, eating, socializing, sleeping, and monopolizing the picnic tables and pavilions and the nearby restrooms. As a result, neighbors and regular park visitors have become fearful and have begun to avoid using the park. Police agents assigned to the city's north sector have responded to numerous calls related to alcohol and substance abuse including detoxification center transports, "man down" calls, disorderly conduct complaints, fights, assaults, and assorted disturbances.

To address this growing problem, Community Resources and the Police Department are proposing that the director of Community Resources be given the authority to ban the possession of fermented malt beverages or malt liquors in any city park if the director determines that public intoxication is having a negative effect on the recreational enjoyment of the park. Signs would be posted to inform the public that possession and/or consumption is prohibited in that park.

## Firearms

During the 2003 legislative session, the General Assembly passed Senate Bills 03-24 and 03-25. Both bills were signed into law by Governor Owens. Senate Bill 03-24 declared the regulation of concealed handguns to be a matter of statewide concern, while Senate Bill 03-25 declared the entire field of the regulation of firearms to be a matter of statewide concern and specifically prohibited certain forms of local regulation. The new laws prohibited cities from passing ordinances or enforcing current ordinances that restrict such things as where firearms could be possessed.

On a challenge filed by the City and County of Denver, the District Court upheld certain Denver ordinances regulating firearms (prohibiting the possession of assault weapons and the sale of Saturday night specials, and regulating the open carrying and safe storage of firearms), but struck down those Denver ordinances that regulated the carrying of firearms in motor vehicles without a permit, the furnishing of firearms to minors, and the carrying of handguns with a permit in city parks as being preempted by state law. The decision was appealed to the Colorado Supreme Court, which voted 3-3 on the matter (one justice had recused herself from the vote). Because of the “tie” vote, the District Court’s ruling stayed in place and bound the parties to the case (i.e., Denver), but the decision has no precedential value. Therefore, it does not bind any other individuals or government entities, and it does not preempt the state from enforcing its laws in the rest of the state.

As a result of this court ruling, Lakewood’s ordinances concerning the possession of weapons in city parks and facilities are not being enforced by Lakewood agents and must be updated. For example, Section 9.32.350, Unlawful possession of weapons – Parks, community centers, and recreational facilities, conflicts with state law in that it prohibits the possession of any firearm in a community center or recreational facility even when the firearm is possessed by a person with a concealed handgun permit.

Senate Bill 03-24 states at Section 18-12-214 (4), C.R.S. that a person with a concealed handgun permit may carry a concealed handgun into a public building unless (a) security personnel and electronic weapons screening devices are permanently in place at each public entrance to the building; and (b) security personnel electronically screen each person who enters the building to determine whether the person is carrying a weapon of any kind. Because such security screening measures are in place at the Lakewood Public Safety Center, persons with concealed handgun permits are banned from bringing a concealed handgun into that building. However, no other city facility has such security screening and therefore state law allows any person with a valid concealed handgun permit to bring a concealed handgun into recreation facilities, community centers and other city buildings.

Note that state law allows cities to prohibit the *open* carrying of a firearm in city facilities. All city parks and facilities are posted with signs at the public entrances that inform visitors that the open carrying of firearms is prohibited. The proposed amendments would make it clear that it is illegal to openly carry firearms in city parks or facilities.

### Park Rangers

The Department of Community Resources employs numerous park rangers to patrol the city's regional parks. These persons are authorized to enforce Chapter 9.32 and the department's rules and regulations. The proposed ordinance would clarify their enforcement authority and make it unlawful to interfere with a park ranger, disobey the lawful order of a park ranger, or give false information to a park ranger during an investigation into the commission of a crime or traffic violation.

### Specific provisions of the proposed ordinance

The proposed ordinance would do the following:

- Grant the director of Community Resources the authority to ban the possession and/or consumption of fermented malt beverages or malt liquors in any individual park within the city if the director deems it appropriate due to a problem with intoxicated persons in the park;
- Make it unlawful to possess and/or consume any fermented malt beverages or malt liquors in any park within the city when a sign has been posted in such park providing notice to the public that such conduct is unlawful;
- Update the provisions regulating the possession of weapons within parks, community centers, and recreational facilities to prohibit the open carrying of a firearm within or upon the grounds of said premises;
- Amend the provision regarding hours of use of parks to state that unless otherwise posted by sign, parks shall be closed daily from 10 p.m. to 5 a.m.;
- Add a definition of park ranger and make it unlawful to interfere with a park ranger, to disobey the lawful and reasonable order of a park ranger, or to provide false information to a park ranger during the investigation into the commission of alleged crime or traffic violation;
- Make it unlawful for any person to remove such things as plants, rocks, or wood from any park;

- Prohibit any person from constructing, placing, or maintaining any road, trail, structure, fence, or other improvement on any park without the director's authorization;
- Amend the provision banning the use of dangerous missiles to specifically include the use of paintball guns or air-soft guns;
- Adopt by reference the Aquatic Nuisance Species Act as set forth in state law to empower park rangers to inspect watercraft for the presence of exotic or nonnative aquatic wildlife or any plant that has been determined to pose a significant threat to the state's aquatic resources or water infrastructure;
- Prohibit any person from swimming or wading in parks except in areas designated by the director; and
- Regulate the use of trails by pedestrians, equestrians, or persons riding a bicycle or operating a toy vehicle.