

REQUEST FOR BOARD ACTION

AGENDA ITEM: 3.19



Law Department

SUBJECT: Amendments to the Wilmette Village Code to Prohibit the Concealed Carry of Firearms for Premises Where Alcohol is Sold for Consumption On the Premises

MEETING DATE: Ordinance Introduction – September 10, 2019
Ordinance Approval – September 24, 2019

FROM: [Jeffrey M. Stein](#), Corporation Counsel

BUDGET IMPACT: None

Recommended Motion

Move to introduce and subsequently adopt Ordinance No. 2019-O-57: An Ordinance Amending Chapter 10 of the Village Code (Prohibiting the Concealed Carry of Firearms for Premises Where Alcohol is Sold for Consumption On the Premises).

Background

At its February 11, 2019 meeting, the Public Safety Committee discussed firearm safety. The Committee directed the Corporation Counsel to determine if the Village of Wilmette could legally impose requirements that restrict individuals from having a concealed carry firearm upon the premises of establishments that are licensed to sell liquor for consumption onsite (Liquor Licensees). Such regulations were recently enacted in the Village of Northbrook.

The Corporation Counsel concluded that since this was a regulation of the Village's Liquor License establishments, and not a direct regulation of firearms, that it was legally permissible. The regulation would require those Liquor Licensees to place at every entryway the State of Illinois approved sign that notifies conceal carry licensees that they cannot have their firearm on their person when entering the premises. A picture of the signage is attached in its actual size to this memorandum.

On August 22, 2019, the Public Safety Commission reconvened to consider the Corporation Counsel's opinion and unanimously recommended adoption of Ordinance No. 2019-O-57 which is modeled after the Village of Northbrook ordinance. Prior to the August Public Safety Committee meeting, letters were sent to all liquor licensed establishments in the Village informing them of the ordinance under consideration and the upcoming meeting - no feedback was received.

Discussion

The following is a summary of the Corporation Counsel's opinion on this matter.

RELEVANT REGULATIONS ALREADY IN EXISTENCE (STATE LAW)

There are enacted statutory provisions that have a direct relevant relationship to the restriction of firearm possession in relation to consumption of liquor.

The Firearm Concealed Carry Act ("FCCA") has numerous relevant provisions that already regulate the carrying of concealed weapons by those consuming alcohol or upon certain premises or locations when the consumption of alcohol may take place. First, the most encompassing provision found in Section 70 of the FCCA (430 ILCS 66/70(d)) states:

- (d) A licensee shall not carry a concealed firearm while under the influence of alcohol, other drug or drugs, intoxicating compound or combination of compounds, or any combination thereof, under the standards set forth in subsection (a) of Section 11-501 of the Illinois Vehicle Code.

Therefore, it is a direct violation of the FCCA for a Conceal Carry Licensee ("CCL") to be armed in any location while under the influence of alcohol or drugs. The determination of whether someone is under the influence or not will be determined in the same manner as the Driving Under the Influence provision of the Illinois Vehicle Code. This restriction applies to all locations, not just Licensees.

The relevant provisions that relate to the sale of alcohol is found under subsections (9) and (11) of Section 65 of the FCCA (430 ILCS 66/65).

Specifically, subsection 11 of Section 65, which is a restriction on CCLs, states as follows:

- (11) Any building or real property that has been issued a Special Event Retailer's license as defined in Section 1-3.17.1 of the Liquor Control Act during the time designated for the sale of alcohol by the Special Event Retailer's license, or a Special use permit license as defined in subsection (q) of Section 5-1 of the Liquor Control Act during the time designated for the sale of alcohol by the Special use permit license.

This section restricts a CCL from bringing their firearm upon the location where a Special Event under the state's Liquor Control Act is being held. Such events would be any event held by a Not-for-Profit entity that is holding a special or charitable event. These provisions would apply to an event like Wilmette Summerfest or the Park District 4th of July Celebration and not necessarily to a Wilmette license holder, hosting an event off their premises under a Special Use Permit Liquor License.

The relevant portion of the FCCA and the Illinois Liquor Control Act of 1934, also put direct restrictions upon Licensees that will have an impact upon a CCL's ability to legally possess a firearm inside certain licensed premises.

Subsection 9 of Section 65 states:

- (9) Any building, real property, and parking area under the control of an establishment that serves alcohol on its premises, if more than 50% of the establishment's gross receipts within the prior 3 months is from the sale of alcohol. The owner of an establishment who knowingly fails to prohibit concealed firearms on its premises as provided in this paragraph or who knowingly makes a false statement or record to avoid the prohibition on concealed firearms under this paragraph is subject to the penalty under subsection (c-5) of Section 10-1 of the Liquor Control Act of 1934.

The Liquor Control Act of 1934 has a corollary provision that states as follows:

- (c-5) Any owner of an establishment that serves alcohol on its premises, if more than 50% of the establishment's gross receipts within the prior 3 months is from the sale of alcohol, who knowingly fails to prohibit concealed firearms on its premises or who knowingly makes a false statement or record to avoid the prohibition of concealed firearms on its premises under the Firearm Concealed Carry Act shall be guilty of a business offense with a fine up to \$5,000.

235 ILCS 5/10-1(c-5).

These sections make it a requirement of every Licensee that has a majority of its gross receipts from the sale of liquor to post the "No Firearms" sign upon their entryways; thereby making it unlawful for any CCL to bring in their concealed firearm within the premises. These provisions obviously apply to bars, but could also apply to a restaurant or any other establishment if the gross receipts from liquor sales exceed more than half of the revenue generated for a 3 month period. The Village is not aware of any such establishments in Wilmette. Furthermore, these provisions apply to a regulation of the Licensees and not necessary directly to the CCLs (even though CCLs would ultimately be impacted by the Licensees' actions).

Finally, outdoor events that are not required to obtain a liquor license, as the sale of liquor is not part of the event, but consumption of such beverages is otherwise allowed are also regulated. An example of such an event is the Village Green Concert Series, where no alcoholic beverages are sold, but the Village does not restrict public consumption of alcohol to take place in designated areas during the concerts.

Subsection 10 of Section 65 of the FCCA, forbids a CCL from carrying a firearm into:

"any public gathering or special event conducted on property open to the public that requires the issuance of a permit from the unit of local government, provided this prohibition shall not apply to a licensee who must walk through a public gathering in order to access his or her residence, place of business, or vehicle."

The plain language of this restriction clearly restricts a CCL from carrying a firearm into public gatherings permitted by the Village, such as the Village Green Concert Series.

Recommended Legislation

Despite all the restrictions provided for in state law, a CCL could still carry their firearm in a vast majority of the Liquor Licensees. The regulation, as proposed by the Public Safety Committee, only applies to where alcohol can be consumed on premises and would only require that the Licensees affix the signage to every entryway to the premises.

The ordinance, as recommended, contains exemptions from the “no firearm” restrictions for those individuals that are otherwise lawfully allowed to carry firearms without having to obtain a CCL. The most common exemption would be for peace officers and retired peace officers. State law does contain a laundry list of other types of individuals that are authorized to carry firearms without obtaining a CCL. Even though those individuals may not be affected by such an ordinance since they can carry a firearm without a CCL, it is recommended that the exemptions under State law (specifically, the Firearms Owners Identification Card Act) be made part of such an ordinance by reference just to ensure compliance with all State laws.

In addition to those otherwise authorized firearm carriers, it is recommended that the owner of the property, tenant or occupant of the property, the Licensee and its agents also be authorized to possess firearms upon the licensed premises if they have a valid CCL. These individuals would have a right to have a firearm upon their property, even without a CCL in certain situations per the United States Supreme Court decision in the *Heller v. District of Columbia*.

Documents Attached

1. Electronic copy of the approved State of Illinois signage available to all business that indict firearms are prohibited within those premises.
2. Ordinance No. 2019-O-57: An Ordinance Amending Chapter 10 of the Village Code (Prohibiting the Concealed Carry of Firearms for Premises Where Alcohol is Sold for Consumption On the Premises).



ORDINANCE NO. 2019-O-57

**AN ORDINANCE AMENDING CHAPTER 10 OF THE VILLAGE CODE
(Prohibiting the Concealed Carry of Firearms Where Alcohol is Sold for Consumption on
the Premises)**

WHEREAS, the Village President and Board of Trustees (collectively “Village Board”) of the Village of Wilmette, Cook County, Illinois (“Village”), find that the Village is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the Public Safety Committee of the Village Board recommends that the Village Board adopt an ordinance restricting the concealed carrying of firearms upon those establishments that have a Wilmette Liquor License that authorizes the on-sight consumption of alcohol; and

WHEREAS, the Village believes it is in the best interests of the public welfare, health and safety of its residents, that the Village’s Liquor Control ordinance (Chapter 10 of the Village Code) be amended to provide for this restriction; and

WHEREAS, the Village Board sees fit to further amend Chapter 10 of the Wilmette Village Code as amended as set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Wilmette, Cook County, Illinois in the exercise of its Home Rule Authority as follows:

SECTION 1: The above recitals are incorporated in this ordinance as if fully set forth.

SECTION 2: The Wilmette Village Code, as amended, is further amended in Chapter 10, Liquor Control, Article I- In General by removing the “Reserved” designation and by adding new Section 10-25, “Firearms Prohibited” so that new Section 10-25 shall read as follows:

Section 10-25. – Firearms Prohibited

- (a) No local liquor license permitting the consumption of alcohol upon the licensed premises may be issued to any establishment that permits the carrying of concealed firearms upon the premises. This prohibition shall not apply to an establishment that allows the carrying of concealed firearms by:
 - 1. Individuals authorized to carry a firearm under Section 24-2 of the Illinois Criminal Code of 2012 or otherwise authorized under federal law; or
 - 2. Retired law enforcement officers qualified under federal law to carry a concealed firearm; or
 - 3. The owner, lessee, tenant, or operator of the licensed premises or the agents thereof.

- (b) No licensee or any officer, director, manager or other agent or employee of any licensee shall permit any person to carry a concealed firearm within an establishment where the consumption of alcohol upon the licensed premises is permitted unless such individual carrying a concealed firearm is:
 - 1. Individuals authorize to carry a firearm under Section 24-2 of the Illinois Criminal Code of 2012 or otherwise authorized under federal law; or
 - 2. Retired law enforcement officers qualified under federal law to carry a concealed firearm; or
 - 3. The owner, lessee, tenant, or operator of the licensed premises or the agents thereof.

- (c) The licensee that holds a license that permits the consumption of alcoholic beverages upon the licensed premises shall post a sign indicating that firearms are prohibited upon the property, in a clear and conspicuous location upon the entryway of the premises. Such signs shall be of a uniform design as established by the Illinois Department of State Police and as provided for in the Illinois Firearms Concealed Carry Act (430 ILCS 66/1 *et. seq.*).

SECTION 3: This Ordinance shall be in full force and effect from and after its passage and approval as required by law.

PASSED by the President and Board of Trustees of the Village of Wilmette, Illinois, on the **24th** day of **September, 2019**, according to the following roll call vote:

AYES: None.
NAYS: None.
ABSTAIN: None.
ABSENT: None.

Clerk of the Village of Wilmette, IL

APPROVED by the President of the Village of Wilmette, Illinois, this **24th** day of **September**,
2019,

President of the Village of Wilmette, IL

ATTEST:

Clerk of the Village of Wilmette, IL

Published in pamphlet form September 25, 2019.