



City of Fairfax, Virginia

City Council Regular Meeting

Agenda Item # 5c

City Council Meeting 1/26/2021

TO: Honorable Mayor and Members of City Council

FROM: Robert A. Stalzer, City Manager *RA Stalzer*

SUBJECT: Introduction of an ordinance amending Chapter 54 (Offenses and Miscellaneous Provisions), Article I (General), of the Code of the City of Fairfax, Virginia, to add thereto a new Section 54-4 pertaining to the prohibition on the possession, carrying or transportation of firearms, ammunition, or components or combination thereof, in City buildings or facilities, on public property or at permitted public events.

ISSUE(S): Whether to introduce an ordinance implementing a prohibition on the possession, carrying or transportation of firearms in City buildings and on public property.

SUMMARY: Regulation of firearms in Virginia is preempted by the Commonwealth, and no locality may take any action governing the purchase, possession, transfer, ownership, carrying, storage or transportation of firearms, ammunition or components other than expressly authorized by statute. New legislation was enacted by the General Assembly in its 2020 session, and signed by the Governor, to allow localities to enact ordinances prohibiting such items in and on certain public properties.

The new enabling authority (codified in Code of Virginia § 15.2-915) allows localities to enact ordinances to prohibit firearms in any building owned or used by such locality, in any public park owned or operated by the locality (or by any authority created by or controlled by the locality), in a recreation or community center facility operated by the locality (or by any authority created by or controlled by the locality), or in any “public right of way” being used by or that is adjacent to a permitted event (or an event that would otherwise require a permit). There is no requirement that an ordinance prohibit firearms in all of the enumerated areas, and there are express exclusions to the applicability of any such ordinance (and a locality may also include additional exclusions/exceptions if it so desires). An ordinance may also contain provisions relating to security measures, required signage/notices and penalties for violation.

At the October 6, 2020 City Council work session, City staff discussed the new enabling authority and the various considerations, but no consensus was achieved in terms of recommendations other than to bring forward this draft ordinance, which includes all of the available prohibitions (both in interior and exterior spaces) under the enabling authority (it effectively mirrors the enabling authority). Staff has, based on some of the discussion at the work session and in reviewing ordinances enacted or considered by other jurisdictions, included several exemptions in addition to the two set forth in the enabling authority.

In deciding whether to enact an ordinance, and what its scope should be, considerations include (as discussed at the work session): (i) whether any firearms prohibition should be limited to

indoor facilities or to some or all of the outdoor options for prohibition (i.e. City parks), primarily due to expressed enforcement concerns attendant to outdoor spaces, and whether specific areas/facilities should be exempted; (ii) the level of enforcement desired with respect to any prohibition (i.e. whether to provide for active security screening/magnetometers in public buildings and security personnel to undertake the same, and the associated costs); (iii) whether to provide any or all of the suggested listed exemptions beyond those that are specifically required (i.e. whether persons having lawful open carry permits in Virginia should be exempted, or whether others should as well, such as judges, prosecutors and others that might have legitimate reasons and need for possessing firearms in prohibited areas, or individuals possessing unloaded firearms in connection with approved educational or historical programs). The exemptions set forth in Sec. 54-4(d)(3)-(7) are staff recommendations based on internal discussion and review of other local jurisdiction planned and enacted ordinances.

Various other jurisdictions in Northern Virginia and elsewhere have enacted ordinances, including but not limited to Fairfax County, the cities of Alexandria and Falls Church, and Arlington County. Others, such as Loudoun County, are either actively considering enacting an ordinance, at various levels of discussion of this issue, or are not planning at this time to enact an ordinance.

If an ordinance is enacted, public and employee education on the scope of any prohibition(s) and associated exemptions will be of paramount importance. City staff will need to develop appropriate outreach materials, design and create required notices and signage, and implement any necessary security requirements. It is anticipated, therefore, that if an ordinance is enacted, there may be a delay before it is fully implemented.

- FISCAL IMPACT:** To be determined depending on the scope of any enacted ordinance.
- RECOMMENDATION:** Introduce the ordinance and set the public hearing on consideration of the same for February 9, 2021.
- ALTERNATIVE COURSE OF ACTION:** Not to proceed, or make changes to the ordinance as introduced.
- RESPONSIBLE STAFF/ POC:** City Attorney; Police Department.
- COORDINATION:** None.
- ATTACHMENTS:** Draft ordinance; Sample motion

ORDINANCE NO. 2021- _____

AN ORDINANCE AMENDING CHAPTER 54 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE I (GENERAL), OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, TO ADD THERETO A NEW SECTION 54-4, PERTAINING TO A PROHIBITION ON THE POSSESSION, CARRYING, OR TRANSPORTATION OF FIREARMS, AMMUNITION, OR COMPONENTS OR COMBINATION THEREOF, IN CITY BUILDINGS OR FACILITIES, ON PUBLIC PROPERTY OR AT CERTAIN PUBLIC EVENTS.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 54, Article I, of the Code of the City of Fairfax, Virginia, be and the same is amended to add thereto a new Section 54-4, pertaining to a prohibition on the possession, carrying, or transportation of firearms, ammunition, or components or combination thereof, in City buildings or facilities, on public property or at public events, to read in its entirety as follows:

“Sec. 54-4. – Possession of firearms in city buildings or facilities, on public property, or at certain public events; penalty.

- (a) For purposes of this section, “firearm” means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material. “Ammunition” means a cartridge, pellet, ball, missile or projectile adapted for use in a firearm.
- (b) The possession, carrying or transportation of any firearms, ammunition, or components or combination thereof is prohibited in the following areas:
 - (1) In any building, or part thereof, owned or used by the city, or by any authority or local governmental entity created or controlled by the city for governmental purposes.
 - (2) In any public park owned or operated by the city, or by any authority or local governmental entity created or controlled by the city.
 - (3) In any recreation or community center facility operated by the city or by any authority or local governmental entity created or controlled by the city.
 - (4) In any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a city-permitted event or an event that would otherwise require a city permit.

For buildings that are not owned by the city or an authority or local governmental authority created or controlled by the city, the above prohibitions shall apply only to the part of the building that is being used primarily for a governmental purpose and/or when the building or part thereof is being used primarily for a governmental purpose.

- (c) To implement this section, the city manager or his designee may provide for security measures (including, but not limited to, the use of metal detectors and security personnel), designed to reasonably prevent the unauthorized access to and of such buildings, parks, recreation or community center facilities, or public streets, roads, alleys, or sidewalks or public rights-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit by a person with any firearm(s), ammunition, or component or combination thereof.
- (d) This section shall not apply to:

- (1) The activities of (i) a Senior Reserve Officers' Training Corps program operated at a public or private institution of higher education in accordance with the provisions of 10. U.S.C. § 2101 *et seq.*
 - (2) Any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions.
 - (3) Military personnel when acting within the scope of their official duties.
 - (4) Sworn law enforcement officers and personnel or retired law enforcement officers to the extent exempted by the Law Enforcement Officer's Safety Act (LEOSA).
 - (5) Private security personnel hired by the city, when any of them are present in any building or facility or public property subject to this section, while in the performance of their duties.
 - (6) Transportation of firearms, ammunition, components or combinations thereof in a vehicle when such firearms are secured out of sight in the vehicle that is being driven on a public street, road, alley, city parking lot or public right-of-way that is open for usual transportation purposes; and
 - (7) Firearms, ammunition, components or combinations thereof that are secured out of sight in a locked vehicle that is parked on public property by persons conducting business with the city or authority or local governmental entity, for the reasonable duration of that business.
- (e) Notice of the restrictions imposed by this section shall be posted:
- (1) At all entrances of any building, or part thereof, owned or used by the city or by any authority or local governmental entity created or controlled by the city for governmental purposes;
 - (2) At all entrances of any public park owned or operated by the city, or by any authority or local governmental entity created or controlled by the city;
 - (3) At all entrances of any recreation or community center facility operated by the city or by any authority or local governmental entity created or controlled by the city; and
 - (4) At all entrances or other appropriate places of ingress and egress to any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a city-permitted event or an event that would otherwise require a city permit.

Any person violating this section shall be guilty of a Class 1 misdemeanor.”

This Ordinance shall become effective as provided by law.

INTRODUCED:

PUBLIC HEARING:

ADOPTED:

Mayor

Date

ATTEST:

City Clerk

VOTE:

Councilmember Harmon _____
Councilmember Lim _____
Councilmember Miller _____
Councilmember Ross _____
Councilmember Stehle _____
Councilmember Yi _____

SAMPLE MOTION

“I MOVE TO INTRODUCE AN ORDINANCE AMENDING CHAPTER 54 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE I (GENERAL), OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, TO ADD THERETO A NEW SECTION 54-4, PERTAINING TO A PROHIBITION ON THE POSSESSION, CARRYING, OR TRANSPORTATION OF FIREARMS, AMMUNITION, OR COMPONENTS OR COMBINATION THEREOF, IN CITY BUILDINGS OR FACILITIES, ON PUBLIC PROPERTY OR AT PUBLIC EVENTS.

I FURTHER MOVE TO WAIVE THE FIRST READING AND TO SET THE PUBLIC HEARING FOR CONSIDERATION OF THE ORDINANCE FOR FEBRUARY 9, 2021.”