

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE USE AND POSSESSION OF REPLICA FIREARMS IN A PUBLIC PLACE AND FOR OTHER PURPOSES.

WHEREAS, non-projectile toys and non-lethal projectile weapons, such as ones commonly known as airsoft guns, can be manufactured with coloring and dimensions identical to genuine, lethal firearms; and

WHEREAS, such replica firearms can be indistinguishable from authentic weapons, even to a trained and knowledgeable observer such as a police officer; and

WHEREAS, the appearance of a replica firearm in a public place can create a public disturbance or alarm, which distress can escalate into an unnecessary fatality if deadly force is employed to overcome the reasonably perceived lethal threat; and

WHEREAS, it is appropriate to regulate the appearance of replica firearms in public places to reduce the possibility of unnecessary harm or death; and

WHEREAS, the City Council desires to see a public information campaign about the public risks of imitation firearms;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST MEMPHIS, ARKANSAS, THAT:

SECTION 1. Short Title. This ordinance shall be known and may be cited as the "Replica Firearms Ordinance" and may be referred to herein as "this ordinance."

SECTION 2. Definitions. For the purposes of this ordinance the following terms have the stated meanings:

Blaze orange tip – Either a plastic plug or a permanent marking which is colored blaze orange, which covers the barrel of a replica firearm from the muzzle end for a depth of at least 6 millimeters, the placement of which is required by Federal law.

Laser pointer – A device that emits light amplified by the stimulated emission of radiation that is visible to the human eye.

Period-authentic historical reenactment – A reenactment of past events in which the use of historically accurate uniforms and equipment predominates.

Replica firearm – Any device that substantially resembles a firearm or can reasonably be perceived to be an actual firearm. A device that substantially resembles a firearm or can reasonably be perceived to be an actual firearm shall not be deemed a replica firearm if:

A. The device is constructed entirely of opaque materials colored bright red, bright orange, bright yellow, bright green, bright blue or bright purple, either singly or in combination with other listed colors; or

B. The device is constructed entirely of transparent or translucent materials that permit unmistakable observation of the complete contents of the device; or

C. The device is constructed entirely of a mixture of materials described in subsections (A) and (B) of this definition.

Replica firearm merchant – A retail operation, such as a hobby shop, sporting goods store, or firearms store, that is a place of sale to ultimate consumers of replica firearms for direct consumption, operating in a commercial structure or storefront, with premises open to the general public during business hours.

School premises – The real property comprising a public or private elementary, secondary or career school attended primarily by minors.

SECTION 3. Prohibitions.

A. No person shall possess a replica firearm in a public place.

B. No person shall intentionally, knowingly, recklessly, or with criminal negligence point or discharge a replica firearm at another person, said other person being located in a public place.

C. No person shall possess on school premises a device that otherwise would be a replica firearm but for the fact that:

1. The device is constructed entirely of opaque materials colored bright red, bright orange, bright yellow, bright green, bright blue or bright purple, either singly or in combination with other listed colors; or

2. The device is constructed entirely of transparent or translucent materials that permit unmistakable observation of the complete contents of the device; or

3. The device is constructed entirely of a mixture of materials described in subsections (1) and (2).

SECTION 4. Affirmative Defenses.

A. A defendant may establish by preponderance of the evidence an affirmative defense to a charge of violating Section 3 of this ordinance that:

1. The defendant possessed the replica firearm in a public place other than on school premises and the replica firearm was completely concealed within an opaque container;

2. The defendant possessed the replica firearm on school premises, the defendant was an employee or agent of the school acting within his or her official duties, and the replica firearm was completely concealed within an opaque container;

3. The defendant was employed as a law enforcement officer or an auxiliary law enforcement officer as defined in A.C.A. § 12-9-301 and possessed the replica firearm within his or her official duties;

4. The defendant possessed the replica firearm while using or intending to use it in connection with the production of a motion picture, television program, theatrical presentation or a period-authentic historical reenactment, and one or more of the following circumstances is present:

a. The production was taking place or was to take place on a stage in an auditorium, including an auditorium on school premises, for which the general admission of an adult to the particular production required the purchase of a ticket; or

b. All of the persons involved in the production were at least 18 years of age; or

c. One or more person involved in the production held a valid membership in the Associated Actors and Artists of America (4As) or the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE); or

d. The production of the period-authentic historical reenactment took place under the express authorization or direct control or active participation of a governmental entity, a federal tax exempt organization or a nonprofit organization duly registered with the Arkansas Secretary of State and the production of the reenactment did not create unreasonable public inconvenience, annoyance or alarm.

5. The defendant possessed the replica firearm where all the following conditions are present:

a. The replica firearm is possessed in the course of commerce, or for service or repair, by a replica firearm merchant, or a patron or wholesaler of such a merchant; and

b. The replica firearm is possessed within the merchant's commercial storefront or structure in which the merchant's business is located; and

c. The replica firearm merchant holds a current, valid City of West Memphis business license; and

d. The replica firearm does not bear an attached laser pointer.

B. A defendant may establish by a preponderance of the evidence an affirmative defense to a charge of violating Section 3 of this ordinance that:

1. The defendant was employed as a law enforcement officer or an auxiliary law enforcement officer as defined in A.C.A. § 12-9-301 and pointed or discharged the replica firearm within his or her official duties;

2. The defendant pointed or discharged the replica firearm in connection with the production of a motion picture, television program, theatrical presentation or period-authentic historical reenactment, and one or more of the following circumstances is present:

a. The production was taking place or was to take place on a stage in an auditorium, including an auditorium on school premises, for which the general admission of an adult to the particular production required the purchase of a ticket; or

b. All of the persons involved in the production were at least 18 years of age; or

c. One or more person involved in the production held a valid membership in the Associated Actors and Artists of America (4As) or the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE); or

d. The production of the period-authentic historical reenactment took place under the express authorization or direct control or active participation of a governmental entity, a federal tax exempt organization or a nonprofit organization duly registered with the Arkansas Secretary of State and the production of the reenactment did not create unreasonable public inconvenience, annoyance or alarm.

C. A defendant may establish by a preponderance of the evidence an affirmative defense to a charge of violating Section 3 of this ordinance that:

1. The defendant possessed the device on school premises, the defendant was an employee or agent of the school acting within his or her official duties, and the device was completely concealed within an opaque container;

2. The defendant was employed as a law enforcement officer or as an auxiliary law enforcement officer as defined in A.C.A. § 12-9-301 and possessed the device on school premises within his or her official duties;

3. The defendant possessed the device while using or intending to use it in connection with the production of a motion picture, television program, theatrical presentation or a period-authentic historical reenactment, and one or more of the following circumstances is present:

a. The production was taking place or was to take place on a stage in an auditorium, including an auditorium on school premises, for which the general admission of an adult to the particular production required the purchase of a ticket; or

b. All of the persons involved in the production were at least 18 years of age; or

c. One or more person involved in the production held a valid membership in the Associated Actors and Artists of America (4As) or the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE); or

d. The production of the period-authentic historical reenactment took place under the express authorization or direct control or active participation of a governmental entity, a federal tax exempt organization or a nonprofit organization duly registered with the Arkansas Secretary of State and the production of the reenactment did not create unreasonable public inconvenience, annoyance or alarm.

SECTION 5. Penalties.¹

A. Except as provided in subsections (B) of this section, a violation of Section 3 of this ordinance shall be punishable by a fine of not more than Five Hundred and No/100 (\$500.00) dollars.

B. Violation of Section 3(A), (B) or (C) of this ordinance is a misdemeanor if within five years to the date of the current offense the defendant has been convicted previously of a violation of Section 3(A), (B) or (C) of this ordinance or a counterpart thereof in another jurisdiction and shall be punishable by a fine of not more than One Thousand and No/100 (\$1,000.00) dollars.

C. In addition to and not in lieu of any other sentence a court may impose, a court may require a defendant convicted under Section 3 of this ordinance to forfeit any rights of the defendant in the device or replica firearm unlawfully possessed, pointed or discharged.

SECTION 6. This Ordinance shall take effect on _____, 200__.
A 30-day public information shall precede the effective date of this Ordinance to inform citizens about the public risks of replica firearms. At minimum, the publication of a City news release on or before [the date prior to the effective date above], sent to selected major media covering the City of West Memphis, Arkansas, area announcing the enactment and the effective date of this Ordinance shall fulfill the requirements of this section.

SECTION 7. Discharging a Weapon.

A. No person shall intentionally discharge a firearm into or across a public place or while located in a public place.

B. No person shall intentionally discharge a pellet gun, BB gun, bow and arrow, sling shot, or other similar weapon that expels a projectile by means other than by the action of smokeless powder.

C. This section shall not prohibit the discharge of a firearm or a weapon that expels a projectile by means other than by the action of smokeless powder while at a reasonably safe and regularly operated firing range.

D. This section shall not prohibit the discharge of a replica firearm displayed in accordance with this ordinance or the discharge of a weapon that expels a projectile by means other than by the action of smokeless powder, so long as the projectile expelled upon discharge is one of the following:

1. A commercially-manufactured spherical projectile which contains paint and which is designed to break and splatter upon impact, commonly known as a "paintball;"

2. A commercially-manufactured spherical projectile with a diameter between and including 5.98 and 8 millimeters, constituted of common styrene plastic or biodegradable plastic, weighing no more than 0.36 gram per sphere.

E. A person who violates this section commits a misdemeanor punishable by a fine of not more than Five Hundred and No/100 (\$500.00) dollars for a first offense and not more than One Thousand and No/100 (\$1,000.00) dollars for each repetition of such offense or violation.

SECTION 8. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

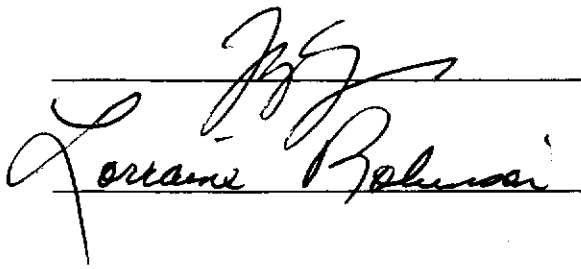
PASSED AND APPROVED this ____ day of _____, 200__.

WILLIAM H. JOHNSON, MAYOR

ATTEST:

PHILLIP PARA, CITY CLERK

SPONSORED BY:



Torrance Bohmer

A.C.A. 14-55-504 Fines and Penalties.

(a)(1) Municipal corporations shall not have power to inflict any fine or penalty, by ordinance or otherwise, to a greater sum than five hundred dollars (\$500) for any one (1) specified offense or violation of a bylaw or ordinance, or double that sum for each repetition of such offense or violation.

(2) If a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the bylaw or ordinance, shall not exceed two hundred fifty dollars (\$250) for each day that it may be unlawfully continued.

(b) If any bylaw or ordinance provides for any greater fine, penalty, or forfeiture than is provided in this section, it shall and may be lawful, in any suit or prosecution for the recovery thereof, to reduce it to such amount as shall be deemed reasonable and proper and to permit a recovery or render a judgment for such amount as authorized.

RECEIVED
City Clerk's Office
Date/Time 06/25/09 2:30pm
By R.D. Wallace