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**CITY OF NEWARK
DELAWARE**

CITY SOLICITOR'S OFFICE

November 19, 2007

TO: Mayor and Council
FROM: Roger A. Akin, City Solicitor, *RAA*
RE: Bill 07-39 Regulating the Carrying of Deadly Weapons

We have identified a potential impediment in the above ordinance which is on your agenda for second reading, hearing and adoption at your November 27, 2007 meeting.

The legal issue pertains to the provision in the ordinance which would prohibit the open carrying and display of deadly weapons by persons not licensed to do so nor required to do so by virtue of their employment.

Since the ordinance has moved to second reading, we would strongly recommend that it be defeated or, alternatively, not receive a "second" at the table on Monday night. We will continue our legal review and prepare a new ordinance for first and second reading if we conclude that current provisions in state law preclude our adoption of the bill as drafted.

We apologize for any inconvenience or confusion regarding this ordinance.

Thank you.

RAA:pmf
cc: Carl F. Luft, City Manager
Susan A. Lamblack, City Secretary
Chief Paul Tiernan

CITY OF NEWARK
DELAWARE
CITY COUNCIL
PUBLIC HEARING
NOTICE

NOVEMBER 26, 2007 - 7:30 P.M.

Pursuant to Section 402.2 of the City Charter of the Code of the City of Newark, Delaware, notice is hereby given of a public hearing at a regular meeting of the Council in the Council Chamber at the Municipal Building, 220 Elkton Road, Newark, Delaware, on Monday, November 26, 2007 at 7:30 p.m., at which time the Council will consider for Final Action and Passage the following proposed Ordinance:

Bill 07-39- An Ordinance Amending Chapter 31, Weapons, Code of the City of Newark, Delaware, by Revising The Code Dealing With Carrying Weapons

Susan A. Lamblack, MMC
City Secretary

/av

Advertised: **Newark Post** – November 16, 2007

BILL NO. 07-39
1st Reading 11/12/07
2nd Reading _____

CITY OF NEWARK
DELAWARE

ORDINANCE NO. 07 - ____

**An Ordinance Amending Chapter 31, Weapons,
Code of the City of Newark, Delaware, by Revising
The Code Dealing With Carrying Weapons**

THE COUNCIL OF THE CITY OF NEWARK HEREBY ORDAINS:

That Chapter 31, Weapons, Code of the City of Newark, Delaware, be hereby amended in the following respect:

AMENDMENT 1. Amend Section 31-3, Carrying concealed weapons; display of weapon, by deleting it in its entirety which reads as follows:

“No person shall, within the city, carry, wear under his clothes, conceal about his person, or display in a threatening manner, any dangerous or deadly weapons, including, but not by way of limitation, any pistol, revolver, dagger, razor, sling shot, knuckles of lead or brass or other metal, any bowie knife or any knife resembling a bowie knife, or any knife with a switch blade or device whereby the blade or blades can be opened by a flick of a button, pressure on the handle, or other mechanical contrivance.”

and substitute in lieu thereof the following new language:

“Sec. 31-3. Carrying weapons; display of weapon.

(a) No person shall, within the city, carry, wear, or otherwise openly display any dangerous or deadly weapon, including, but not by way of limitation, any pistol, revolver, or other firearm, unless such person is acting within the scope of his employment and such employment requires that the person carry, wear, or otherwise display such a dangerous or deadly weapon.

(b) In all cases in which a person is found within the city to be carrying a concealed dangerous or deadly weapon, such act shall be governed by relevant provisions under state law, including, but not limited to, statutes pertaining to carrying concealed weapons and statutes permitting such activity pursuant only to a valid state permit.”

MOTION for Acceptance as First Reading on November 12, 2007,

By Council Member Osborne.

Second Reading and Final Passage on _____, 2007

VOTE: _____ to _____.

Mayor

Attest:

City Secretary

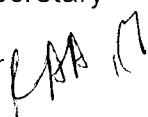
Approved as to Legality & Form:

City Solicitor

CITY OF NEWARK
DELAWARE

CITY SOLICITOR'S OFFICE

October 24, 2007

TO: Susan A. Lamblack, City Secretary
FROM: Roger A. Akin, City Solicitor 
RE: Revision to Newark Weapon Carrying Ordinance

In a recent memorandum, I summarized the status of discussions regarding a number of ordinance changes which have been requested by Council or staff.

One of those proposed changes concerns amendments to our "carrying a deadly weapon" ordinance. Those proposed changes follow discussions with Cpt. Potts. The City Manager has directed that I go ahead and draft the appropriate changes. That is the purpose of this memo.

We recommend the following amendments to Chapter 31 of the Municipal Code:

1. Delete Sec. 31-3 in its entirety.
2. Substitute the following language as a new Sec. 31-3:

"Carrying weapons; display of weapon.

"(a) No person shall, within the city, carry, wear or otherwise openly display any dangerous or deadly weapon, including, but not by way of limitation, any pistol, revolver or other firearm, unless such person is acting within the scope of his employment and such employment requires that the person carry, wear or otherwise display such a dangerous or deadly weapon.

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(b) In all cases in which any person is found within the City to be carrying a concealed dangerous or deadly weapon, such act shall be governed by relevant provisions under state law, including, but not limited to, statutes pertaining to carrying concealed weapons and statutes permitting such activity pursuant to a valid state permit."

You will note that in deleting the current Sec. 31-3 we are eliminating the specific offense of carrying a concealed deadly weapon. Such an act is a felony under state law. The Police Department is of the view that such an offense should not be handled as a misdemeanor in Newark, but as a felony under state law.

Please let me know if there are questions. I am copying this memo to Cpt. Potts so that he can perform a final review of the language we have incorporated in the revised ordinance.

Thank you.

RAA:pmf
cc: Carl F. Luft, City Manager
Chief Paul Tiernan
Cpt. John Potts

Carl F. Luft, City Manager
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6. Carrying Deadly Weapons in Newark.

Cpt. Potts and I have discussed this subject at some length and on several occasions. The Municipal Code currently forbids carrying or displaying in a threatening manner any concealed dangerous or deadly weapons. Code at Sec. 31-3. State law, on the other hand, allows individuals to carry concealed weapons on their persons if licensed to do so. On the other hand, carrying a concealed deadly weapon itself is a Class E felony under state law if the person is not so licensed. Newark does not currently outlaw the open display of a weapon such as a pistol.

In light of the interplay of these laws, Cpt. Potts and I recommend that the following changes be made in Chapter 31-Weapons:

a. Delete Sec. 31-3. Carrying a concealed deadly weapon in Newark should be penalized under state law as a felony and not under the Municipal Code as a misdemeanor.

b. Add a new section to Chapter 31 which permits the carrying of a concealed deadly weapon by licensed persons.

c. Add a new section to Chapter 31 which permits the open carrying of a weapon in the City but only when the carrier is in the scope of his or her lawful employment.

7. Loud Vehicle Noise.

In a recent memo I suggested that we investigate to determine what are the state noise standards cited in state law and which govern the operation of motor vehicles such as motorcycles. It was further my suggestion that we bring Newark vehicle noise standards in conformity with those state standards so that operators may travel freely from the City to unincorporated areas, and vice versa, with the assurance that the same standards will apply. Cpt. Potts advises that Lt. Poley is presently assigned to work on this project.

Please do not hesitate to call if there are questions.

RAA:pmf

cc: Susan A. Lamblack, City Secretary
Chief Paul J. Tiernan
Cpt. John Potts

CHAPTER 31

WEAPONS¹

Sec. 31-1. Discharging firearms prohibited; law enforcement agencies excepted.²

No person who is not a member of a law enforcement agency acting in the regular course of duty shall discharge any firearm within the limits of the city.
(Code 1959, Ch. 5, § 701)

Sec. 31-2. Sale or possession of switch-blade knives prohibited.³

No person shall, within the city, sell, offer for sale, or have in his possession any knife or knives having the appearance of a pocket knife, the blade or blades of which can be opened by a flick of a button, pressure on the handle, or other mechanical device.
(Code 1959, Ch. 5, § 702)

Sec. 31-3. Carrying concealed weapons; display of weapon.⁴

No person shall, within the city, carry, wear under his clothes, conceal about his person, or display in a threatening manner, any dangerous or deadly weapons, including, but not by way of limitation, any pistol, revolver, dagger, razor, sling shot, knuckles of lead or brass or other metal, any bowie knife or any knife resembling a bowie knife, or any knife with a switch blade or device whereby the blade or blades can be opened by a flick of a button, pressure on the handle, or other mechanical contrivance.
(Code 1959, Ch. 5, § 703)

Sec. 31-4. Police authority to search persons suspected of concealing deadly weapon; confiscate switchblades.

(a) Any policeman or peace officer may make a search of any person who is suspected of having concealed upon his person a deadly weapon. Such search of a person

¹**Cross reference**—As to police offenses generally, see Ch. 22.

State law reference—As to weapons generally, see 11 Del. Code Anno. §§ 451 et seq. (1953); 24 Del. Code Anno. §§ 401 et seq. (1953).

²**State law reference**—As to prohibition against discharge of weapons in streets and public places, see 16 Del. Code Anno. § 6902 (1953).

³**State law reference**—As to possession and sale of switch blade knives, see 11 Del. Code Anno. § 468 (1953).

⁴**State law reference**—As to carrying concealed deadly weapons, see 11 Del. Code Anno. § 461 (1953).

Decisional law reference—As to definition of "deadly weapons", see *State v. Jones*, 22 Del. 174 (1906). As to burden of proving license for concealed weapon, see *State v. Sockum*, 29 Del. 350 (1917).