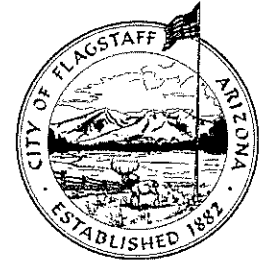


**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and City Council
From: James B. Speed, (928) 779-7680
Flagstaff City Attorney's Office
Date: August 19, 2009
Meeting Date: September 1, 2009

Title: Consideration of Ordinance No. 2009-27: An ordinance amending Title 6, Police Regulations, Chapter 6-01, General Offenses, by repealing Section 6-01-001-0015, Playing Ball in Streets.

Recommended Action:

At the Council Meeting of September 1, 2009: Read Ordinance No. 2009-27 for the first time by title only.

At the Council Meeting of, September 15, 2009: Read Ordinance No. 2009-27 for the final time by title only. Adopt Ordinance No. 2009-27.

ACTION SUMMARY:

While not directly preempted by any one provision of the Arizona Revised Statutes, the prohibition against persons playing ball on public thoroughfares found in Flagstaff City Code 6-01-001-0015 is adequately addressed by State statutes barring individuals from obstructing public thoroughfares and committing criminal damage. The present ordinance is put forward as part of an ongoing effort by the City Attorney's Office to remove or update those archaic, obsolete and ineffective ordinances currently found within the Flagstaff City Code.

DISCUSSION:**Background/History:**

Section 6-01-001-0015, Playing Ball in Streets, states that "[i]t shall be unlawful for any person to play ball or throw any ball to and fro upon any public thoroughfare in the City. (Ord. 160, 6-15-14)." The citation at the end of the ordinance suggests that it was adopted by the Mayor and Common Council of the Town of Flagstaff at their June 15, 1914 Town Council Meeting and was the 160th ordinance adopted after Flagstaff's incorporation as a town in May, 1882. However, the language of 6-01-001-0015 is not found in that ordinance nor is there any indication in the relevant Town Council Minutes that such language was discussed. Ordinance No. 160 is entitled "AN ORDINANCE REGULATING THE HOLDING OF PUBLIC AND OTHER MEETINGS, PROHIBITING THE OBSTRUCTION OF STREETS AND SIDE WALKS AND THE COLLECTION OF CROWDS OR BODIES OF PERSONS FOR UNLAWFUL PURPOSES OR TO THE ANNOYANCE OR DISTURBANCE OF CITIZENS." Section One states that all "streets, side-walks and cross-walks of

the Town and the entrance to public halls or public buildings, within the Town...shall be kept free from all obstruction, and all groups and assemblages of persons thereon, at any time are prohibited." Similarly, Section Two makes it unlawful "for any groups or assemblages of persons to collect, assemble or gather on any street, side-walk, or cross-walk, or to hinder, molest, or annoy persons passing along the same." A look at the "Municipal Code of the City of Flagstaff, 1960", the first codification of the City's ordinances, reveals that Ordinance No. 160 was incorporated into the 1960 Code, almost verbatim, as Ordinance 6-1-50, Public Meetings in Streets. Of interest to the present inquiry, on the same page of the 1960 Code as 6-1-50 is an ordinance making its initial appearance, Ordinance 6-1-48, Playing Ball on Streets Prohibited, today's 6-01-001-0015. Given the proximity of the two ordinances in the 1960 Code, and their shared focus on public thoroughfares, it appears that a transcription or similar clerical error is responsible for the attribution of 6-01-001-0015 to Ordinance No. 160.

Although there are no contemporaneous documents related to the 1960 Flagstaff City Council's decision to adopt 6-01-001-0015, the language employed suggests a concern that, in certain instances, individuals playing ball on City thoroughfares pose a danger to themselves as well as to pedestrians and passing motorists. As mentioned above, there is no State statute that prohibits an individual from throwing a ball to and fro upon any public thoroughfare. However, A.R.S. § 13-2906, Obstructing a highway or other public thoroughfare, addresses most of the health, safety and welfare issues that appear to have motivated the 1960 City Council's decision to adopt 6-01-001-0015. It states

[a] person commits obstructing a highway or other public thoroughfare if, having no legal privilege to do so, such person, alone or with other persons, recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

In addition to providing a tool for prohibiting persons from playing ball on public thoroughfares, the State statute clarifies and tempers some of the more difficult provisions of F.C.C. 6-01-001-0015. For example, the ordinance is silent as to a culpable mental state, while the State statute requires the individual obstructing the thoroughfare to have acted, at the very least, recklessly; the City ordinance is silent as to the impact the throwing of a ball to and fro must have on those individuals traveling on a public thoroughfare, while the State statute requires that the activity create "an unreasonable inconvenience or hazard." In short, the State statute supplies reasonable requirements that make the obstruction of a public thoroughfare by anyone, including those playing ball, dependent on the mindset of the individual engaged in the conduct as well as the activity's impact on traffic or pedestrians.

Another State statute that addresses one of the potential problems associated with throwing a ball on public thoroughfares, damage to property, is addressed by A.R.S. § 13-1602, Criminal damage. It states that "a person commits criminal damage by recklessly...damaging the property of another person." Like the Obstructing a highway of public thoroughfare statute, cited above, this statute requires an individual to act recklessly, knowingly or intentionally before criminal sanctions apply. The class 2 misdemeanor associated with criminal damage in an amount less than \$250.00 provides a sufficient disincentive to those individuals whose reckless throwing of a ball on a public thoroughfare could potentially result in damage to another's property.

Lastly, repeal is appropriate because of the hyper-focused language of the ordinance itself. The ordinance makes it illegal for a person to "play ball or throw any ball to and fro on a public thoroughfare." Dangers posed by other types of objects designed to be thrown or hit, such as Frisbees or pucks, are exempt from the ordinance's prohibition. Further, persons are guilty of

throwing a ball only if it is “to and fro.” Presumably an individual could throw a ball against a backstop placed in a public thoroughfare, retrieve it and throw it again ad infinitum, and escape the ordinance’s sanctions. In addition, the City ordinance specifically prohibits the throwing of a ball, exempting individuals who kick a ball or other object to and fro, such as those playing hacky-sack on a public thoroughfare. Other types of outdoor activities played on public thoroughfares that do not require a ball, such as badminton, jump-rope and hopscotch, are permitted while those who “play ball”, an ambiguous term in itself, regardless of the circumstances or the dangers posed, are guilty of a class one misdemeanor. As the threat posed by an individual throwing a ball to and fro on a public thoroughfare and an individual hitting, throwing or kicking any other object is identical, repeal is appropriate.

Key Considerations:

It appears that from mid-80’s, the earliest period that records concerning police citations are available, to the present, no citation for an F.C.C. 6-01-001-0015 violation has ever been issued.

The Police Department has reviewed this Ordinance and is in favor of repealing F.C.C. 6-01-001-0015.

Should Council vote to repeal this ordinance Flagstaff Police Officers will be alerted and instructed that they should begin to cite the applicable A.R.S. statute when they observe persons throwing a ball to and fro on a public thoroughfare.

Community Benefits and Considerations:

Removing superfluous sections from the Flagstaff City Code results in a clearer, more accessible code.

Community Involvement:

The proposed Ordinance and Staff Summary will be posted in accordance with law, and interested persons are invited to comment at the City Council meetings at which the Ordinance will be under consideration.

Financial Implications:

A violation of A.R.S. § 13-2906 constitutes a class 3 misdemeanor, while those individuals who violate F.C.C. 6-01-001-0015 are guilty of a class 1 misdemeanor. A class 1 misdemeanor’s maximum fine is \$2500.00 plus surcharges, while a class 3 misdemeanor carries a maximum fine of \$500.00 plus surcharges. As a result, Municipal Court judges would be forced to cap their sentences at the lower of the two fine amounts, a situation that, potentially, could result in a loss of \$2000.00 per violation. However, considering the unlikelihood that an individual found guilty of violating F.C.C. 6-01-001-0015 would ever be fined the maximum amount, as well as the virtual certainty that no citation will ever be issued for this offense, the financial implications are negligible.

Options and Alternatives:

1. Do not adopt Ordinance No. 2009-27.

Attachments/Exhibits:

Ordinance No. 2009-27.



Division Director *(Acknowledgment that all reviews have been completed and required approvals initialed below.)*

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS	_____	_____	CONTRACTS	_____
<u>JBS</u>	LEGAL	<u>8/10/2009</u>	_____	IGAS	_____
_____	_____	_____	_____	_____	_____

DATE OF COUNCIL APPROVAL: _____

ORDINANCE NO. 2009-27

AN ORDINANCE AMENDING TITLE 6, POLICE REGULATIONS, CHAPTER 6-01, GENERAL OFFENSES, BY REPEALING SECTION 6-01-001-0015, PLAYING BALL IN STREETS.

WHEREAS, in October, 1960 the City of Flagstaff adopted the "Municipal Code of the City of Flagstaff, 1960", one element of which was SECTION 6-01-001-0015, PLAYING BALL IN STREETS, an ordinance prohibiting persons from playing ball or throwing a ball to and fro on public thoroughfares; and

WHEREAS, since 1960 the State Legislature has adopted certain statutes, in particular Obstructing a Public Thoroughfare and Criminal Damage, that more effectively discourage the conduct prohibited by Section 6-01-001-0015.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Section 6-01-001-0015, PLAYING BALL IN STREETS, is hereby repealed.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2009.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY