

City of Brisbane Agenda Report

Date: City Council Meeting of March 3, 2016
To: Mayor and City Council
From: Michael H. Roush, City Attorney
Teresa L. Stricker, Deputy City Attorney
Subject: Weapon Control Ordinance

CITY COUNCIL GOALS

To assure the safety of property and citizens residing, working, or visiting in Brisbane.

To provide for effective and efficient delivery of City services.

PURPOSE

Calguns Foundation informed City staff that, in Calguns's view, state and federal law preempt the City's current regulations governing how firearms may be carried in Brisbane. That assertion caused us to take a comprehensive look at the City's 50-plus year old weapon control ordinance.

The purpose of this agenda item is to amend the City's outdated weapon control regulations to clarify their scope and meaning and to conform those regulations to current state and federal law.

RECOMMENDATION

Introduce the proposed ordinance amending Division VII of Title 9 of the Brisbane Municipal Code.

BACKGROUND

A. The City's Current Weapon Control Regulations

Division VII of Title 9 of the Brisbane Municipal Code sets forth the City's weapon control regulations. These regulations have not been changed in any significant way since their adoption in 1962.

1. Chapter 9.52

Chapter 9.52 regulates the discharge, use, carrying and sale to minors of firearms and a broad range of other types of weapons that project objects, including bows and slingshots.

Chapter 9.52 makes it unlawful to *discharge* such weapons anywhere within City-limits or to *use* such weapons to endanger or injure a person, damage property or to the "annoyance of any person."

(BMC § 9.52.10.) These prohibitions do not apply to (1) peace and military officers, (2) use of firearms in necessary self-defense, (3) possession of firearms for keeping at a residence or businesses, (4) possession of firearms while traveling to or from a shooting range or hunting ground, or (5) the discharge of cannons or anvils at public occasions where the Council first issued a permit. (BMC § 9.52.010.)

Additionally, Chapter 9.52 bans the *sale* of firearms and other weapons that project objects, and the parts and projectiles for any such weapons, to any minor without the consent of the minor's parent or guardian. (BMC § 9.52.20.)

Finally, Chapter 9.52 bans the *carrying* of firearms and other weapons that project objects anywhere in the City unless the weapon is carried "unloaded, with the breech or magazine open, or with the main parts of the weapon broken down and separated." (BMC § 9.52.30.) The City's current regulations do not contain any exceptions to the carry requirements.

2. Current Chapter 9.56

Chapter 9.56 regulates the carrying, possession, and in some instances, the sale or transfer, of certain types of knives, similar cutting or stabbing weapons or clubs.

Currently, Section 9.56.020 prohibits the *carrying* of such weapons *while loitering* in many public areas places or at the premises of another person. Similarly, Section 9.56.030 prohibits the *carrying* of such weapons *while engaged in disorderly conduct*.

Finally, current Section 9.56.060 flatly prohibits the *possession, sale, offer for sale, or transfer* of any switchblade knife having any blade length.

None of these regulations prohibit the possession or use of ordinary knives, tools or equipment carried for legitimate work, business, sport or recreation purposes. (BMC § 9.56.050.)

B. Overview of Applicable Federal and State Gun Control Laws

Since the City adopted its local gun control regulations more than a half century ago, a broad scheme of federal and state gun control regulations have been adopted. Among other things, current federal and state laws ban the possession of certain types of firearms altogether and ban the sale of firearms to minors.

Subject to a variety of exceptions, state law also generally bans individuals from *carrying or transporting* firearms *in public locations* within the limits of any city, including Brisbane, under each of the following circumstances:

- While the possessor is masked.
- *Loaded firearms*, whether carried *openly or concealed* on a person or in a vehicle.
- *Unloaded handguns* carried *openly*.
- *Unloaded* firearms that are *not handguns*, carried *openly* outside of a vehicle unless (1) carried in a locked container or encased and (2) being transported directly to and from specifically authorized places (for example, gun club meetings, gun shows, firearm safety classes, sporting

events involving the particular firearm, gun stores, target ranges and the possessor's place of residence, business or other property owned or lawfully possessed by that individual).

- *Unloaded firearms capable of being concealed on a person (i.e., handguns) carried concealed on a person* unless in a locked container and being transported directly to or from the same places defined above.
- *Unloaded firearms capable of being concealed on a person (i.e., handguns) transported concealed in a vehicle* unless in a locked container or trunk and being transported directly to or from the same places defined above.

State law defines a number of significant exceptions to these carry regulations. First, under the state's concealed carry laws, qualified individuals who establish good cause may obtain a license to lawfully carry a concealed, loaded handgun in public.¹ (Penal Code §§ 26150, 26155.)

Second, state law permits individuals who have obtained a restraining order against another individual to carry a concealed, loaded handgun in public for self-defense purposes under certain narrowly-defined circumstances. (Penal Code § 25600.)

Third, state law also provides exceptions to its carry requirements for certain categories of individuals, including, for example, peace and military officers, security guards and participants in entertainment events or motion picture, television or video productions.

None of these state law restrictions ban individuals from carrying a handgun, openly or concealed, inside their residence, business or other personal property they lawfully own or possess. (Penal Code § 25605.)

State law also regulates other types of weapons that are subject to Chapter 9.52. State law prohibits the open display or exposure of any "imitation firearm" in a "public place." The state defines imitation firearms to include BB guns and spot marker guns (also known as paint ball guns), firearm replicas and toys that are so realistic in appearance that they can be reasonably mistaken for firearms. In the context of imitation firearms, state law defines "public place" very broadly to include streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, vehicles, buildings open to the public, building or dwelling entrances, and schools. (Penal Code §§ 16700, 20170.)

¹ The constitutionality of the state's regulations governing the carrying of concealed, loaded handguns in public is the subject of ongoing litigation. In *Peruta v. County of San Diego* (9th Cir. 2014) 742 F.3d 1144, a three-judge panel of the Ninth Circuit Court of Appeal – the intermediary federal appellate court for California and other western states – determined that the way the state's concealed carry license requirements are enforced violates the Second Amendment of the federal constitution. The full composition of the Ninth Circuit agreed to have an 11-judge panel rehear the case. The matter was re-argued before the larger panel of the Court in May 2015, but the Court has not yet issued its *en banc* opinion. Regardless of the outcome, we anticipate that United State Supreme Court review will be sought in this extremely controversial case.

C. Recommended Amendments to the City’s Current Regulations Governing Guns and Other Weapons that Project Objects

The attached proposed ordinance makes the substantive changes to Chapter 9.52 set forth below.

1. Amends the City’s Carry Regulations under Chapter 9.52

The City’s current regulations make it unlawful to carry, anywhere in Brisbane, firearms or other weapons that project objects anywhere in Brisbane unless the weapon is unloaded, with the breech or magazine open or the main part of the weapon broken down and separated.” (BMC § 9.52.030.)

Because state law, and to some extent federal law, dictate the manner in which firearms and imitation firearms may be carried in Brisbane, we recommend that the Council repeal the City’s current regulations governing the carrying of these weapons in Brisbane. Should Council wish to continue regulate the carrying of other “shooting” weapons not regulated by state and federal law, we recommend that the Council consider amending its carry regulations to prevent the open carry of certain other types of weapons in public places.

a. Repeal All Carry Provisions Governing Firearms and Imitation Firearms.

There are some discrepancies between Brisbane’s current carry restrictions and state and federal laws governing the carrying of firearms and imitation firearms.

First, the City’s regulations ban certain methods of carrying and transporting firearms and imitation firearms that state law expressly permits. For example, under state law, under certain conditions, an individual may carry an unloaded, concealed handgun in a locked container outside of a vehicle without breaking down any of its parts. But doing so would violate Section 9.52.030. Likewise, the City’s carry restrictions apply even to an individual who holds a concealed carry weapon license under state law or is otherwise authorized by state law to carry a loaded, concealed weapon in public.²

Second, the City’s regulations purport to authorize the carrying of firearms and other weapons in public in ways state law bans. For example, under Section 9.52.030, it would be lawful to *openly* carry in public an unloaded firearm or imitation firearm that projects objects so long as the breech or magazine is open or main parts are broken down. But under state law, subject to certain narrow exceptions, firearms and imitation firearms may *not* be carried openly in public regardless of whether the gun is loaded or has its parts open or broken down. Likewise, although state law bans the possession of blow guns except by certain professionals for use with animals (Penal Code §§ 20010-20015), Section 9.52.030 seems to authorize unloaded blow guns to be carried openly in public.

Third, to the extent the City’s current carry regulations apply to the carrying of firearms for self-defense purposes, in certain narrow circumstances, that regulation may conflict with rights of individuals under the Second Amendment of the federal Constitution. (See *District of Columbia v. Heller* (2008))

² The uncertainty the *Peruta* case creates about the constitutionality of the state’s regulations regarding the carrying of concealed handguns in public does not change our conclusion that the City’s regulations should be amended. Should the state’s concealed handgun regulations ultimately be found to be unconstitutional as applied in certain circumstances, that decision would presumably prevent the City from enforcing, under the same circumstances, its local ban on carrying loaded, concealed handguns in public.

554 U.S. 570 [construing the Second Amendment to give individuals the right to possess fire-ready guns in their *homes* under certain circumstances for purposes of self-defense].)³

Given the breadth of the state and federal laws governing the carrying of firearms and imitation firearms that now exist, we recommend that the Council repeal its outdated local regulations in this area.

b. Consider Whether to Impose State Law Regulations Governing the Carrying of Imitation Firearms on Certain Shooting Weapons That Are Not Regulated under State or Federal Law

The Council may, if it chooses, continue to regulate the carrying of other “shooting” weapons that are not regulated under state or federal law.

Should the Council wish to continue to regulate in this area, the Police Chief recommends that the Council impose the same carry restrictions state law imposes on imitation firearms to the carrying of all BB guns and spot marker guns – whether or not they are realistic enough to constitute an “imitation firearm” under state law – and to bows, arrows and slingshots. The Chief advises, however, that there is no need to impose any carry regulations on anvils or skeet-launchers, two types of weapons that are otherwise regulated by Chapter 9.52.

Should the Council adopt this amendment to its existing carry provisions of Chapter 9.52, no BB gun, spot marker gun, slingshot, bow or arrow could be carried openly in any street, sidewalk, plaza, parking lot, parked or moving vehicle, building open to the public, public school, building or dwelling entrance, driveway or front yard. The proposed ordinance the Council is considering includes this amendment.

If the Council instead wishes *not* to continue to regulate the carrying of weapons governed by Chapter 9.52 beyond the requirements state and federal law impose, we recommend that the Council repeal the existing carrying provisions of set forth in current Section 9.52.030.

2. Narrows Restrictions on Sales to Minors.

Current state and federal law preclude the sale of firearms and firearm ammunition to minors. (18 U.S.C. § 922(x); Penal Code § 27505(a)). And state law bans the sale of any BB guns and spot marker guns to minors. (Penal Code § 19910.) Further, state legislature has *expressly* preempted the field in the area of regulating the sale of imitation firearms, BB guns and spot marker guns, thereby precluding local governments from creating further regulations in this area. (Gov. Code § 53071.5.)

Accordingly, the City’s regulations permitting the sale of any weapon defined by Chapter 9.52, or the projectiles for such weapons, to a minor with the consent of a parent or guardian is not enforceable where a minor seeks to buy a firearm, imitation firearm, BB gun, spot marker gun or firearm ammunition. Rather, federal and state law flatly ban the sale. But the City is free to regulate the circumstances under which weapons not regulated by state and federal law – like slingshots, bows and arrows – may be sold to minors.

³ A critical issue before the Ninth Circuit in *Peruta* is the whether the Second Amendment right to bear arms extends outside of the home.

For that reason, staff recommends that the City amend current Section 9.52.020 to make clear that the provision applies only to the sale of slingshots, bows and arrows. The proposed ordinance contains this recommended amendment.

3. Narrows and Clarifies the Discharge and Use Restrictions of Chapter 9.52

Current section 9.52.10 makes it unlawful to *discharge* firearms and other weapons that project objects anywhere within City-limits or to *use* such weapons to endanger or injure a person, to damage or threaten damage to property, or to “the annoyance” of others. We recommend a number of amendments to this provision, all of which are incorporated into the proposed ordinance.

First, the prohibition against using weapons to the “annoyance” of others is ambiguous and could be construed to ban what state or federal law permits or requires. Indeed, many individuals may be annoyed by those exercising their rights under state or federal law to possess or use weapons. We recommend that the Council delete this unnecessary and confusing language from Chapter 9.52.

Second, the prohibition against using weapons to injure, endanger or threaten another person, or to damage or threaten to damage another person’s property is similarly unnecessary. Because state law makes it a crime to use any weapon to injure a person, damage another’s property or threaten to do either of those things, the Police Chief advises that there is no need for the City to regulate the use of the weapons defined in Chapter 9.52 beyond the *discharge* of those weapons. Accordingly, we recommend that the Council amend Section 9.52.10 to limit its scope to the discharge of weapons.

Third, we recommend that Council amend the discharge provisions to clarify that the discharge of blanks constitutes a “discharge” within the meaning of Chapter 9.52.

Finally, we recommend that Council amend Chapter 9.52 to create a variety of new exceptions to the weapon discharge prohibition. The recommended exceptions avoid conflicts with state and federal law, permit the discharge of flare guns to signal distress or provide emergency illumination, and permit the discharge of weapons pursuant to a valid permit issued by the City.

4. Incorporates State Law Terms and Definitions

We further recommend that the Council incorporate the state law definitions of certain terms to ensure that the City’s regulations remain consistent with state law as state law may be amended from time-to-time in the future. Attached to this report is an appendix of the state law terms incorporated by reference into the proposed ordinance, along with the current definitions of those terms under state law.

5. Clarifies the Scope of the Weapons Regulated

We also recommend that Council make a variety of amendments to clarify the scope of the weapons regulated by Chapter 9.52. In particular, the draft ordinance eliminates redundant terms and removes the specific reference to blow guns in light of the state law ban on the possession or use of blow guns.

Further, the draft removes from the scope of weapons regulated by Chapter 9.52 many projectile devices that are generally not considered weapons. These devices include true toys that are not reasonably capable of inflicting harm, industrial equipment (for example, nail guns), athletic equipment (for example, lacrosse sticks or pitching devices), and spraying devices.

6. Clarifies the Weapon Discharge Permitting Provisions

Chapter 9.52 currently contains two provisions authorizing the City Council to issue permits for the discharge of weapons. Current section 9.52.040 addresses permits for shooting and archery ranges. Current section 9.52.50 (D) addresses permits for the discharge of cannons, anvils and fireworks in connection with public parades, processions or gatherings.

The proposed ordinance maintain these two existing permit provisions, although for safety reasons, the Police Chief recommends that discharging of anvils no longer be permitted at public parades, processions or gatherings. The proposed ordinance amends these provisions to incorporate consistent language for both types of permits related to the standard of care required for those discharging weapons pursuant to permits.

Additionally, the proposed ordinance adds an additional provision for permits the City issues to discharge weapons in connection with entertainment events or movie, television or video productions. Currently, the Police Chief, or her designee, issues such permits. The proposed amendment does not alter that practice.

D. Recommended Amendments to Chapter 9.56

The proposed ordinance also cleans up the City’s outdated knife control provisions set forth in Chapter 9.56 by removing redundant terms, reorganizing provisions, and clarifying that Chapter 9.56 regulates only knives and other dangerous stabbing or cutting instruments.

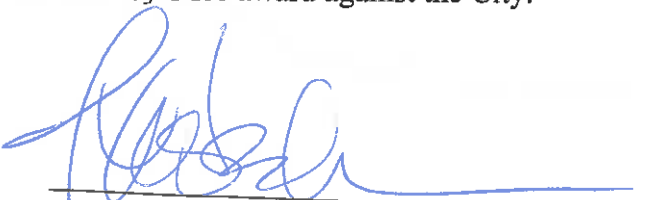
Further, as with Chapter 9.52, the proposed ordinance incorporates state law terms and definitions into Chapter 9.56 to make the City’s regulations conform to state law as it may be amended from time-to-time. But under the proposed ordinance, Chapter 9.52 would continue to regulate switchblade knives regardless of the blade length, while state law regulates switchblade knives with a blade of two or more inches in length.

E. Enactment of Chapter 9.57

The proposed ordinance updates and reorganizes the outdated seizure, disposition and violation provisions of the City’s weapons regulations and makes them consistent with applicable federal and state laws.

FISCAL IMPACT

The fiscal impact of adopting the proposed ordinance is a significant potential *savings* to the City by avoiding costly litigation over the City’s current gun control provisions and avoiding the possibility of an attorney’s fee award against the City.



Teresa L. Stricker, Deputy City Attorney



Clay Holstine, City Manager

Attachment:
Appendix of State Law Terms and Definitions Incorporated into Proposed Ordinance

**Appendix of California Penal Code Terms and Current Definitions
Incorporated By Reference in Weapon Control Ordinance**

“BB device” means any instrument that expels a projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun. (Penal Code § 16250.)

“Blowgun” means a hollow tube designed and intended to be used as a tube through which a dart is propelled by the force of the breath of the user. (Penal Code §16270.)

“Dirk” or “Dagger” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 21510, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position. (Penal Code § 16470.)

“Firearm” means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

As used in the following provisions, “firearm” includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.
- (15) Sections 30150 to 30165, inclusive.
- (16) Section 31615.
- (17) Sections 31705 to 31830, inclusive.
- (18) Sections 34355 to 34370, inclusive.
- (19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

As used in the following provisions, “firearm” also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

- (1) Section 16750.
- (2) Subdivision (b) of Section 16840.
- (3) Section 25400.
- (4) Sections 25850 to 26025, inclusive.
- (5) Subdivisions (a), (b), and (c) of Section 26030.
- (6) Sections 26035 to 26055, inclusive.

As used in the following provisions, “firearm” does not include an unloaded antique firearm:

- (1) Subdivisions (a) and (c) of Section 16730.
- (2) Section 16550.
- (3) Section 16960.
- (4) Section 17310.
- (5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
- (6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26700 to 26915, inclusive.
- (9) Section 27510.
- (10) Section 27530.
- (11) Section 27540.
- (12) Section 27545.
- (13) Sections 27555 to 27585, inclusive.
- (14) Sections 29010 to 29150, inclusive.
- (15) Section 25135.

As used in Sections 34005 and 34010, “firearm” does not include a destructive device.

As used in Sections 17280 and 24680, “firearm” has the same meaning as in Section 922 of Title 18 of the United States Code.

As used in Sections 29010 to 29150, inclusive, “firearm” includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

(Penal Code § 16520.)

“**Handgun**” means any pistol, revolver, or firearm capable of being concealed upon the person. Nothing shall prevent a device defined as a “handgun” from also being found to be a short-barreled rifle or a short-barreled shotgun. (Penal Code § 16640.)

“Imitation firearm” means any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm.

As used in Section 20165, “imitation firearm” does not include any of the following:

(1) A nonfiring collector's replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A spot marker gun which expels a projectile that is greater than 10mm caliber.

(3) A BB device that expels a projectile, such as a BB or pellet, that is other than 6mm or 8mm caliber.

(4) A BB device that is an airsoft gun that expels a projectile, such as a BB or pellet, that is 6mm or 8mm caliber which meets the following:

(A) If the airsoft gun is configured as a handgun, in addition to the blaze orange ring on the barrel required by federal law, the airsoft gun has a trigger guard that has fluorescent coloration over the entire guard, and there is a two centimeter wide adhesive band around the circumference of the protruding pistol grip that has fluorescent coloration.

(B) If the airsoft gun is configured as a rifle or long gun, in addition to the blaze orange ring on the barrel required by federal law, the airsoft gun has a trigger guard that has fluorescent coloration over the entire guard, and there is a two centimeter wide adhesive band with fluorescent coloring around the circumference of any two of the following:

(i) The protruding pistol grip.

(ii) The buttstock.

(iii) A protruding ammunition magazine or clip.

(5) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device's complete contents.

The adhesive bands described in paragraph (4) of subdivision (b) shall be applied in a manner not intended for removal, and shall be in place on the airsoft gun prior to sale to a customer.

(Penal Code § 16700.)

“Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. (Penal Code § 17090.)

“Shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. (Penal Code § 17190.)

“Switchblade knife” means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife, or any other similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever. “Switchblade knife” does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position. (Penal Code § 17235.)

ORDINANCE NO. 600

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING DIVISION VII OF TITLE 9 OF THE MUNICIPAL CODE TO CLARIFY THE SCOPE AND MEANING OF THE CITY'S WEAPON CONTROL REGULATIONS AND TO CONFORM THOSE REGULATIONS TO CURRENT FEDERAL AND STATE LAW.

WHEREAS, Division VII of Title 9 of the Brisbane Municipal Code sets forth the City's weapon control regulations;

WHEREAS, Chapter 9.52 regulates the discharge, carrying and sale to minors of firearms and a broad range of other weapons that project objects;

WHEREAS, the current version of Chapter 9.52 bans, with limited exceptions, the carrying of any weapon that projects objects, including firearms, anywhere in Brisbane unless the weapon is unloaded with its breach or magazine open, or the weapon's main parts are broken down and separated;

WHEREAS, the current version of Chapter 9.52 also bans the sale of any weapon that projects objects to minors without the consent of a parent or guardian;

WHEREAS, Chapter 9.56 regulates the carrying, possession, and in some instances, the sale or transfer, of certain types of knives and other similar cutting or stabbing weapons;

WHEREAS, since the adoption of Chapters 9.52 and 9.56 more than 50 years ago, many federal and state laws have been enacted to regulate firearms, certain types of knives and other similar weapons;

WHEREAS, current state and federal laws ban the sale to minors of firearms and certain other weapons that project objects, including BB guns and spot marker guns (also known as paint ball guns);

WHEREAS, these state and federal laws make Chapter 9.52's outdated regulations related to the sale of firearms and certain other weapons to minors unenforceable;

WHEREAS, current state and federal law also sets forth specific and detailed circumstances under which firearms and certain other weapons that project objects – including BB guns, spot marker guns and toy guns that are so realistic in appearance that they may be mistaken as firearms – may be carried or transported in public within a city;

WHEREAS, these state and federal laws make the outdated “open carry” regulations set forth in the current version of Chapter 9.52 unenforceable when applied to firearms and many other weapons that project objects and are regulated by state or federal laws, including realistic looking BB guns and toy guns;

WHEREAS, the open carrying and transportation of other weapons that project dangerous objects but that are not regulated by state or federal law – such as bows that shoot arrows, slingshots and certain types of BB guns and spot marker guns – pose a risk to public safety when carried openly in places open to the public as Chapter 9.52 currently permits;

WHEREAS, to assure public safety in Brisbane, the city council finds that the state law ban on the open display or exposure of realistic looking BB guns, spot marker guns and toy guns in places open to the public – including streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, vehicles, buildings open to the public, building and dwelling entrances, and schools – should also apply to all BB guns, spot marker guns, bows, arrows and slingshots; and

WHEREAS, certain additional amendments are necessary to clarify the scope and meaning of the weapon control regulations set forth in Division VII of Title IX, and to conform those regulations to applicable federal and state laws.

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 9.52 of the Municipal Code is amended to read as follows:

Chapter 9.52 – ~~DISCHARGE OF FIREARMS AND OTHER WEAPONS~~ THAT PROJECT DANGEROUS OBJECTS

9.52.010 – Definitions

The following definitions shall apply in this Chapter:

A. “BB device” means “BB device” as defined in Part 6 of the California Penal Code.

B. “Blow gun” means “blow gun” as defined in Part 6 of the California Penal Code.

C. “Firearm” means “firearm” as defined in Part 6 of the California Penal Code.

D. “Handgun” means “handgun” as defined in Part 6 of the California Penal Code.

E. "Imitation firearm" means "imitation firearm" as defined in Part 6 of the California Penal Code.

F. "Projectile weapon" means any firearm or any BB device, slingshot, bow or any instrument of any kind, character or description that projects bullets, pellets, missiles, cartridges, blanks, arrows, anvils or any other dangerous object of any kind to any distance, by means of power or any explosive substance, or by means of the elastic force of air, rubber or steel springs, or by any other means. "Projectile weapons" do not include any of the following:

1. Any instrument that, when used as designed and intended by the manufacturer, is commonly regarded as a toy and is not reasonably capable of inflicting any impairment of physical condition, function or senses.
2. Any instrument that, when used as designed and intended by the manufacturer, projects objects for manufacturing and/or construction purposes, such as rivets, staples, nails and other similar objects.
3. Any instrument that when used as designed and intended by the manufacturer, projects a ball, puck or other similar object that is commonly considered to be athletic equipment.
4. Any instrument that sprays liquids, gases or vapors.

G. "Public place" means an area open to the public as defined in Section 20170 of the California Penal Code.

H. "Rifle" means "rifle" as defined in Part 6 of the California Penal Code.

I. "Shooting or archery range" means a rifle, shotgun, handgun, skeet, trap and/or archery range.

J. "Shotgun" means "shotgun" as defined in Part 6 of the California Penal Code.

9.52.01020 -- Discharge Within city prohibited.

~~—A.~~ A. It is unlawful for any person ~~or persons~~, within the corporate limits of the city, to discharge any projectile weapon. ~~pistol, revolver, gun, rifle (of any caliber), cannon, anvil, or any other firearm, and also any airgun, BB gun, blow gun, slingshot, bow, or any instrument of any kind, character, or description which throws or projects bullets,~~

~~pellets, or missiles of any kind to any distance, by means of power or any explosive substance, or by means of the elastic force of air, rubber, or steel springs, or by any other means; or in any manner to use the same to the danger or annoyance of any person or injury to property, except as provided in this chapter.~~

B. This section shall not apply in any of the following circumstances:

1. To police, peace officers or persons in military service in the discharge of their duties, consistent with all applicable federal and state laws.
2. To persons discharging a projectile weapon in necessary self-defense consistent with all applicable federal and state laws.
3. To persons discharging flare guns or other similar devices in a careful manner to signal distress or provide illumination in an emergency situation.
4. To persons discharging a blow gun in the limited circumstances permitted under applicable federal and/or state laws.
5. To persons discharging rifles, shotguns, handguns, BB devices, skeets, traps or bows at a shooting or archery range in a careful manner that is consistent with all conditions set forth in any permit first obtained from the city council for operation of the shooting or archery range under section 9.52.050.
- 1.6. To persons discharging cannons or fireworks upon occasions of public parades, processions or other public gatherings, in a careful manner that is consistent with all conditions set forth in a permit first obtained from the city council under section 9.52.060.
7. To persons discharging projectile weapons in a careful manner that is consistent with all conditions set forth in any permit first obtained from the chief of police, or his or her designee, for an entertainment event or motion picture, television or video production under section 9.52.070.
8. To any circumstance in which application of this section would violate federal and/or state law.

9.52.02030 - Purchase of slingshots, bows and arrows by minors restricted.

No person under eighteen (18) years of age shall purchase any slingshot, bow designed to project arrows, or arrow designed to be projected by a bow of the parts, projectiles, supplies or devices set forth in Section 9.52.010 unless accompanied by his or her parent or guardian, who shall request the purchase. This section shall not apply

to the purchase of any item that, when used as designed and intended by the manufacturer, is commonly regarded as a toy and is not reasonably capable of inflicting any impairment of physical condition, function or senses. This section shall not be construed to authorize any purchase in violation of federal and/or state law.

9.52.03040 -- Carrying of BB devices, bows, arrows and slingshots restrictions.

A. — It is unlawful for any person or persons to openly carry display or expose any ~~weapon~~ BB device, bow designed to project arrows, arrow designed to be projected by a bow, or slingshot, as defined in Section 9.52.010, anywhere in any public place within the corporate limits of the city, unless such person or persons shall carry the ~~weapon unloaded, with the breech or magazine open, or the main parts of the weapon broken down and separated.~~

B. This section shall not be construed to authorize or prevent the carrying of any weapon in violation of federal law, state law and/or valid weapon permit.

9.52.04050 -- Permits authorized for ~~S~~shooting and archery ranges authorized.

The city council may, upon written application being made, grant a permit~~ssion~~ for the location of ~~rifle, pistol, skeet, trap, or~~ shooting or archery ranges within the city, upon which range it may be lawful to discharge rifles, revolvers, pistols, shotguns, or ~~bows~~ subject to such regulations as the city council may appropriately establish. The permittee shall act in a careful manner that is consistent with all conditions set forth in the permit. No permit shall exempt a permittee under this section from liability for any injury or damage caused by the operation of any shooting or archery range.

9.52.050 - Exemptions.

The provisions of Section 9.52.010, as to the use of any of the devices mentioned therein, shall not apply to any of the following cases:

- A. — To police, peace officers or persons in military service in the discharge of their duties and using reasonable care;
- B. — To persons using firearms in necessary self defense;
- C. — To the possession of such firearms for keeping at the place of residence or business of the person otherwise in lawful possession thereof, or while traveling to or from a legal firing, shooting or target range or hunting ground;
- D. — To cannon, anvils or fireworks discharged upon occasions of public parades, processions or other public gatherings, after permit first obtained

~~from the council. All acts done under the provisions of this subsection shall be performed in a careful manner, and the permit granted by the council shall not exempt the permittee from any liability for damage done under such permit to person or property.~~

9.52.060 – Permits authorized for discharging cannons and fireworks.

The city council may, upon written application, grant a permit for the discharge of cannons and/or fireworks upon occasions of public parades, processions or other public gatherings subject to such regulations the city council may appropriately establish. The permittee shall act in a careful manner that is consistent with all conditions set forth in the permit. No permit shall exempt a permittee under this section from liability for any injury or damage caused by the discharge of cannons and/or fireworks.

9.52.070 – Permits authorized for entertainment event or motion picture, television or video production.

The chief of police, or that person's designee, may, upon written application, grant a permit for an entertainment event or a motion picture, television or video production involving the discharge of projectile weapons subject to such regulations the chief of police, or that person's designee, may appropriately establish. The permittee shall act in a careful manner that is consistent with all conditions set forth in the permit. No permit shall exempt a permittee under this section from liability for any injury or damage caused by the discharge of any projectile weapon.

9.52.060 – Seizure of weapons—Disposition.

~~A.— Any and all weapons, as defined in Section 9.52.010, used and employed by any person in violation of this chapter shall be seized by the authorized law enforcement officer and shall be confiscated and disposed of in the manner specified in this section. After seizure, all weapons shall remain in the custody of the police department until a forfeiture has been declared, or a release has been ordered, by the court having jurisdiction in the matter. In those cases in which the court with jurisdiction finds that the weapon was used in violation of this chapter, all individual property rights in the weapon shall be declared forfeited, if the court feels in its sole discretion that the forfeiture would be in the interests of justice. If the reasonable value of any forfeited weapon, as estimated by the chief of police, the captain of police, or the police sergeant on duty, does not exceed the sum of ten dollars (\$10.00), the police department is authorized to destroy such weapon, or cause it to be destroyed, to such extent that it shall be wholly and entirely useless and ineffective for the purpose for which it was designed or constructed. However, if such reasonable value of any forfeited weapon exceeds the sum of ten dollars (\$10.00), the same shall remain in the custody of the police department and thereafter be sold to the highest bidder at a public auction to be~~

~~conducted by the department on a business day between the hours of nine (9:00) a.m. and five (5:00) p.m. at a public place in the city within one (1) year from the date of forfeiture. Before any such sale is conducted, notice thereof must be given by posting in at least three (3) public places within the city, at least ten (10) days before the date of the sale, a written notice containing a brief description of the weapons to be sold and stating the time and the place of the public auction. It may be specified in the notice that any and all bids may be rejected, as the police officer conducting the sale shall in his sound discretion so decide. No member of the police department shall become a purchaser at such sale, or be interested in any purchase thereat. All money received by the police department, through the public sale of the weapons shall be deposited with the city manager clerk for distribution into the general fund. All weapons which may remain unsold after the conduct of a public auction as provided for in this section shall be destroyed by the police department, unless the chief thereof shall, in his discretion, determine to retain such weapons in the custody of the police department for the purpose of offering the same for sale at a subsequent public auction to be held under this sect~~

9.52.07080 - Violation—Penalties.

The violation of any of the provisions of ~~this chapter sections 9.52.020 through and 9.52.070~~ shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code, but only to the extent the same conduct does not constitute a violation of any applicable state or federal criminal law.

SECTION 2: Chapter 9.56 of the Municipal Code is amended to read as follows:

Chapter 9.56 - **SWITCHBLADE KNIVES AND OTHER CUTTING OR STABBING WEAPONS**

Sections:

9.56.010 - Definitions.

The following definitions shall apply in this Chapter:

A. "Dagger" means "dagger" as defined in Part 6 of the California Penal Code.

B. "Dirk" means "dirk" as defined in Part 6 of the California Penal Code.

C. "Switchblade knife" means "switchblade knife" as defined in as defined in Part 6 of the California Penal Code except that, as used in this Chapter, "switchblade knife" includes knives of any blade length. For the purposes of this chapter, the term "switchblade knives" includes, but is not necessarily limited to, the following: all spring-blade knives, switchblade knives, snap-blade knives, or other similar type knives; all knives of which any blade, regardless of the length thereof, is released automatically by a spring mechanism or other mechanical device, or is released by any type of mechanism whatsoever.

9.56.020 – Switchblade knives prohibited.

No person shall sell, offer for sale, expose for sale, keep, carry, possess, loan, transfer, or give to any other person any switchblade knife.

9.56.02030 - Carrying while loitering in public places restricted prohibited.

It is unlawful for anyone who has upon his or her person or within his or her immediate physical possession or control, whether the same is visible or concealed, any switchblade knife, as described in Section 9.56.010, any knife with a blade three (3) inches or more in length, any ice pick, awl, dirk, dagger, stilette, or similar sharp stabbing tool, any straight-edged razor, razor blade fitted to a handle, razor with an unguarded blade, or any other similar sharp cutting or, stabbing or bludgeoning weapon or device intended to be used as a club or capable of inflicting grievous bodily harm, (a) to loaf or loiter upon any public street, way, sidewalk, alley, or at any athletic event, dance or other such gathering to which the public, or a number thereof, are admitted, or in or about a public park, beach, other recreational area, school, or any other public building or place, any place where alcoholic beverages are sold, or any other place of public resort, or (b) to wander about from place to place with no lawful business thereby to perform, or to hide, lurk, or loiter upon or about the premises of another.

9.56.03040 -- Carrying while engaging in disorderly conduct prohibited.

It is unlawful for anyone who has upon his or her person or within his or her immediate physical possession or control, whether the same is visible or concealed, any ~~switchblade knife, or dangerous or deadly weapon, weapon as~~ described in Sections ~~9.56.010 and~~ 9.56.02030, to engage in any fight or to participate in any riot, uprising, or other type of disorderly conduct upon the premises of another or ~~upon~~ any public street, way, sidewalk, ~~or~~ alley, or in or about a public park, beach, other recreational area, school, ~~or~~ any other public building or place, or any place where alcoholic beverages are sold, or any other place of public resort, or at any athletic event, dance, or other such gathering to which the public, or a number thereof, are admitted.

9.56.040 - Loitering near alcoholic beverage establishments prohibited.

~~It is unlawful for anyone who has upon his person or within his immediate physical possession or control any switchblade knife, or dangerous or deadly weapon, as described in Sections 9.56.010 and 9.56.020, to loiter about any place where alcoholic beverages are sold or any other place of public resort.~~

9.56.050 - Exceptions to restrictions.

~~The foregoing restrictions Sections 9.56.030 and 9.56.040~~ shall not be deemed to prohibit the possession, ~~or control~~ or use of ordinary tools or equipment carried in good faith for the purpose of honest work, trade, or business, or for use in a legitimate bona fide sport or recreation.

9.56.060 -- Sale prohibited.

~~Notwithstanding any provision in this chapter to the contrary, no person shall sell, offer for sale, expose for sale, keep, carry, possess, loan, transfer, or give to any other person any switchblade knife.~~

9.56.07060 - Violation—Penalties.

The violation of any of the provisions of Sections 9.56.020 through 9.56.040 of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code, but only to the extent the same conduct does not constitute a violation of any applicable state or federal criminal law.

SECTION 3: Chapter 9.57 of the Municipal Code is enacted as follows:

Chapter 9.57 – Seizure, Forfeiture and Disposition of Weapons

Sections:

9.57.010 - Seizure.

Police officers shall seize any and all weapons used by any person in violation of Chapter 9.52 or 9.56.

9.57.020 – Forfeiture.

Any weapon seized pursuant to this Chapter shall remain in the custody of the police department until a forfeiture has been declared, or a release has been ordered, by a court having jurisdiction in the matter. In those cases in which the court with jurisdiction finds that the weapon was used in violation of Chapter 9.52 or 9.56, all individual property rights in the weapon shall be declared forfeited, if the court determines, in its sole discretion, that the forfeiture would be in the interests of justice.

9.57.030 - Disposition.

All weapons declared forfeited pursuant to this Chapter shall be confiscated and disposed of as authorized by federal and state law.

SECTION 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

SECTION 5. This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the city council of the City of Brisbane held on the ____ day of _____, 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Cliff Lentz, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Teresa L. Stricker, Deputy City Attorney

ORDINANCE NO. 600

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING DIVISION VII OF TITLE 9 OF THE MUNICIPAL CODE TO CLARIFY THE SCOPE AND MEANING OF THE CITY'S WEAPON CONTROL REGULATIONS AND TO CONFORM THOSE REGULATIONS TO CURRENT FEDERAL AND STATE LAW.

WHEREAS, Division VII of Title 9 of the Brisbane Municipal Code sets forth the City's weapon control regulations;

WHEREAS, Chapter 9.52 regulates the discharge, carrying and sale to minors of firearms and a broad range of other weapons that project objects;

WHEREAS, the current version of Chapter 9.52 bans, with limited exceptions, the carrying of any weapon that projects objects, including firearms, anywhere in Brisbane unless the weapon is unloaded with its breach or magazine open, or the weapon's main parts are broken down and separated;

WHEREAS, the current version of Chapter 9.52 also bans the sale of any weapon that projects objects to minors without the consent of a parent or guardian;

WHEREAS, Chapter 9.56 regulates the carrying, possession, and in some instances, the sale or transfer, of certain types of knives and other similar cutting or stabbing weapons;

WHEREAS, since the adoption of Chapters 9.52 and 9.56 more than 50 years ago, many federal and state laws have been enacted to regulate firearms, certain types of knives and other similar weapons;

WHEREAS, current state and federal laws ban the sale to minors of firearms and certain other weapons that project objects, including BB guns and spot marker guns (also known as paint ball guns);

WHEREAS, these state and federal laws make Chapter 9.52's outdated regulations related to the sale of firearms and certain other weapons to minors unenforceable;

WHEREAS, current state and federal law also sets forth specific and detailed circumstances under which firearms and certain other weapons that project objects – including BB guns, spot marker guns and toy guns that are so realistic in appearance that they may be mistaken as firearms – may be carried or transported in public within a city;

WHEREAS, these state and federal laws make the outdated “open carry” regulations set forth in the current version of Chapter 9.52 unenforceable when applied to firearms and many other weapons that project objects and are regulated by state or federal laws, including realistic looking BB guns and toy guns;

WHEREAS, the open carrying and transportation of other weapons that project dangerous objects but that are not regulated by state or federal law – such as bows that shoot arrows, slingshots and certain types of BB guns and spot marker guns – pose a risk to public safety when carried openly in places open to the public as Chapter 9.52 currently permits;

WHEREAS, to assure public safety in Brisbane, the city council finds that the state law ban on the open display or exposure of realistic looking BB guns, spot marker guns and toy guns in places open to the public – including streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, vehicles, buildings open to the public, building and dwelling entrances, and schools – should also apply to all BB guns, spot marker guns, bows, arrows and slingshots; and

WHEREAS, certain additional amendments are necessary to clarify the scope and meaning of the weapon control regulations set forth in Division VII of Title IX, and to conform those regulations to applicable federal and state laws.

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 9.52 of the Municipal Code is amended to read as follows:

Chapter 9.52 – FIREARMS AND OTHER WEAPONS THAT PROJECT DANGEROUS OBJECTS

9.52.010 – Definitions

The following definitions shall apply in this Chapter:

- A. “BB device” means “BB device” as defined in Part 6 of the California Penal Code.
- B. “Blow gun” means “blow gun” as defined in Part 6 of the California Penal Code.
- C. “Firearm” means “firearm” as defined in Part 6 of the California Penal Code.
- D. “Handgun” means “handgun” as defined in Part 6 of the California Penal Code.

E. "Imitation firearm" means "imitation firearm" as defined in Part 6 of the California Penal Code.

F. "Projectile weapon" means any firearm or any BB device, slingshot, bow or any instrument of any kind, character or description that projects bullets, pellets, missiles, cartridges, blanks, arrows, anvils or any other dangerous object of any kind to any distance, by means of power or any explosive substance, or by means of the elastic force of air, rubber or steel springs, or by any other means. "Projectile weapons" do not include any of the following:

1. Any instrument that, when used as designed and intended by the manufacturer, is commonly regarded as a toy and is not reasonably capable of inflicting any impairment of physical condition, function or senses.
2. Any instrument that, when used as designed and intended by the manufacturer, projects objects for manufacturing and/or construction purposes, such as rivets, staples, nails and other similar objects.
3. Any instrument that when used as designed and intended by the manufacturer, projects a ball, puck or other similar object that is commonly considered to be athletic equipment.
4. Any instrument that sprays liquids, gases or vapors.

G. "Public place" means an area open to the public as defined in Section 20170 of the California Penal Code.

H. "Rifle" means "rifle" as defined in Part 6 of the California Penal Code.

I. "Shooting or archery range" means a rifle, shotgun, handgun, skeet, trap and/or archery range.

J. "Shotgun" means "shotgun" as defined in Part 6 of the California Penal Code.

9.52.020 – Discharge prohibited.

A. It is unlawful for any person, within the corporate limits of the city, to discharge any projectile weapon.

B. This section shall not apply in any of the following circumstances:

1. To police, peace officers or persons in military service in the discharge of their duties, consistent with all applicable federal and state laws.
2. To persons discharging a projectile weapon in necessary self-defense consistent with all applicable federal and state laws.
3. To persons discharging flare guns or other similar devices in a careful manner to signal distress or provide illumination in an emergency situation.
4. To persons discharging a blow gun in the limited circumstances permitted under applicable federal and/or state laws.
5. To persons discharging rifles, shotguns, handguns, BB devices, skeets, traps or bows at a shooting or archery range in a careful manner that is consistent with all conditions set forth in any permit first obtained from the city council for operation of the shooting or archery range under section 9.52.050.
6. To persons discharging cannons or fireworks upon occasions of public parades, processions or other public gatherings, in a careful manner that is consistent with all conditions set forth in a permit first obtained from the city council under section 9.52.060.
7. To persons discharging projectile weapons in a careful manner that is consistent with all conditions set forth in any permit first obtained from the chief of police, or his or her designee, for an entertainment event or motion picture, television or video production under section 9.52.070.
8. To any circumstance in which application of this section would violate federal and/or state law.

9.52.030 - Purchase of slingshots, bows and arrows by minors restricted.

No person under eighteen (18) years of age shall purchase any slingshot, bow designed to project arrows, or arrow designed to be projected by a bow unless accompanied by his or her parent or guardian, who shall request the purchase. This section shall not apply to the purchase of any item that, when used as designed and intended by the manufacturer, is commonly regarded as a toy and is not reasonably capable of inflicting any impairment of physical condition, function or senses. This section shall not be construed to authorize any purchase in violation of federal and/or state law.

9.52.040 – Carrying of BB devices, bows, arrows and slingshots.

A. It is unlawful for any person or persons to openly display or expose any BB device, bow designed to project arrows, arrow designed to be projected by a bow, or slingshot in any public place within the corporate limits of the city.

B. This section shall not be construed to authorize or prevent the carrying of any weapon in violation of federal law, state law and/or valid weapon permit.

9.52.050 – Permits authorized for shooting and archery ranges.

The city council may, upon written application, grant a permit for the location of shooting or archery ranges within the city subject to such regulations the city council may appropriately establish. The permittee shall act in a careful manner that is consistent with all conditions set forth in the permit. No permit shall exempt a permittee under this section from liability for any injury or damage caused by the operation of any shooting or archery range.

9.52.060 – Permits authorized for discharging cannons and fireworks.

The city council may, upon written application, grant a permit for the discharge of cannons and/or fireworks upon occasions of public parades, processions or other public gatherings subject to such regulations the city council may appropriately establish. The permittee shall act in a careful manner that is consistent with all conditions set forth in the permit. No permit shall exempt a permittee under this section from liability for any injury or damage caused by the discharge of cannons and/or fireworks.

9.52.070 – Permits authorized for entertainment event or motion picture, television or video production.

The chief of police, or that person's designee, may, upon written application, grant a permit for an entertainment event or a motion picture, television or video production involving the discharge of projectile weapons subject to such regulations the chief of police, or that person's designee, may appropriately establish. The permittee shall act in a careful manner that is consistent with all conditions set forth in the permit. No permit shall exempt a permittee under this section from liability for any injury or damage caused by the discharge of any projectile weapon.

9.52.080 - Violation—Penalties.

The violation of any of the provisions of sections 9.52.020 through and 9.52.070 shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code, but only to the extent the same conduct does not constitute a violation of any applicable state or federal criminal law.

SECTION 2: Chapter 9.56 of the Municipal Code is amended to read as follows:

Chapter 9.56 - KNIVES AND OTHER CUTTING OR STABBING WEAPONS

Sections:

9.56.010 - Definitions.

The following definitions shall apply in this Chapter:

- A. "Dagger" means "dagger" as defined in Part 6 of the California Penal Code.
- B. "Dirk" means "dirk" as defined in Part 6 of the California Penal Code.
- C. "Switchblade knife" means "switchblade knife" as defined in as defined in Part 6 of the California Penal Code except that, as used in this Chapter, "switchblade knife" includes knives of any blade length.

9.56.020 – Switchblade knives prohibited.

No person shall sell, offer for sale, expose for sale, keep, carry, possess, loan, transfer, or give to any other person any switchblade knife.

9.56.030 - Carrying while loitering prohibited.

It is unlawful for anyone who has upon his or her person or within his or her immediate physical possession or control, whether the same is visible or concealed, any knife with a blade three (3) inches or more in length, any ice pick, awl, dirk, dagger, any straight-edged razor, razor blade fitted to a handle, razor with an unguarded blade, or any other similar sharp cutting or stabbing weapon or device capable of inflicting grievous bodily harm (a) to loiter upon any public street, way, sidewalk, alley, or at any athletic event, dance or other such gathering to which the public, or a number thereof, are admitted, or in or about a public park, beach, other recreational area, school, any other public building or place, any place where alcoholic beverages are sold, or any other place of public resort, or (b) to hide, lurk, or loiter upon or about the premises of another.

9.56.040 – Carrying while engaging in disorderly conduct prohibited.

It is unlawful for anyone who has upon his or her person or within his or her immediate physical possession or control, whether the same is visible or concealed, any weapon described in Section 9.56.030, to engage in any fight or to participate in any riot, uprising, or other type of disorderly conduct upon the premises of another or any public street, way, sidewalk or alley, or in or about a public park, beach, other recreational area, school, any other public building or place, any place where alcoholic beverages are sold, or any other place of public resort, or at any athletic event, dance, or other such gathering to which the public, or a number thereof, are admitted.

9.56.050 - Exceptions.

Sections 9.56.030 and 9.56.040 shall not be deemed to prohibit the possession, control or use of ordinary tools or equipment carried in good faith for the purpose of honest work, trade, or business, or for use in a bona fide sport or recreation.

9.56.060 - Violation—Penalties.

The violation of any of the provisions of Sections 9.56.020 through 9.56.040 of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code, but only to the extent the same conduct does not constitute a violation of any applicable state or federal criminal law.

SECTION 3: Chapter 9.57 of the Municipal Code is enacted as follows:

Chapter 9.57 – Seizure, Forfeiture and Disposition of Weapons

Sections:

9.57.010 - Seizure.

Police officers shall seize any and all weapons used by any person in violation of Chapter 9.52 or 9.56.

9.57.020 – Forfeiture.

Any weapon seized pursuant to this Chapter shall remain in the custody of the police department until a forfeiture has been declared, or a release has been ordered, by a court having jurisdiction in the matter. In those cases in which the court with jurisdiction finds that the weapon was used in violation of Chapter 9.52 or 9.56, all individual property rights in the weapon shall be declared forfeited, if the court determines, in its sole discretion, that the forfeiture would be in the interests of justice.

9.57.030 - Disposition.

All weapons declared forfeited pursuant to this Chapter shall be confiscated and disposed of as authorized by federal and state law.

SECTION 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

SECTION 5. This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the city council of the City of Brisbane held on the _____ day of _____, 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Cliff Lentz, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Teresa L. Stricker, Deputy City Attorney