

City of Brisbane

Memo

To: Honorable Mayor and City Council

From: Sheri Marie Spediacci, City Clerk

RE: Ordinance No. 600 amending Division VII of Title 9 of the Brisbane Municipal Code to clarify the scope and meaning of the City's Weapon Control Regulations to conform those regulations to current Federal and State law

The ordinance listed above was introduced at the City Council Meeting of March 3, 2016. No changes were made at that time.

It is on this agenda for consideration of adoption.

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WHEREAS, these state and federal laws make Chapter 9.52's outdated regulations related to the sale of firearms and certain other weapons to minors unenforceable;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

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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