

ORDINANCE NO. _____

BILL NO. 169 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 9.28, MAUI COUNTY
CODE, RELATING TO AIR AND REPLICA GUNS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this Ordinance is to update regulations on air guns and incorporate regulations on replica guns into the chapter.

SECTION 2. Chapter 9.28, Maui County Code is amended to read as follows:

“Chapter 9.28

AIR GUNS AND REPLICA GUNS

Sections:

9.28.010	<u>[Defined.] Definitions.</u>
9.28.015	<u>Air gun: restrictions on use.</u>
9.28.020	<u>Air gun: use by minors.</u>
9.28.030	<u>Sale of [balls,] pellets, [or missiles.] BB shot, or projectiles to minors prohibited.</u>
9.28.031	<u>Replica gun: prohibitions.</u>
9.28.032	<u>Air gun and replica gun: exceptions.</u>
9.28.033	<u>Air gun and replica gun: possession prohibited.</u>
9.28.034	<u>Possession of an air gun or replica gun with intent to facilitate the commission of a felony drug offense.</u>
9.28.035	<u>Seizure, forfeiture, and disposal.</u>
9.28.040	<u>Violation—Penalty.</u>

9.28.010 [Defined.] As used in this chapter, “air gun” means any weapon using compressed air or gas as the propelling force to eject therefrom a projectile in the shape of a ball, pellet or rod of any type or material, or any weapon of similar design, nature or function, whether usable or unusable, serviceable or

unserviceable, or modern or antique.] **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Air gun” means any instrument, by whatever name known, that is designed to expel a pellet or BB shot by action of compressed air or gas, or by the action of a spring or elastic, but does not include a firearm.

“Controlled substance” has the same meaning as defined in section 329-1 of the Hawaii Revised Statutes.

“Distribution” means the selling, transferring, prescribing, giving, or delivering to another, or the leaving, bartering, or exchanging with another, or the offering or agreeing to do the same.

“Replica gun” means any toy or other object, not including an air gun or an actual firearm, that:

(1) Bears such a resemblance to an actual firearm that a reasonable person would have difficulty visually distinguishing the replica gun from a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, assault weapon, starter pistol, inoperative firearm, or other firearm; and

(2) Lacks any feature or aspect that would allow a reasonable person to readily distinguish by sight the replica gun from an actual firearm.

9.28.015 Air gun: restrictions on use. A. It is unlawful for any person to carry or display an air gun in a public place, on a public street, or in any area that is open to the public, unless the air gun is unloaded and in an enclosed container.

B. It is unlawful for any person to discharge any air gun from or across any street, sidewalk, alley, or public land, or any public place except on an enclosed range designed and properly constructed for the use the air gun that is discharged.

C. It is unlawful for any person to discharge any air gun on any private parcel of land or residence in such a manner that the pellet or BB shot may reasonably be expected to traverse any ground or space outside the limits of such parcel of land or residence or in such a manner that persons or property may be endangered; provided, that nothing in this article may be deemed to prevent any person who has obtained a hunting license pursuant to chapter 183D, Hawaii Revised Statutes, from engaging in hunting in accordance with law.

D. It is unlawful for any person to discharge any air gun in such a manner or under such circumstances that persons or property may be endangered.

9.28.020 [Use] Air gun: use by minors. A. It is unlawful for any minor under the age of eighteen years to own, acquire by purchase, gift, or otherwise, possess, use, operate, or play with an

air gun; provided, however, any person under the age of eighteen years, while under the immediate supervision of an adult, may possess, use, operate, or play with an air gun; provided further that it is not lawful for any such person under the age of eighteen years, under any circumstances, to possess, use, operate, or play with an air gun on any public highway, in any public park or playground, school premises, theater, airport, harbor, pier, or any other place of public resort. "Place of public resort," as used in this subsection [shall] does not include a bona fide public target range.

B. It is unlawful for any parent, guardian, or any other person having the care, custody, or control of any minor under the age of eighteen years to permit such minor to own, acquire by purchase, gift or otherwise, possess, use, operate, or play with an air gun except as otherwise provided in subsection A of this section.

C. Except as otherwise provided in this chapter, it is unlawful for any person to sell, transfer, or give an air gun to any minor under the age of eighteen years.

9.28.030 Sale of [balls,] pellets, [or missiles.] BB shot, or projectiles to minors prohibited. It is unlawful for any person to sell to any minor under the age of eighteen years any ball, pellet, or any other missiles designed to be used for or by air guns.

9.28.031 Replica gun: prohibitions. A. No person may carry, possess, brandish, aim, point, or display to any other person a replica gun in such a manner as to frighten, threaten, harass, panic, or annoy any other person.

B. No person may, with knowledge that a law enforcement officer, firefighter, emergency medical technician, paramedic or medical first responder is engaged in the performance of the law enforcement officer's, firefighter's, emergency medical technician's, paramedic's, or medical first responder's duties draw, exhibit, brandish, or display any replica gun in the law enforcement officer's, firefighter's, emergency medical technician's, paramedic's or medical first responder's presence.

C. No person may carry or possess, whether concealed or displayed, a replica gun in a motor vehicle in an area of the vehicle accessible to the occupants thereof, including, but not limited to, under or near the driver's seat or in the glove box or dashboard.

9.28.032 Air gun and replica gun: exceptions. Notwithstanding anything in this chapter to the contrary, the following actions are exempt from prohibitions on the use or possession of an air gun or replica gun as long as its use or possession does not present an unreasonable risk of harm to any

person or property: A. The possession of an air gun or replica gun within such person's residence.

B. The use of an air gun or replica gun by a person under eighteen years of age, who is a duly enrolled member of any club, team, or society organized for education or training purposes and maintaining as a part of its facilities or having written permission to use an indoor or outdoor target range, when the air gun is used at such target range under the supervision, guidance, and instruction of a responsible adult.

C. The use of an air gun or replica gun by a person eighteen years of age or older at an enclosed range designed and properly constructed for the type of device being discharged.

D. The use of an air gun or replica gun in or on any private property so long as the projectile remains on the property from which it was discharged.

E. The use of an air gun or replica gun in hunting or going to or from the place of hunting in accordance with law by a person who has obtained a hunting license pursuant to chapter 183D, Hawaii Revised Statutes, or who, if such person is under eighteen years of age, has obtained such a hunting license and is accompanied by an adult who has obtained such hunting license.

F. The use of an air gun or replica gun by a person involved in a living history presentation or other activity for historical interpretation or educational purposes, or by a person participating in a parade if such activity or parade participant is associated with an established historical organization, museum, military preservation organization, or other group with a mission to educate the public at various events through the use of historical artifacts, clothing, vehicles, aircraft, maritime vessels, and firearms or replicas thereof.

G. The use of an air gun or replica gun when necessary to do so to protect life or property under circumstances that would warrant the use of such force under Hawaii law or to deter any dangerous animal.

H. The firing or discharge paintballs at a facility in which all participants have consented to engage in paintball activities.

I. The use or possession of an air gun or replica gun by an authorized law enforcement officer acting in the course and scope of duty.

J. The use of nail guns or other carpentry tools being used for their intended purpose.

K. The use of air guns for animal control measures taken by government agencies.

L. The use of air guns or replica guns with blank cartridges for a show or theatrical production, or for signal or ceremonial purposes in athletics or sports, or by a military organization.

9.28.033 Air gun and replica gun: possession prohibited. A. It is unlawful for any person who is a fugitive from justice, or prohibited from possessing any firearm or ammunition therefor, to possess any air gun or replica gun.

B. It is unlawful for any person who is under indictment for, or has waived indictment for, or has been bound over to the circuit court for, or has been convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug to possess any air gun or replica gun.

C. It is unlawful for any person who:

1. Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, Hawaii Revised Statutes, or intoxicating liquor.

2. Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411, Hawaii Revised Statutes.

3. Is or has been diagnosed as having a significant behavioral, emotional, or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes; to own, possess, or control any air gun, unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect.

4. It is unlawful for any person who is less than twenty-five years old and has been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug to own, possess or control any air gun or replica gun.

5. It is unlawful for any person who has been restrained pursuant to an order of any court, from contacting, threatening, or physically abusing any person, to possess, control, or transfer ownership of any air gun or replica gun so long as the protective order, restraining order, or any extension is in effect, unless the order, for good cause shown, specifically permits the possession of an air gun, or replica gun. The protective order or restraining order must specifically include a statement that possession, control, or transfer of ownership of an air gun or replica gun by the person named in the order is prohibited. The person must relinquish possession and control of any air gun and replica gun owned by that person to the police department for safekeeping for the duration of the order or extension thereof. At the time of service of a protective order or restraining order

involving an air gun or replica gun issued by any court, a police officer may take custody of any and all air guns and replica guns in plain sight, those discovered pursuant to a consensual search, and those air guns and replica guns surrendered by the person restrained.

6. Any person disqualified from ownership, possession, control, or the right to transfer ownership of air guns and replica guns under this section must surrender or dispose of all air guns and replica guns in compliance with section 134-7.3, Hawaii Revised Statutes.

9.28.034 Possession of an air gun or replica gun with intent to facilitate the commission of a felony drug offense. It is unlawful for any person to knowingly possess an air gun or replica gun with the intent to facilitate the commission of a felony offense involving the distribution of a controlled substance

9.28.035 Seizure, forfeiture, and disposal. Any police officer who arrests any person for possessing, using, lending, renting, giving or transferring an air gun or replica gun in violation of any provisions of this article must take custody of such air gun or replica gun. Upon conviction of such person the air gun or replica gun so seized will be forfeited to the County. Any air gun or replica gun so forfeited will remain in the custody of the department of police for one year and thereafter destroyed; provided, that such air gun or replica gun will be retained for subsequent proceedings, both civil or criminal, and until any such action is concluded, if any person desiring the use of such forfeited air gun or replica gun as evidence files with the chief of police a written notice of an intention to so use the air gun or replica gun before the destruction date herein provided.

9.28.040 Violation—Penalty. Any person who violates any provision of this chapter [shall,] will, upon conviction, be punished by a fine not exceeding [one hundred dollars.] \$500, or by imprisonment for a period not to exceed one year, or by both such fine and imprisonment.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
County of Maui
2021-0451
2022-04-06 Ord Amd Ch 9.28.docx

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Charles R. Lee", is written over a horizontal line.

Upon the request of the Mayor.