



POLICE DEPARTMENT

COUNTY OF MAUI



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CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

May 19, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 5/21/21
Mayor Date

For transmittal to:

Honorable Alice L. Lee
Council Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

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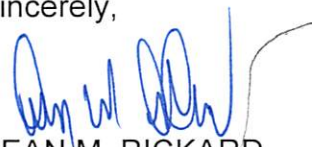
Re: Proposed Air Gun and Replica Gun Regulations

Dear Chair Lee:

We are forwarding for your review a copy of a proposed revision to Maui County Code Chapter 9.28 – Air Guns. This proposal has been reviewed by First Deputy Michael Kegami of the Department of Prosecuting Attorney, as well as Mr. Keola Whittaker of the Department of Corporation Counsel. We are asking your support in updating this Maui County Code.

If you have any questions, please contact Sergeant Grant Nakamura of our Crime Reduction Unit at extension 6577.

Sincerely,


DEAN M. RICKARD
Acting Chief of Police

Enclosure

COUNTY COMMUNICATION NO. 21-265

PROPOSED AIR GUN AND REPLICA GUN REGULATIONS

Sections:

- 9.28.010 Defined.
- 9.28.020 Air Gun: Restrictions on use
- 9.28.030 Air Gun: Use by Minors
- 9.28.040 Sale of Pellets, BB shot, or Projectiles to Minors Prohibited
- 9.28.050 Replica Gun: Prohibitions
- 9.28.060 Air Gun and Replica Gun: Exceptions
- 9.28.070 Air Gun and Replica Gun: Possession Prohibited
- 9.28.080 Possession of an air gun or replica gun with intent to facilitate the commission of a felony drug offense
- 9.28.90 Seizure, forfeiture and disposal

9.28.010 Defined.

As used in this chapter:

"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" shall have 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;

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

9.28.020 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 shall be deemed to prevent any person who has obtained a hunting license pursuant to HRS Chapter 183D 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.

9.28.030 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, theaters, airports, harbors, piers, or any other place of public resort. "Place of public resort," as used in this subsection shall 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.

[note: currently 9.28.020]

9.28.040 Sale of Pellets, 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 pellet, BB shot, or any other projectile designed to be used for or by an air gun.

[note: currently 9.28.030]

9.28.050 Replica Gun: Prohibitions

A. No person shall 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 shall, 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 shall 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.

9.28.060 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 18 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 18 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 HRS Chapter 183D or who, if such person is under 18 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.

9.28.070 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 of the 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 of the Hawaii Revised Statutes; or

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, including a gun violence protective order issued pursuant to part IV, 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 shall 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 shall relinquish possession and control of any air gun and replica gun owned by that person to the police department of the appropriate county 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 shall surrender or dispose of all air guns and replica guns in compliance with section 134-7.3 of the Hawaii Revised Statutes.

[Note: This section is adapted from state laws relating to the possession of firearms - Hawaii Revised Statutes 134-7.]

9.28.080 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.

9.28.090 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 shall take custody of such air gun or replica gun. Upon conviction of such person the air gun or replica gun so seized shall be forfeited to the County of Maui. Any air gun or replica gun so forfeited shall remain in the custody of the police department for one year and thereafter destroyed; provided, that such air gun or replica gun shall 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.

9.28.100 Violation – Penalty

Any person who violates any provision of this chapter shall, upon conviction, be punished by a fine not exceeding \$500, or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment.