

CITY OF KIRKLAND

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CITY ATTORNEY'S OFFICE
MEMORANDUM

To: Dave Ramsay, City Manager
From: Wm. R. Evans, Assistant City Attorney
Date: April 19, 2007
Subject: Air Guns

At the April 3, 2007, Council meeting there was discussion regarding Ordinance 4093 and a question posed as to whether KMC Chapter 11.41 would prohibit the use of air guns by minors on private property as well as public. A further question presented was whether the Council could require that the orange tips mandated for these guns under federal law could be required by local ordinance, too.

As to the first question, a minor's use of air guns on both public and private property is prohibited unless the use occurs in compliance with the exceptions presented in 11.41.160. There it provides that air guns can be used by minors on a range or their parents' property if used in compliance with "rules and regulations provided by the chief of police or city ordinance and licensed by the City."

Currently there are no such ranges operating in Kirkland nor has there been a request for a business license to operate one here since the 1990s according to the City's business licensing division. I am told the business that obtained that license then ceased operations just months later. If another business owner were to submit such an application, either the Council or the Chief of Police could then adopt regulations and minors would then be allowed to use those ranges. Alternatively, such regulations could be adopted now in anticipation that someone may open such a range. I would anticipate the content of these rules would be guided by some of the regulations MRSC provided us that are being used by other cities for regulating air guns generally and perhaps even by some of the rules the ranges themselves impose on their users.

The proposed amended ordinance as presented to the Council has also been further amended to clarify that the exceptions presented in 11.41.160 are not just limited to the traditional target range but also includes the game courses where the contestants use these guns in mock combat. Based on comments received from Council, I also amended that section to eliminate one of the exceptions contained there that would have allowed such courses or ranges to be placed in City parks.

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Regarding the second question, the Council could adopt a local law requiring that air guns have the orange tips required by Congress and the Secretary of Commerce so long as that ordinance did not conflict with the federal requirements on that topic established by Congress in 15 U.S.C.A. Section 5001 and by the Secretary in 15 CFR Part 1150. However, because air guns can be marked in other ways as well pursuant to Part 1150, that ordinance would also need to allow for these other markings because the manner of marking air guns has been pre-empted under federal law. See 15 CFR Part 1150, Section 5.

Given my understanding Council was primarily concerned federal law would allow for removal of these markings, I did not amend the ordinance to replicate federal law because the federal marking requirements are permanent. In other words, making them a permanent local requirement would be redundant. Further, given the pre-emption in this area, if Congress ever decided to allow the markings to be temporary, any ordinance prohibiting removal would likely be superseded at that time.

ORDINANCE 4093

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO AIR GUNS AND AMENDING SECTIONS 11.41.140, 11.41.150 AND 11.41.160 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Section 11.41.140 of the Kirkland Municipal Code is hereby amended to read as follows:

11.41.140 Air gun defined.

As used in this chapter, "air gun" means and includes the following: air gun, air pistol, air rifle, BB gun and toy guns of any kind or nature when so designed, contrived, modified and used to propel, by compressed air, gas, electricity, or spring loaded plunger, any pellet, dart, hard-tipped arrow, bean, pea, BB (metal or plastic), paint ball, rock or other hard substance a distance of more than twenty-five feet with sufficient force to break windows or inflict injury upon persons or animals.

Section 2. Section 11.41.150 of the Kirkland Municipal Code is hereby amended to read as follows:

11.41.150 Possession of air guns.

(a) Except as hereinafter provided, it is unlawful:

(1) For any person under ~~sixteen~~ eighteen years of age to carry or shoot any air gun within the city when not in the presence of his parent or other adult in loco parentis and under the direction and control of such adult;

(2) For any parent or person in loco parentis to allow, give or permit the possession of any air gun, falling within the definition contained in Section 11.41.140, to any child under the age of ~~sixteen~~ eighteen years, except under the provisions of subsection (1) above;

(3) For any person to point or shoot an air gun at any person or property of another, or to aim or discharge such weapons in the direction of the person or residence of another, while within such range as ~~to cause or inflict~~ would make possible injury to the person or damage the property of another;

(4) For any person to point or shoot an air gun in the direction of, while within such range as to kill, injure, or disturb any nongame bird or harmless bird or songbird;

(5) For any merchant to sell or rent any air guns to minors under ~~sixteen~~ eighteen years of age, except when such minor is in the presence of his parent or other adult in charge of such child.

(b) Provided further, that the provisions of Sections 11.41.150(3) and 11.41.150(4) shall not prohibit the use of such weapons by a person over ~~sixteen~~ eighteen years of age, when such use is reasonably necessary and

represents reasonable force in the protection of the person or property of the user or another.

Section 3. Section 11.41.160 of the Kirkland Municipal Code is hereby amended to read as follows:

11.41.160 Exceptions.

The provisions of Section 11.41.150(1) and (2) shall not apply:

(1) When such minor is possessing or using such weapons on a gun range or game course operated or conducted by any school, educational institution or other regulated group, pursuant to rules and regulations provided by the chief of police or city ordinance and licensed by the city; or

~~(2) When such minor is possessing or using such air gun within a regulated or supervised course or range provided by the city park department, under regulations or ordinances duly promulgated and adopted therefor; or~~

~~(3)~~ (2) When such minor is carrying such weapon unloaded and otherwise properly dismantled, to and from such licensed or authorized course; or

~~(4)~~ (3) When confined to an area within the property of the parents of such minor which complies with the regulations relating to private practice or target ranges or game courses as promulgated by the chief of police.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2007.

Signed in authentication thereof this ____ day of _____, 2007.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney