

ORDINANCE NO. 2019-014

AN ORDINANCE REPEALING SECTION 78-1 WEAPONS, CONTAINED IN ARTICLE I, OF CHAPTER 78 OF THE CODE OF ORDINANCES OF THE CITY OF CLUTE, TEXAS; ADOPTING ARTICLE V , CHAPTER 78, REGULATING WEAPONS IN THE CITY OF CLUTE, TEXAS; CONTAINING A PREAMBLE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT; CONTAINING DEFINITIONS OF TERMS USED IN THIS ORDINANCE; PROVIDING FOR ENFORCEMENT OF THIS ORDINANCE; MAKING IT AN OFFENSE FOR VIOLATION OF THIS ORDINANCE; CONTAINING A PENALTY; CONTAINING A SEVERANCE CLAUSE; CONTAINING A REPEALER CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.

WHEREAS, the public health and safety of the City of Clute is endangered by the discharging of firearms and the possession of replica firearms with the blaze orange tip removed or altered; and

WHEREAS, the City Council finds that individuals using replica firearms inappropriately within the City present a serious danger to themselves and others; and

WHEREAS, pursuant to Texas Local Government Code ANN. §51.001 the City is authorized to adopt regulations that are for the good government, peace, or order of the City; and

WHEREAS, the City Council of the City of Clute has determined, based upon the findings stated above, that the regulations established by this Ordinance are necessary for the good government, peace, and order of the City; and

WHEREAS, the City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Government Code (the Open Meetings Act); and

WHEREAS, the City has previously adopted and amended Ordinances related to Weapons and now desires to restate and amend these regulations in the manner set forth in this Ordinance;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLUTE, BRAZORIA COUNTY, TEXAS:

First, Chapter 78-1 of the Code of Ordinances of the City is hereby repealed, and Chapter 78, Article V "Weapons" shall read as follows:

Chapter 78 OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE V. - WEAPONS

Sec. 78-70 – Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air Soft Gun means a spring-operated, gas-operated, or battery-powered replica firearm made of hard plastic or light metal that fires plastic or other nonmetallic projectiles.

Firearm means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance, or any device readily convertible to that use.

Paintball Gun means a replica firearm that is powered by compressed gas (carbon dioxide, nitrogen, or ordinary air) and fires dye-filled gelatinous capsules.

Public Place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Replica Firearm means any device or object that is a toy version or facsimile of, or is reasonably likely to be perceived as, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or other firearm, and includes but is not limited to a starter pistol, BB gun, pellet gun, air soft gun, paintball gun, or air rifle.

Sec. 78-71 – Discharge of Firearm

(a) *Discharge of firearms.* It shall be unlawful for any person to discharge any gun, pistol or firearm of any kind within the city.

(b) *Affirmative defenses.* It shall be an affirmative defense to any prosecution under subsection (a) of this section if:

- (1) The actor is a peace officer engaged in the lawful discharge of his official duties;
- (2) The actor is engaged in the lawful defense of his person or property; or
- (3) The actor is a participant in a turkey shoot or other similar activity for the conducting of which the chief of police has issued a written permit pursuant to subsection (c) of this section.

(c) *Permit for turkey shoot or similar activity.* At the request of the owner or person lawfully in possession of any premises in the city where such activities may be safely conducted therein and are specifically designated, the chief of police may issue a written permit authorizing any nonprofit corporation or association determined by him to be recognized by the Internal Revenue Service as a tax exempt organization to conduct a turkey shoot or other similar activity upon such premises. Such permit may contain such rules and regulations for the conducting of such activities as the chief of police may in his sole discretion determine to be necessary to assure that such activities are safely conducted.

Sec. 78-72 – Airguns, Spring Guns and Paintball Guns.

(a) *Discharge of airguns or spring guns.* It shall be unlawful for any person to discharge an air rifle or air pistol of any description, by whatever name known, that by means of compressed air, compressed gas, springs or any other means is capable of discharging shots, pellets or any solid object at a velocity of 300 feet per second or any greater velocity.

(b) *Discharge of paint ball guns.* It shall be unlawful for any person to discharge an air rifle or air pistol of any description, by whatever name known, that by means of compressed air, compressed gas, or any other means discharges a ball or other projectile containing paint in any public park within the city.

(c) *Affirmative defense.* It shall be an affirmative defense to any prosecution under subsection(f) of this section the actor is a participant in a special event sponsored by either the city's park board or the Great Texas Mosquito Festival Board or another special event approved by the city council.

Sec. 78-73 – Replica Firearms

(a) It shall be unlawful for any person to intentionally or knowingly display or brandish a replica firearm in a manner or under circumstances that cause another person to:

- (1) reasonably believe that the replica firearm is actually an operable firearm; and
- (2) in fear imminent bodily injury from a firearm.

(b) It is defense to prosecution under Subsection (a) that the person displaying or brandishing the replica firearm did so in self-defense.

(c) It shall be unlawful for any person to display or brandish a replica firearm in any public place within the city.

(d) It is a defense to prosecution under Subsection (c) that the replica firearm was:

- (1) a non-firing collector replica firearm modeled on a real firearm and not intended for use as a toy; or
- (2) a decorative, ornamental, or miniature object having the appearance, shape, or configuration of a firearm and measuring not more than 38 millimeters in height and 70 millimeters in length (excluding any gun stock length measurement), including, but not limited to, an object intended to be displayed on a desk, worn on a bracelet or necklace, or attached to a keychain; or
- (3) being displayed or brandished at a lawfully operated, contained location designated for games, events, and activities that involve replica firearms such as, but not limited to, paintball guns and air soft guns; or
- (4) being displayed at a lawfully operated business establishment authorized to sell merchandise, including replica firearms; or
- (5) being displayed or brandished as part of an event, performance, demonstration, or ceremony authorized by the city or sponsored and conducted by a subdivision of any federal, state, or local government; or
- (6) being displayed or brandished in the production of a television program, a theatrical presentation, or a motion picture or other filming event in the city and written permission was obtained from the city to use the replica firearm in the production; or
- (7) being displayed or brandished in a historical reenactment, military event, or other special event in the city requiring the use of a replica firearm and written permission was obtained from the city to use the replica firearm in the event; or
- (8) being displayed or brandished for the purpose of protecting persons or property as authorized under Chapter 9 of the Texas Penal Code; or
- (9) being displayed or brandished by a law enforcement officer or other government employee or official while acting in the performance of official duties.

Sec. 78-74 – Alteration of Weapons

(a) It shall be unlawful for any person to:

- (1) remove or obscure:
 - (A) the blaze orange tip required to be on a replica firearm under Title 15, Section 5001 of the United States Code; or
 - (B) any other colors or markings required to be on a replica firearm under city ordinance or federal or state law; or
- (2) possesses a replica firearm on which the blaze orange tip required by Title 15, Section 5001 of the United States Code or any other colors or markings required by city ordinance or state or federal law have been removed or obscured.

Sec. 78-75 – Penalties

A person who violates a provision this Article – Weapons, is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.

Second, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgement or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Third, all Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Fourth, this ordinance shall take effect and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this 13th day of June 2019.

Calvin Shiflet, Mayor,
City of Clute, Texas

ATTEST:

APPROVED AS TO FORM ONLY:

Rosie Poitevint, City Clerk,

Christopher Duncan, City Attorney,

City of Clute, Texas

City of Clute, Texas