



CITY OF BEAVERTON

CITY ORDINANCES

ORDINANCE 3703

AN ORDINANCE AMENDING BEAVERTON CODE SECTIONS 5.08.200-5.08.220, "WEAPONS AND FIREWORKS", IN ITS ENTIRETY, ADDING 5.08.225, DISCHARGING A WEAPON, 5.08.227, SEIZURE AND FORFEITURE OF WEAPONS, AND 5.08.230, UNLAWFUL DISPLAY OF FIREWORKS, AND AMENDING 5.08.800 A-C, PENALTIES, TO MAKE THE SECTIONS CONSISTENT WITH STATE LAW, AND DECLARING AN EMERGENCY.

NUMBER OF PAGES

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A-C, PENALTIES, TO MAKE THE
SECTIONS CONSISTENT WITH STATE LAW,
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WHEREAS, House Bill 3470 has been enacted into law and shall go into effect on January 1, 1990; and

WHEREAS, the legislation contains a preemption clause which reads: "Except as otherwise provided by law, cities, counties and other political subdivisions of this state may regulate only the possession of firearms and ammunition in a public place as defined in ORS 161.015."; and

WHEREAS, the preemption clause appears to prohibit local ordinances that are in conflict with the state law or that regulate the possession of firearms or ammunition any where other than in a public place; and

WHEREAS, the present firearms ordinances of the City regulate the use or possession of firearms throughout the City, and therefore will be in conflict with the new legislation unless revised; and

WHEREAS, the Oregon Supreme Court's recent decision of City of Portland v. Lodi has affected the ability of local jurisdictions to regulate the concealed carrying of knives; and

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WHEREAS, the Oregon Supreme Court appears to be of the opinion that a city cannot prohibit the concealed carrying of a knife other than a switchblade knife; and,

WHEREAS, the Oregon Supreme Court is the highest authority on the interpretation of Oregon law, thus requiring the City to revise its existing concealed weapon ordinance to conform with the Lodi decision; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. BC 5.08.200 - 5.08.220 of the "Weapons and Fireworks" section of the Beaverton Code is hereby amended in its entirety to read as follows:

"BC 5.08.200, Definitions. For purposes of this ordinance, the following mean:

"Firearm - A weapon, by whatever name known, which is designed to expel a projectile by the action of smokeless powder and which is readily capable of use as a weapon.

"Handgun - A conventional pistol or revolver that uses a fixed cartridge containing a propellant charge, primer and projectile, and is designed to be aimed or fired other than from the shoulder and that when fired, fires a single shot for each pressure on the trigger device.

"Public Place - A place to which the general public has access, including, but not limited to, highways, streets, schools, parks, play grounds, places of amusement, premises used in connection with public transportation, and the hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

"Switchblade Knife - A knife having a blade that projects or swings into position by force of a spring or by centrifugal force.

"5.08.205 Carrying of Concealed Weapons.

"A. No person shall knowingly carry concealed on or about the person any switchblade knife, dirk, dagger, ice pick, slung shot, metal knuckles or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person.

"B. Nothing contained in subsection (A) of this section shall apply to any peace officer whose duty includes service of process or making arrests.

"5.08.210 Pointing a Firearm at Another. No person shall intentionally point or aim a loaded or unloaded firearm at or toward any other person who is within range of the firearm if:

"1. either person is in a public place; or

"2. the firearm is pointed or aimed through a public place.

"5.08.215 Unlawful Possession of Firearms.

"A. Except as provided by B.C. 5.08.220, no person while in a public place or while operating a vehicle in a public place shall knowingly:

"1. Carry a firearm concealed upon the person.

"2. Carry a handgun concealed and readily accessible about the person within a vehicle which is under the person's control or direction.

"B. Firearms carried openly in belt holsters are not concealed within the meaning of this section.

"5.08.217 Unlawful Carrying of a Loaded Firearm.

"A. Except as provided by B.C. 5.08.220, no person shall knowingly carry a loaded firearm on or about the person while in a public place or in a vehicle located in a public place and under the person's control or direction.

"B. A firearm shall not be deemed unloaded until all ammunition is removed from the firearm, including all ammunition contained in the clip, chamber, cylinder or magazine.

"5.08.220 Persons not affected by B.C. 5.08.215 and 5.08.217. B.C. 5.08.215 does not apply to or affect:

"A. Sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers.

"B. Any person summoned by any such officer to assist in making arrests or preserving the peace, while

said person so summoned is actually engaged in assisting the officer.

"C. The possession or transportation by any merchant of unloaded firearms as merchandise.

"D. Members of the Army, Navy or Marine Corps of the United States, or of the National Guard, when on duty.

"E. Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

"F. Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

"G. Members of any club or organizations, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

"H. Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

"I. A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention.

"J. Persons who possess a concealed handgun license lawfully issued either by a sheriff of a county of this state or by any official of a State having requirements substantially comparable to those of this State for issuance of concealed handgun licenses."

Section 2. BC 5.08.225, Discharging a Weapon, is hereby added to the Beaverton Code and is to read as follows:

"5.08.225 Discharging a Weapon.

"A. No person shall intentionally discharge a firearm into or across a public place or while located in a public place.

"B. No person shall intentionally discharge a pellet gun, BB gun, bow and arrow, sling shot, or other similar weapon that expels a projectile by means other than by the action of smokeless powder.

"C. This section shall not prohibit the discharge of a firearm or other weapon while at a reasonably safe and regularly operated firing range."

Section 3. BC 5.08.227, Seizure and Forfeiture of Weapons, is hereby added to the Beaverton Code and is to read as follows:

"5.08.227 Seizure and Forfeiture of Weapons. The unlawful possession of a firearm, the unlawful carrying of a concealed weapon or loaded firearm, and the unlawful discharging of a weapon are a nuisance. Any weapon taken from the person or a vehicle of any person unlawfully possessing, carrying or discharging the same is a nuisance, and shall be surrendered to the police department and disposed of pursuant to the procedures provided at ORS 166.280."

Section 4. BC 5.08.230, Unlawful Display of Fireworks, is hereby added to the Beaverton Code and is to read as follows:

"5.08.230 Unlawful Display of Fireworks. ORS 480.130, "Permit required for sale or public display of fireworks; fee," is hereby incorporated by reference into this Code."

Section 5. BC 5.08.800 (A), Penalties, is hereby amended by adding:

"5.08.215 Unlawful Possession of Firearms"
"5.08.217 Unlawful Carrying of a Loaded Firearm"

Section 6. BC 5.08.800 (B), Penalties, is hereby amended by amending, adding, and deleting certain sections and is to read as follows:

- "5.08.115 Disorderly Conduct"
- "5.08.120 Disobeying a Lawful Order to Disperse"
- "5.08.130 Harassment"
- "5.08.133 Telephonic Harassment"
- "5.08.205 Carrying of Concealed Weapons"
- "5.08.225 Discharging a Weapon"
- "5.08.230 Unlawful Display of Fireworks"
- "5.08.600 Unsworn Falsification"
- "5.08.700 Cruelty to Animals"

Section 7. BC 5.08.800 (C), Penalties, is hereby amended by adding:

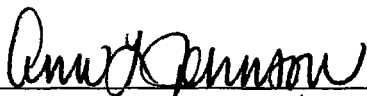
"5.08.210 Pointing a Firearm at Another"


Section 8. Emergency Clause. An emergency is hereby declared to exist and this ordinance shall take effect January 1, 1990, in order to preserve the peace, health and safety of the City and to maintain the consistency among State laws and City ordinances.

First reading this 11th day of December, 1989.
 Passed by the Council this 18th day of December, 1989.
 Approved by the Mayor this 27th day of DECEMBER, 1989.

ATTEST:

APPROVED:


 ANN L. JOHNSON, City Recorder


 LARRY D. COLE, Mayor

A G E N D A B I L L

Beaverton City Council
Beaverton, Oregon

SUBJECT:
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SECTIONS CONSISTENT WITH
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AN EMERGENCY.

BILL NO. 89-
FOR AGENDA OF: December 11, 1989
APPROVED FOR AGENDA:
DEPARTMENT OF ORIGIN: City Attorney's
DATE SUBMITTED: December 11, 1989
CLEARANCES: None
EXHIBITS: Ordinance

PROCEEDING:
First Reading.

BUDGET IMPACT

EXPENDITURE REQUIRED:	\$	AMOUNT BUDGETED:	\$	APPROPRIATION REQUIRED:	\$
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Code Ordinance: NO

BACKGROUND:

The portion of the City Code that regulates the way weapons may be possessed or used must be revised. The revision is substantial, especially in regard to the manner in which the City regulates the use and possession of firearms.

There are two reasons for the change. The first is the enactment of HB 3470 (the new gun control bill), which goes into effect on January 1, 1990. The new legislation contains a preemption clause that appears to limit the ability of local jurisdictions to regulate use or possession of firearms or ammunition. As a result, the City may now only regulate the possession of firearms or ammunition while the objects are in a public place.

The second reason for the change is an aftereffect of the Oregon Supreme Court's recent decision of City of Portland v. Lodi. That decision has affected the ability of local jurisdictions to regulate the concealed carrying of knives. Apparently the Supreme Court is of the opinion that a city cannot prohibit the concealed carrying of a knife other than a switchblade knife. Given that the Oregon Supreme Court is the highest authority on the interpretation of Oregon law, the City's present concealed weapon ordinance must be revised to conform with the Lodi decision.

RECOMMENDED ACTION:
First Reading.