

PLEASE NOTE:

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REGULAR

NUMBER: 89.4

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO AIR GUNS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, state law preempts local regulation of the possession and display of BB guns and air guns pursuant to Government Code § 53071.5; and

WHEREAS, the Milpitas Municipal Code contains provisions that may be inconsistent with state law regarding regulation of BB guns and air guns; and

WHEREAS, the City Council finds that with the inclusion of the amendments listed below, the Municipal Code remains internally consistent; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 10

Section V-10-3 of Chapter 10 of Title V is hereby amended to read as follows:

V-10-3 Use Unlawful

Except as hereinafter provided, it shall be unlawful for any person to ~~possess or~~ use any air gun within the City Limits of the City of Milpitas.

Section V-10-4 of Chapter 10 of Title V is hereby amended to read as follows:

~~**V-10-4.01—Possession in One's Home**~~

~~To the possession of an air gun by any person while in his domicile.~~

~~**V-10-4.02—Authorized Possession at Other Times**~~

~~To the possession of an air gun by any person conveying it to or from his domicile and (a) the place where said air gun was purchased or was or will be repaired and while at said place of repair, (b) outside the City limits, and (c) at a target range approved by the Chief of Police.~~

~~**V-10-4.03—Possession by a Merchant**~~

~~To the possession thereof while in the ordinary course of business of an air gun by a retail or wholesale merchant.~~

~~**V-10-4.04—Possession by a Police Officer**~~

~~To any police officer in the discharge of his duties.~~

V-10-4.05 Use at a Target Range

~~To the possession of~~ The use of an air gun at a target range approved by the Chief of Police.

Section V-10-7 of Chapter 10 of Title V is hereby amended to read as follows:

V-10-7.00

Any police officer shall be empowered to summarily abate as a public nuisance the unlawful ~~possession or~~ use of any air gun by taking said air gun from the person violating the provisions of this Chapter and impounding it. All air guns impounded under the provisions of this Chapter shall be retained, destroyed or disposed of in accordance with the provisions of Section 12028 of the Penal Code of the State of California.

Sections V-10-11.01, V-10-11.02, and V-10-11.03 are hereby deleted from Chapter 10 of Title V.

~~V-10-11.00 Sale or Lease of Air Gun—Warning Required~~

~~11.01 Any person selling or leasing an air gun within the City:~~

- ~~a.— shall have posted at the point of sale in a conspicuous location a sign with a length of not less than 14 inches and a height of not less than 14 inches, clearly printed with letters of not less than ¼ inch in height as follows:~~

~~WARNING~~

~~USE OF AIR GUNS IN THE CITY OF MILPITAS IS STRICTLY REGULATED BY LAW. BEFORE USING YOUR AIR GUN, PLEASE OBTAIN A COPY OF CHAPTER 10, TITLE V OF THE MILPITAS MUNICIPAL CODE AT THE POLICE DEPARTMENT, CITY HALL, MILPITAS~~

~~OR~~

- ~~b.— shall deliver a legible copy of the above described warning to the buyer or lessee of said air gun.~~

~~11.02 In addition to such other remedies as are herein provided or as allowed by law for violation of this Chapter, the failure of any seller or lessor of an air gun to comply with this Section shall be grounds for rescission of the sale or lease of said air gun.~~

~~11.03 It shall be a defense to any action for rescission hereunder to produce a copy of the above described warning, signed and dated by the buyer or lessee.~~

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.