City of Birmingham
A Walkable Community

MEMORANDUM

Police Department

DATE: **August 6, 2015**

TO: **Joseph A. Valentine, City Manager**

FROM: **Donald A. Studt, Police Chief**

SUBJECT: **Amendment to Chapter 74 of City Code-Weapons**

State law has changed recently with regards to weapons status particularly involving definition of “brandish”, “firearm” and now includes pneumatic gun.

To keep our ordinance consistent, the City Attorney has prepared the attached proposed amendment to Chapter 74, Article VI, Division 2 of the City Code. We recommend adoption of this change.

SUGGESTED RESOLUTION:
To adopt the attached changes to Chapter 74, Offenses, Article VI, Offenses Against Public Safety, Division 2- Weapons.

MEMORANDUM

TO: **Chief Studt and Deputy Chief Clemence**
FROM: **Mary Kucharek**
RE: **Weapons Ordinance**
DATE: **August 4, 2015**

Attached please find proposed amendments to Birmingham City Code Chapter 74 Offenses, Article VI. Offenses Against Public Safety, Division 2 Weapons. As we recently discussed, the State of Michigan has enacted multiple changes regarding the weapons statute. I would, therefore, recommend the attached changes to the City Code.

If you have any questions, please do not hesitate to contact me.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE VI. OFFENSES AGAINST PUBLIC SAFETY, DIVISION 2 WEAPONS.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article VI. Offenses Against Public Safety, Division 2 Weapons, shall be amended as follows:

DIVISION 2. - WEAPONS

Sec. 74-206. - Definitions.

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

"Brandish" means to point, wave about, or display in a threatening manner with the intent to induce fear in another person.

State Law reference - MCL §750.222(c)

"Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

State Law reference - MCL §750.222(e)

"Pneumatic gun" means any implement, designed as a gun that will expel a BB or pellet by spring, gas, or air. Pneumatic gun <u>includes</u> a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

State Law reference - MCL §750.222(g)

Cross reference— Definitions generally, § 1-2.

Sec. 74-207. - Persons exempt.

Police officers, peace officers and persons in the military service, in pursuit of official duty, and persons duly authorized by federal or state law to carry firearms, are exempt from the provisions of this division.

Sec. 74-208. - Confiscation of firearms.

All weapons, guns, pistols, firearms, knives, dirks, razors, stilettos, or any other sharp-edged or pointed instruments, or weapons carried, possessed or used contrary to this division are hereby declared forfeited to the city.

Sec. 74-209. - Discharge.

No person shall discharge any firearm, air rifle, air pistol, or pneumatic gun in the city, except when lawfully acting in the defense of persons or property or the enforcement of law or at a duly established range, the operation of which has been approved by the commission.

(Code 1963, § 9.102(4))

Sec. 74-210. - Possession.

(a) No person shall, except as provided in subsection (b) of this section, possess a firearm or pneumatic gun on the premises of any of the following:

(1) A depository financial institution or a subsidiary or affiliate of a depository financial institution.

(2) A church or other house of religious worship.

(3) A school.

(4) A court.

(5) A theater.

(6) A sports arena.

(7) A day care center.

(8) A hospital.

(9) An establishment licensed under the state liquor control act, Act No. 8 of the Public Acts of the State of Michigan of 1933, Extra Session (MCL 436.1 et seq., MSA 18.971 et seq.).

(b) This section does not apply to any of the following:

(1) A person who owns or is employed by or contracted by an entity described in subsection (a) of this section if the possession of that firearm is to provide security services for that entity.

(2) A peace officer.

(3) A person licensed by this state or another state to carry a concealed weapon.

(4) A person who possesses a firearm in a school for purposes of providing or receiving instruction in firearms safety.

(5) A person who possesses a firearm on the premises of an entity described in subsection (a) of this section if that possession is with the permission of the owner or an agent of the owner of that entity.

(c) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00 or both.

(Code 1963, § 9.102(48); Ord. No. 1550, 1-11-93)

Sec. 74-211. – Transporting a loaded firearm or pneumatic gun in a vehicle.

Except as otherwise permitted by law, a person shall not transport or possess either of the following in or upon a sailboat, motor vehicle, aircraft, motorboat, or any other vehicle propelled by mechanical means:

(a) A firearm, other than a pistol that is loaded.
(b) A pneumatic gun that is loaded and expels a metallic BB or metallic pellet greater than .177 caliber.

A person who violates this section is guilty of a 90 day misdemeanor.

State Law reference - MCL §750.227c

Sec. 74-212. – Transporting an unloaded firearm or a pneumatic gun in a vehicle.

Except as otherwise permitted by law, a person shall not transport or possess in or upon a motor vehicle or any self-propelled vehicle designed for land travel either of the following:

(a) A firearm, other than a pistol, or
(b) A pneumatic gun that expels a metallic BB or metallic pellet greater than .177, unless the firearm or pneumatic gun is one or more of the following:

(1) Taken down.
(2) Enclosed in a case.
(3) Carried in the trunk of a vehicle.
(4) Inaccessible from the interior of the vehicle.

A person who violates this section is guilty of a 90-day misdemeanor.

State Law reference - MCL §750.227d

Sec. 74-213 - Brandishing.

(a) No person shall, except as provided in subsection (b) of this section, knowingly brandish a firearm in public.

(b) Subsection (a) of this section does not apply to any of the following:

(1) A peace officer lawfully performing his duties as a peace officer.

(2) A person lawfully engaged in hunting.

(3) A person lawfully engaged in target practice.

(4) A person lawfully engaged in the sale, purchase, repair, or transfer of that firearm.

(c) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00 or both.

(Code 1963, § 9.102(51))

Sec. 74-214 – Intentionally aiming a firearm without malice.

It shall be unlawful for any person to intentionally, without malice, point or aim any firearm at or toward any other person.

State law reference – Similar provisions, MCL §750.233

Sec. 74-215. - Hunting within city prohibited.

It shall be unlawful for any person within the city to hunt wild game, or in any manner carry any gun, weapon or firearm within the city for the purpose of hunting any wild game or fowl at any time.

State Law reference— Game law, MCL 311.1 et seq., MSA 13.1321 et seq.

Sec. 74-216. - Unauthorized taking, killing of birds, animals.

No person shall by use of any pit, pitfall, deadfall, cage, snare, trap, net, baited hook, or any similar device, or of any drug, poison, chemical or explosive, injure, capture or kill any bird, or any game or fur bearing animal; nor shall any person at any time or in any manner whatever molest, harass, or annoy any such bird or any game or fur bearing animal within the limits of the city; except under authority of a written license issued by the police chief, or someone by him duly authorized.

(Code 1963, § 9.102(5))

Sec. 74-217. - Possession of knives, etc., by minors.

It shall be unlawful for any minor under 18 years of age to have in his possession or control, except within his own domicile, or carry or use in any manner any knife with a blade in excess of three inches, dagger, dirk, razor, stiletto or any other sharp-edged or pointed instrument; provided, however, that such person shall not be in violation of this section if:

(1) His possession of such bladed weapon is necessary for his employment, trade or occupation;

(2) He is engaged in or is proceeding to or returning from a place of hunting, trapping or fishing and whenever required, is also carrying a currently valid license issued to him by the state department of conservation;

(3) Such person is a duly enrolled member of the Boy Scouts of America or a similar organization or society and such possession is necessary to participate in the activities of such organization or society; or

(4) Such bladed weapon is required under circumstances that tend to establish that its possession is for a lawful purpose.

State Law reference— Carrying firearm or dangerous weapon, MCL 750.226, MSA 28.423.

Secs. 74-218—74-240. - Reserved.

Ordained this ___ day of, _____2015, but to become effective upon publication in a newspaper of general circulation within the City of Birmingham.

_____
Stuart Lee Sherman, Mayor

_____
Laura M. Pierce, City Clerk

I, Laura M. Pierce, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2015 and that a summary was published _____, 2015.

_____
Laura M. Pierce, City Clerk

MICHIGAN STATE POLICE
LEGAL UPDATE

No. 117
July 1, 2015

Subscriptions: To receive the Update via email, go to michigan.gov/msp-legal and click on "subscribe to legal updates."

CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

The manual is published by **Kendall Hunt Publishing Co.** Copies may be **ordered online** or by calling Kendall Hunt Customer Service at (800) 228-0810.

CRIMINAL LAW

Amendments to the Firearms chapter of the Michigan Penal Code related to firearms and pneumatic guns

Public Act 26 of 2015 amended various sections of the Firearms chapter of the Michigan Penal Code related to firearms and pneumatic guns.

Definitions

As a result of the amendments, the following terms have the following meaning for purposes of the Firearms chapter of the Michigan Penal Code:

"Brandish" means to point, wave about, or display in a threatening manner with the intent to induce fear in another person. **MCL 750.222(c)**

"Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. Previously, the definition of "firearm" included weapons that propelled a dangerous projectile by gas or air. **MCL 750.222(e)**

"Pneumatic gun" means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun <u>includes</u> a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact. **MCL 750.222(g)**

Pneumatic guns added to weapons-related violations

<u>Carrying a pneumatic gun with unlawful intent</u>
A person shall not, with intent to use the same unlawfully against the person of another, go armed with a pistol or other firearm, or a pneumatic gun, dagger, dirk, razor, stiletto, or knife having a blade over three inches in length, or any other dangerous or deadly weapon or instrument. A person who violates this section is guilty of a five-year felony. **MCL 750.226**

<u>Possession of a pneumatic gun in furtherance of a crime ("felony firearm")</u>
A person who carries or possesses a pneumatic gun and uses it in furtherance of committing or attempting to commit a felony, except a violation of MCL **750.223**, **750.227**, **750.227a**, or **750.230**, is guilty of a two-year felony with increasing penalties for second or subsequent offenses. **MCL 750.227b(2)**

<u>Transporting a loaded firearm or pneumatic gun in a vehicle</u>
Except as otherwise permitted by law, a person shall not transport or possess either of the following in or upon a sailboat, motor vehicle, aircraft, motorboat, or any other vehicle propelled by mechanical means:

- A firearm, other than a pistol that is loaded.
- A pneumatic gun that is loaded and expels a metallic BB or metallic pellet greater than .177 caliber.

A person who violates this section is guilty of two-year misdemeanor. **MCL 750.227c**

<u>Transporting an unloaded firearm or a pneumatic gun in a vehicle</u>
Except as otherwise permitted by law, a person shall not transport or possess in or upon a motor vehicle or any self-propelled vehicle designed for land travel either of the following:

- A firearm, other than a pistol, or
- A pneumatic gun that expels a metallic BB or metallic pellet greater than .177,

unless the firearm or pneumatic gun is one or more of the following:

- Taken down.
- Enclosed in a case.
- Carried in the trunk of a vehicle.
- Inaccessible from the interior of the vehicle.

A person who violates this section is guilty of a 90-day misdemeanor. **MCL 750.227d**

<u>Pneumatic guns and "weapon free school zones"</u>
MCL 750.237a(6)(d) was amended to provide that the term "weapon" for purpose of the weapon free school zones includes, but is not limited to, a pneumatic gun.