

Lee Brand
Councilmember
District 6

**ORDINANCE REPEALING ARTICLE 29 OF CHAPTER 9 OF THE FRESNO MUNICIPAL CODE AND
RESOLUTION IN SUPPORT OF CHIEF OF POLICE CONCERNING CITIZEN CONCEALED WEAPONS PERMIT**

November 17, 2011

TO: Fresno City Council Members

FROM: Lee Brand, Council President 

Agenda Item

Recommend that the Fresno City Council repeal Article 29 of Chapter 9 of the Fresno Municipal Code and its procedures and adopt Resolution No. _____ to support the Police Chief as the issuing authority on concealed weapons permits consistent with State law.

Background

The Concealed Weapons Municipal Ordinance was adopted by the Council in 1995 and provided the qualifications and guidelines for concealed weapons license (CCW) issuance. CCW licenses are governed by the State Attorney General pursuant to State Penal Code Section 12050-12054. County Sheriffs and City Police Chiefs are empowered as the final issuing authority for CCW license issuance and revocation.

The current City Municipal Ordinance does not conform to State law and must be repealed. Adoption of Resolution No. _____ better known as the "Citizen Concealed Weapons Act" will conform to State law.

Resolution Overview

This resolution will expand the Police Chief's authority in issuing concealed weapons permits and bring the City into compliance with newly enacted legislation and State law. The major change in this Resolution concerns the "show good cause" provision. Currently, a CCW applicant must show good cause for wanting the license. Examples of good cause include: Having a business where the applicant handles large sums of cash or valuables; opening or closing a business at odd hours; a documented threat of violence against an applicant or applicant's family; or a member of the Fresno Police Reserve. This resolution will change the

Presented to City Council

Date 11/17/11

Disposition Bill B-39 inter

Calcedonia

Res 2011-236 adopted

“show good cause” definition to simply state that any citizen concerned about their safety or the safety of their family can meet the show good cause requirement. What this means, is that average citizens who do not own a business or are in a profession that is inherently dangerous will qualify for a CCW license subject to State and Federal qualifications.

The Police Chief has the final authority to issue and revoke all CCW licenses.

All other provisions of the existing ordinance, including disqualification standards, conditions, restrictions, processing and fees are updated by this resolution to comply with current State and Federal laws concerning concealed weapons permits.

State of California, Department of Justice
Standard Application for CCW License

Attachment 1

**CALIFORNIA PROHIBITING CATEGORIES FOR A CCW LICENSE
As of January, 1999**

- Persons convicted of a felony, or any offense enumerated in section 12021.1 of the Penal Code (PC).
- Persons addicted to the use of narcotics.
- Persons denied firearm possession as a condition of probation pursuant to PC section 12021(d).
- Persons convicted of a specified misdemeanor pursuant to PC section 12021(c)(1) are prohibited from purchasing or possessing firearms for 10 years (see Attachment 2).
- Juveniles adjudged wards of the juvenile court because they committed a 707(b) Welfare and Institutions Code (WIC) offense, an offense described in PC section 1203.073(b) or any offense enumerated in PC section 12021 (c)(1) are prohibited until they reach age 30.
- Persons who are subject to a protective order as defined in section 6218 of the Family Code, or a temporary restraining order or injunction issued pursuant to sections 527.6 or 527.8 of the Code of Civil Procedure.
- Persons found by a court to be a danger to others because of mental illness.
- Persons found by a court to be mentally incompetent to stand trial.
- Persons found by a court to be not guilty by reason of insanity.
- Persons adjudicated to be a mentally disordered sex offender.
- Persons placed on a conservatorship because they are gravely disabled as a result of a mental disorder or impairment by chronic alcoholism
- Persons who communicate a threat to a licensed psychotherapist, against a reasonably identifiable victim, and the psychotherapist reports to law enforcement pursuant to WIC section 8100(b), are prohibited from purchasing or possessing a firearm for 6 months.
- Persons in a mental health facility certified pursuant to WIC sections 5250, 5260, and 5270.15 are prohibited from possessing or purchasing or attempting to purchase firearms for 5 years.
- Persons who are voluntary patients in a mental facility who are determined to be a danger to self or others are prohibited from purchasing or possessing a firearm between admission and discharge.
- Persons under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year.

State of California, Department of Justice
Standard Application for CCW License

Attachment 2

**CALIFORNIA PROHIBITING MISDEMEANORS
As of January, 1999**

Pursuant to Penal Code (PC) section 12021(c)(1), any person who has been convicted of a misdemeanor violation for any of the following offenses is prohibited from owning, possessing, or having under his or her custody or control any firearms within 10 years of the conviction:

- Threatening public officers, employees and school officials (PC section 71).
- Threatening certain public officials, appointees, judges, staff or their families with the intent and apparent ability to carry out the threat (PC section 76).
- Possessing a deadly weapon with the intent to intimidate a witness (PC section 136.5).
- Threatening witnesses, victims, or informants (PC section 140).
- Attempting to remove or take a firearm from the person or immediate presence of a public or peace officer (PC section 148(d)).

- Unauthorized possession of a weapon in a courtroom, courthouse or court building, or at a public meeting (PC section 171(b)).
- Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (PC section 171c).
- Taking into or possessing loaded firearms within the Governor's Mansion or residence of other constitutional officers, etc. (PC section 171(d)).
- Supplying, selling or giving possession of a firearm to a person for participation in criminal street gangs (PC section 186.28).
- Assault (PC sections 240, 241)

- Battery (PC sections 242, 243).
- Assault with a stun gun or Taber weapon (PC section 244.5)
- Assault with deadly weapon or force likely to produce great bodily injury (PC section 245).
- Assault with a deadly weapon or instrument, by any means likely to produce great bodily injury or with a stun gun or Taber on a school employee engaged in performance of duties (PC section 245.5).
- Shooting at an inhabited or occupied dwelling house, building, vehicle, aircraft, horsecart or camper (PC section 246).

- Discharging a firearm in a grossly negligent manner (PC section 246.3)
- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house (PC section 247)
- Inflicting corporal injury on a spouse or significant other (PC section 273.5)
- Willfully violating a domestic protective order (PC section 273.6).

State of California, Department of Justice
Standard Application for CCW License

Attachment 2 (Continued)

CALIFORNIA PROHIBITING MISDEMEANORS
As of January, 1999

- Drawing, exhibiting, or using any deadly weapon other than a firearm (PC sections 417(a)(1), 417(a)(2)).
- Brandishing a firearm in presence of a peace officer (PC section 417.1 – repealed by stats. 1998).
- Drawing or exhibiting, selling, manufacturing, or distributing firearm replicas or imitations (PC section 417.2).
- Inflicting serious bodily injury as a result of brandishing (PC section 417.6).
- Bringing into or possessing firearms upon or within public schools and grounds (PC section 626.9).
- Stalking (PC section 646.9).

- Armed criminal action (PC section 12023).
- Possessing a deadly weapon with intent to commit an assault (PC section 12024).
- Driver or any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who will fully and maliciously discharges a firearm from a motor vehicle (PC sections 12034(b), 12034(d)).
- Criminal possession of a firearm (PC section 12040).
- Firearms dealer who sells or transfers or gives possession of any firearm to a minor or a handgun to a person under the age of 21 (PC section 12072(b)).

- Various violations involving sales and transfers of firearms (PC section 12072(g)(3)).
- Person or corporation who sells any concealable firearm to any minor (PC section 12100(a) – repealed by stats. 1994).
- Unauthorized possession/transportation of a machine gun (PC section 12220).
- Possession of ammunition designed to penetrate metal or armor (PC section 12320).
- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform, while picketing (PC section 12590).

- Bringing firearm related contraband into juvenile hall (WIC section 871.5).
- Bringing firearm related contraband into a youth authority institution (WIC section 1001.5).
- Purchase, possession, or receipt of a firearm or deadly weapon by a person receiving in-patient treatment for a mental disorder, or by a person who has communicated to a licensed psychotherapist a serious threat of physical violence against an identifiable victim (WIC section 8100).
- Providing a firearm or deadly weapon to a person described in WIC sections 8100 or 8103 (WIC section 8101).
- Purchase, possession, or receipt of a firearm or deadly weapon by a person who has been adjudicated to be a mentally disordered sex offender or found to be mentally incompetent to stand trial, or not guilty by reason of insanity, and individuals placed under a conservatorship (WIC section 8103).

State of California, Department of Justice
Standard Application for CCW License

Attachment 3

FEDERAL PROHIBITING CATEGORIES FOR POSSESSING FIREARMS
Gun Control Act of 1968, Title 18 U.S.C. Chapter 44
As of January, 1999

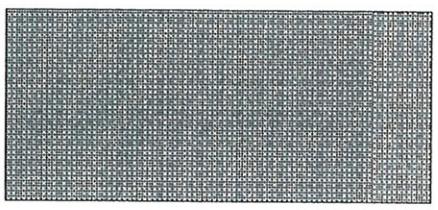
Pursuant to Section 922, any person listed below is prohibited from possessing, shipping, transporting, or receiving any firearm, who:

- Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
- Is a fugitive from justice.
- Is an unlawful user of or addicted to any controlled substance.
- Has been adjudicated as a mental defective or committed to a mental institution.
- Is an alien illegally or unlawfully in the United States.
- Has been discharged from the Armed Forces under dishonorable conditions.
- Having been a citizen of the United States, has renounced U.S. citizenship.
- Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.
- Has been convicted in any court of a misdemeanor crime of domestic violence.
- Is under indictment for a crime punishable by imprisonment for a term exceeding one year.
- Has an out-of-state prohibitive criminal history.
- Has a prior denial on a previous National Instant Criminal Background Check System (NICS) inquiry.

*Submitted during my 10:00am-11
By J. Brand*

CONCEALED CARRY WEAPONS RESOLUTION

BY LEE BRAND, COUNCIL PRESIDENT



PROPOSED ORDINANCE REPEAL

- Will repeal Article 29 of Chapter 9 of the Fresno Municipal Code
- Existing ordinance is out dated and not in compliance with new legislation (SB610)

CALIFORNIA SENATE BILL 610

- This recently passed bill expands the latitude of the County Sheriff or Police Chief in determining the conditions of which a CCW License is issued pursuant to State law
- Requires licensing authority to publish written policy that lists the procedures for application and issuance of a CCW License, which includes definitions of good cause, good moral character, residency, and describe what training course will be required for CCW applicants
- Sets limit on fees charged by local Agency of \$100 for application processing & \$25 for license renewal

BACKGROUND

- The Concealed Weapons Municipal Ordinance was passed in 1995
- This ordinance provided the qualifications and guidelines for concealed weapons license (CCW) issuance for the City
- CCW Licenses are governed by the State Attorney General pursuant to State Penal Code Sections 12050-12054 with County Sheriffs or City Police Chiefs being the final issuing authority

CITY OF FRESNO CCW STATISTICS

- The City has received 813 applications since its inception in 1995 of which 672 paid fees to process
- A total of 106 applications were denied for not meeting good cause and 46 denied for failing a background check
- Since 1995, only 29 CCW licenses have been revoked and none were gun related incidents
- Since 1995, there has never been a shooting incident with a CCW license holder
- Fresno is currently issuing about 250 CCW permits per year

FRESNO COUNTY CCW POLICY

- The Fresno County Sheriff has a liberalized “shall issue” CCW license policy
- An applicant does not have a high threshold to “show good cause” to be issued a CCW license
- An applicant must pass a State Department of Justice criminal background check
- Fresno County is currently issuing over 3,000 CCW Licenses per year
- Over the past 20 years, the County has issued thousands of CCW permits and there has only been one gun related incident where the permit holder was determined to be acting in self defense

POLICY CHANGE: SHOW GOOD CAUSE

- Under our current policy, CCW applicants must “show good cause” to be considered for a CCW license.
- Our policy defines “good cause” as a person who has the fear and there is a likelihood that the applicant, the applicant’s spouse or dependent child is in danger of physical harm

EXAMPLES OF GOOD CAUSE

- A person who has a business necessity to carry large sums of money or valuables and is danger or physical harm because of those activities
- A person who has a business necessity to open or close a business at odd hours and is in danger of physical harm
- A person by nature of their position or profession is in danger of physical harm
- Reserve officers in the Fresno Police Department

RE-DEFINING GOOD CAUSE

- This resolution will change the definition and standard of “show good cause”
- The new standard for showing good cause shall be “Any citizen concerned for the safety of themselves, their family and friends or their employees can apply for a CCW license”
- This policy change will make it much easier for the average citizen who is not a business owner or engaged in an inherently dangerous profession to qualify for a CCW license

QUALIFICATIONS FOR CCW LICENSE

- Qualifications include:
 - Must be at least 21 years old
 - Must have lived in Fresno for a least 30 days
 - Have no criminal record including no felony convictions
 - No substance abuse problems as documented by law enforcement
 - Not subject to any restraining orders
 - No violation for firearms controls in preceding 10 years
 - Any other prohibiting category for a CCW license pursuant to State and Federal law-Refer to Prohibiting Categories
- This resolution cannot and does not change any State or Federal standards

LOCAL BACKGROUND CHECK

- In addition to the DOJ background check, the Police Chief has the latitude to conduct a reasonable local background investigation of every CCW applicant that will include information not ordinarily contained in routine state or federal background checks

ISSUANCE AND FINAL AUTHORITY

- All approved CCW licenses and renewals for personal use shall be for a period of 2 years; 3 years for judges and magistrates; and 4 years for peace officers
- The Police Chief shall be the final issuing authority
- The Police Chief shall have the right to deny any CCW license application based on: 1) the results of the DOJ and/or local background check; and 2) any other factors that the Police Chief deems relevant so long as such factors are not less restrictive or more restrictive than state law

RESTRICTIONS FOR CCW LICENSE

- The Police Chief shall not place any restrictions that are less restrictive or more restrictive than those authorized by State law.
- Examples of State law restrictions include: 1) cannot carry concealed weapon in secure area of airport; 2) cannot carry concealed weapon in any court facility; 3) cannot carry concealed weapon in any school facility, etc.
- Private business has the right to restrict bringing in concealed weapons
- This resolution cannot & does not change State or Federal restrictions

CONDITIONS FOR CCW LICENSE

- There are conditions that will apply to CCW license holders including the following:
- Cannot have alcohol or drugs in their system while carrying a weapon
- Cannot represent themselves as peace officer
- Cannot violate any local, state or federal law
- Cannot be under the influence of any medication which is labeled with a warning to not operate a vehicle

CONDITIONS - CONTINUED

- Cannot impede any law enforcement officer in the performance of their duties
- Cannot refuse to display a weapon with legal justification
- Shall not refuse to display or surrender their license and weapon when requested by a peace officer
- Shall immediately notify a peace officer with whom the license comes in contact, that the licensee is armed and has a valid CCW license in their possession
- This resolution cannot and does not change any State or Federal conditions

RECIPROCITY

- A CCW License issued by the City of Fresno Police Chief is valid in every city and county in California (except San Francisco)
- There is currently no national reciprocity agreement between most states that recognize their respective CCW Licenses
- There are some states that do recognize neighboring states CCW Licenses

EMPLOYER APPROVAL

- CCW license holders shall have written authorization of their employer and/or governing body acknowledging that licensee will be carrying a firearm while working and the licensee has permission to carry a concealed weapon at their place of employment not withstanding state or federal regulation

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
REPEALING ARTICLE 29 OF CHAPTER 9 OF THE FRESNO
MUNICIPAL CODE RELATING TO CITIZENS CONCEALED
WEAPONS LICENSE.

WHEREAS, the City of Fresno currently has a Municipal Ordinance governing the issues of concealed weapons permits for its citizens based upon good cause; and

WHEREAS, the regulation of the issuance of firearms by the local law enforcement authority is contained in the California State Penal Code; and

WHEREAS, the City Council of the City of Fresno desires to have the Chief of Police issue concealed weapons permits in compliance exclusively with the regulations set forth in the California State Penal Code.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 29 of Chapter 9 of the Fresno Municipal Code is hereby repealed.

SECTION 2. Severability. If any section or portion of this ordinance shall be determined invalid or unconstitutional, that section or portion shall be deemed severable and all remaining sections or portions shall remain in full force and effect.

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SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2011.

AYES:
NOES:
ABSENT:
ABSTAIN:

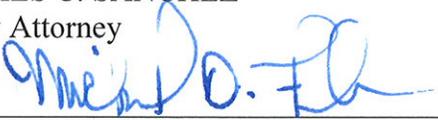
Mayor Approval: _____, 2011
Mayor Approval/No Return: _____, 2011
Mayor Veto: _____, 2011
Council Override Vote: _____, 2011

REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: 
Michael D. Flores, Deputy

MDF:ns [57386ns/mdf]- 11/9/11