

SUMMARY OF PROPOSED COMMITTEE DRAFT:
BILL 57 (2022)
RELATING TO THE PUBLIC CARRY OF FIREARMS.

THE PROPOSED CD1 makes the following amendments:

- A. Amends SECTION 1 of the bill to clarify that the purpose of this ordinance is additionally to recognize limitations on designating sensitive places where firearms are prohibited.
- B. In SECTION 2 of the bill:
 - 1. Updates the amendatory language to reflect that the Revised Ordinances of Honolulu 2021 is being amended instead of the Revised Ordinances of Honolulu 1990.
 - 2. Revises the proposed ROH § 41-___.1 to clarify that the intent of the article is to protect sensitive areas and their historical analogues where constitutionally permissible, and in particular as mentioned in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).
 - 3. Revises the proposed ROH § 41-___.2 to add definitions of "Building" and "Landlord," amend the definition of "Sensitive Place," and remove definitions that are no longer referred to in the proposed CD1 version of the bill.
 - 4. Revises the proposed ROH § 41-___.3 to remove "intentionally, knowingly, or recklessly" as an element of the prohibition of this section and remove the criminal penalties (see newly added language in ROH § 41-___.6 regarding penalties for a "violation").
 - 5. Revises the proposed ROH § 41-___.4 to:
 - a. Allow private business establishments and charitable organizations to prohibit the carry of firearms by posting appropriate signage;
 - b. Set forth signage requirements;
 - c. State that the posting of signage is at the sole discretion of the owner of the private business establishment or charitable organization in the absence of a conflicting contractual provision in a lease;
 - d. Revise the prohibition and exceptions accordingly;

- e. Remove the criminal penalties (see newly added language in ROH § 41-___.6 regarding penalties for a "violation");
 - f. Add an additional exception to the prohibition for a person carrying a firearm when such carry is permitted or the posting of signage prohibiting firearms is prohibited as a provision of a lease agreement;
 - g. Amend the requirements to establish prima facie evidence of a violation of this section; and
 - h. Add a provision stating that this section does not prohibit a landlord from including provisions in a lease agreement regarding the carrying of firearms or posting of signage, nor does it impair the obligation of contracts in effect on the effective date of this ordinance.
6. Revises the proposed ROH § 41-___.5 to replace "firearm" with "pistol or revolver" in the section title to be consistent with the remaining text of this section, remove "intentionally, knowingly, or recklessly" as an element of the prohibition of this section, remove the criminal penalties (see newly added language in ROH § 41-___.6 regarding penalties for a "violation"), and amend the requirements to establish prima facie evidence of a violation of this section.
7. Renumbers the proposed ROH § 41-___.6 (relating to severability) to ROH § 41-___.7.
8. Revises ROH § 41-___.6 to set forth powers of arrest or citation, citation, and civil penalty provisions for violations of the article.
- C. Makes miscellaneous technical and nonsubstantive amendments.



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RELATING TO THE PUBLIC CARRY OF FIREARMS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to define those sensitive locations within the City and County of Honolulu ("City") where the carrying of firearms by law-abiding citizens with a valid license issued by the Honolulu Police Department is prohibited, consistent with an individual's Second Amendment right to bear arms and the ruling of the United States Supreme Court ("Supreme Court") in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

It is the further purpose of this ordinance to protect sensitive areas that have traditionally been subject to restrictions on carrying or possessing arms therein; to protect health, life, and property; and to preserve the order and security of the City, its inhabitants, and its visitors, while balancing individuals' Second Amendment right to bear arms. The Supreme Court in *Bruen* states, "sensitive places—where the carrying of firearms is prohibited—are constitutionally permissible" and further notes that courts may determine those sensitive places by using analogies to historical regulations.

However, the Supreme Court also recognizes limitations on governmental designations of sensitive places where firearms are prohibited, stating, "[t]here is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place' simply because it is crowded and generally protected by the New York Police Department," and "expanding the category of sensitive places simply to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly." Therefore, we seek to narrowly define these sensitive areas within the City's jurisdiction.

SECTION 2. Chapter 41, Revised Ordinances of Honolulu 2021 ("Public Health and Safety"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"ARTICLE __: PUBLIC CARRY OF FIREARMS

§ 41-__ .1 Declaration of legislative intent.

It is declared to be the intent of this article to:

- (1) Protect sensitive areas and their historical analogues where constitutionally permissible, such as schools, government buildings,



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legislative assemblies, polling places, and courthouses, as mentioned in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022);

- (2) Allow private decision-making by businesses and charitable organizations on the carrying or possession of arms on their private property;
- (3) Protect health, life, and property; and
- (4) Preserve the order and security of the city, its inhabitants, and its visitors.

§ 41-__2 Definitions.

For the purposes of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

Building. Has the same meaning as defined in § 21-10.1.

Business. Any sole proprietorship, partnership, joint venture, business trust, limited liability company, business corporation, professional corporation, or other business entity formed for profit-making purposes.

Business Establishment. Includes any of the following establishments operated by a business:

- (1) Any hotel, except individual hotel rooms and when actively traveling through a hotel to or from an individual hotel room;
- (2) Any financial institution;
- (3) Any industrial, commercial, or wholesale establishment;
- (4) Any utility;
- (5) Any retail establishment where goods or services are sold, leased, or otherwise provided to the public or to another business; and
- (6) Any restaurant or bar, as those terms are defined in § 41-14.1.

Carry on their Person. The person has immediate physical access to the firearm, such as by carrying the firearm in a holster or other receptacle.



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Charitable Organization. Any organization classified under § 501(c) of the Internal Revenue Code.

Detective, Private Detective, and Investigator. Have the same meanings as defined in HRS § 463-1.

Firearm(s). Has the same meaning as defined in HRS § 134-1.

Guard. Has the same meaning as defined in HRS § 463-1.

Landlord. Has the same meaning as defined in HRS § 521-8.

License. Any license to carry a concealed or unconcealed firearm issued by the Honolulu police department.

Operating Hours. Any time at which a place is open for customers or visitors, including any time at which a place is open only for a limited number or group of customers or visitors but otherwise closed to the general public.

Place of Deposit. Has the same meaning as defined in HRS § 11-1.

Sensitive Place. Within the city:

- (1) Honolulu Hale and Kapolei Hale, but not including their parking lots or attached grounds.
- (2) A voter service center, place of deposit, and its appurtenances, and an area of 200 feet from the perimeter of any voter service center, place of deposit, and its appurtenances, as designated by election officials pursuant to HRS § 11-132, as follows:
 - (A) As applied to a voter service center and its appurtenances, all operating hours, as set forth in HRS § 11-109; and
 - (B) As applied to a place of deposit, all times at which the place of deposit is accessible to the public.

Sidewalk. Has the same meaning as defined in § 13-1.1.

Street. Has the same meaning as defined in § 13-1.1, provided that "street" does not include any portion of a parking lot.



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Voter Service Center. Has the same meaning as defined in HRS § 11-1.

Voter Service Center, Place of Deposit, and its Appurtenances. Includes those places included within those terms as enumerated in HRS § 11-132.

§ 41-__3 Prohibition against the public carrying of firearms in sensitive places.

- (a) ***Prohibition.*** Except as otherwise provided by federal or State law, it is a violation of this article for any person to carry on their person a firearm, concealed or unconcealed, in any sensitive place.
- (b) ***Exceptions.*** This prohibition does not apply to:
 - (1) Persons exempted from HRS § 134-9 pursuant to HRS § 134-11; and
 - (2) Detectives, private detectives, investigators, and guards, authorized by the chief of police to carry a firearm in a particular sensitive place, while on duty in that sensitive place.
- (c) In any proceeding, a prima facie case of a violation of this article is established upon the showing that any person charged with the violation of this section was found or seen in any sensitive place while carrying on their person a firearm, concealed or unconcealed. It is an affirmative defense to a violation of this article that the person was exempt from the prohibition in subsection (a) pursuant to subsection (b).

§ 41-__4 Public carry of firearms may be prohibited in areas owned or leased by private businesses and charitable organizations.

- (a) Private business establishments and charitable organizations may prohibit the carry of firearms, concealed or unconcealed, in the areas of the building they own or lease by posting signage in a prominent location at all public entrances to those areas of the building.
- (b) Signage must:
 - (1) Be a minimum of 8.5 inches in width and 11 inches in height;
 - (2) Utilize font that is bolded and easy-to-read, at least 0.5-inches thick, not less than two inches high, and light-reflective;
 - (3) Utilize contrasting colors for the font and sign background;



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- (4) Clearly and solely state, "No Firearms Allowed";
 - (5) Contain a pictograph that shows a firearm within a red circle and a diagonal red line across the firearm; and
 - (6) Be posted on all publicly accessible doors and entrances of the business establishment or charitable organization in a location that is clearly visible to visitors.
- (c) Absent a contractual provision in a lease allowing or restricting the carrying of firearms, concealed or unconcealed, on a property or prohibiting or requiring the posting of signage allowing or restricting the same, or both:
- (1) A landlord of a building leased by a private business establishment or charitable organization may not prohibit nor require the posting of signage by a lessee that prohibits the carry of firearms, concealed or unconcealed, in the area of the building the private business establishment or charitable organization leases; and
 - (2) The owner of the private business establishment or charitable organization that has leased the property has the sole discretion to determine whether to post or refrain from posting such signage.
- (d) Except as otherwise provided by federal or State law, it is a violation of this section for any person to carry on their person a firearm, concealed or unconcealed, in the areas of a building owned or leased by a private business establishment or charitable organization where signage prohibiting the carry of firearms is posted in compliance with this section.
- (e) This prohibition does not apply to:
- (1) Persons exempted from HRS § 134-9 pursuant to HRS § 134-11;
 - (2) Detectives, private detectives, investigators, and guards, when acting in the official capacity of their scope of employment; and
 - (3) The landlord of the property when carrying a firearm, concealed or unconcealed, on that property.
 - (4) Persons carrying on their person a firearm in the areas of a building leased by a private business establishment or charitable organization if such carry (concealed or unconcealed, or both) is permitted or the posting



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of signage prohibiting firearms is prohibited on that property pursuant to the business establishment's or charitable organization's lease agreement.

- (f) In any proceeding, a prima facie case of a violation of this section is established upon the showing that any person charged with the violation of this section was found or seen carrying a firearm, concealed or unconcealed, in the areas of a building owned or leased by a private business establishment or charitable organization where signage prohibiting the carry of firearms is posted in compliance with this section. It is an affirmative defense to the violation that the person was exempt from the prohibition in subsection (d) pursuant to subsection (e).
- (g) Nothing in this section may be construed as prohibiting a landlord from including a provision in a lease agreement allowing or restricting the carrying of firearms, concealed or unconcealed, on the property or prohibiting or requiring the posting of signage allowing or restricting the same, or both. Additionally, nothing in this section may be construed as impairing the obligation of contracts in effect on the effective date of this ordinance.

§ 41-__5 Prohibition against the public carry of a pistol or revolver without possession of license to carry.

- (a) *Prohibition.* Except as otherwise provided by federal or State law, it is a violation of this article for any person who has a valid license to carry on their person a pistol or revolver outside the person's residence without having a valid license in the person's immediate possession, or to fail to display after reasonable warning or request by a law enforcement officer.
- (b) *Exceptions.* This prohibition does not apply to:
 - (1) Persons exempted from HRS § 134-9 pursuant to HRS § 134-11; and
 - (2) Qualified law enforcement officers and qualified retired law enforcement officers pursuant to 18 USC §§ 926B and 926C and HRS Chapter 134 who have documentation regarding their qualifications in their immediate possession.
- (c) *Prima facie case.* In any proceeding, a prima facie case of a violation of this section is established upon the showing that any person charged with the violation of this section, while carrying on their person a pistol or revolver outside the person's residence, either (1) failed to have a valid license in their immediate possession, or (2) failed to display their license after reasonable warning or



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request by a law enforcement officer. It is an affirmative defense to the violation that the person was exempt from the prohibition in subsection (a) pursuant to subsection (b).

§ 41-__6 Violation—Enforcement and penalty.

- (a) *Powers of arrest or citation.* Police officers and any other officer so authorized shall issue a citation for any violation of this article, except they may arrest for instances when:
- (1) The alleged violator refuses to provide the officer with such person's name and address and any proof thereof as may be reasonably available to the alleged violator; and
 - (2) The alleged violator refuses to cease such person's illegal activity after being issued a citation.
- (b) *Citation.*
- (1) A form of citation for use in citing violators of this article for instances that do not mandate the physical arrest of such violators must be provided for use by authorized police officers. The form and content of such citation is to be adopted or prescribed by the administrative judge of the district court and is to be printed on a form commensurate with the form of other citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and rules of the State and the city.
 - (2) In every case when a citation is issued, a copy of the same must be given to the violator.
 - (3) Every citation is to be consecutively numbered and each copy is to bear the number of its respective original.
 - (4) Whenever a person is in violation of this article, any police officer and any other officer so authorized shall take the name and address of the alleged violator, and shall issue to such alleged violator in writing a citation, notifying the alleged violator to answer to the complaint to be entered against such person at a place and at a time provided in the citation.



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- (5) If a person cited for violating this article does not appear in response to a citation, a penal summons is to be issued ordering such person's appearance in court.
- (c) *Penalty.* Any person convicted of a violation of this article shall be punished by:
- (1) A fine of not more than \$200 for a first violation;
 - (2) A fine not exceeding \$300 for a second violation within one year of the date of the first violation; and
 - (3) A fine not exceeding \$500 for each additional violation of this article within one year of the date of the preceding violation.

Each violation cited constitutes a separate offense.

§ 41-___.7 Severability.

Every provision in this article and every application of the provisions in this article is severable from each other as a matter of law. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this article that may be given effect without the invalid provision or application. This article must be construed to be enforceable up to, but no further than, the maximum possible extent consistent with federal and State law."



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SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

November 10, 2022

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu