




TO: Elizabeth Pauli, City Manager
FROM: William C. Fosbre, City Attorney, City Attorney's Office
COPY:  Keith A. Echterling, Assistant City Attorney, City Attorney's Office
City Council and City Clerk
SUBJECT: Proposed changes to the Tacoma Municipal Code relating to Electroshock Devices
DATE: May 24, 2017

SUMMARY:

Tacoma Municipal Code ("TMC") 8.66.080.A.1 prohibits selling, manufacturing, purchasing, possessing or carrying of an electroshock device in the City of Tacoma. Any person engaging in this conduct is guilty of a gross misdemeanor offense punishable by up to 364 days in jail and/or a \$5,000 fine. The proposed amendments herein would decriminalize these activities as they relate to electroshock devices. However, the use of such a device with unlawful force against another, or in such a way as to harass, intimidate or threaten another would still constitute criminal conduct under the existing relevant municipal and state laws. The proposed amendments recommend removing electroshock devices from the list of generally prohibited items in the City of Tacoma to reflect an appropriate balance between citizens' constitutional rights, relevant persuasive and binding case law, and the City's important interest in public safety.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

The City of Tacoma currently is among a handful of jurisdictions in the nation that regulate the possession of an electroshock device. Such device is often colloquially referred to as a TASER.¹ Possessing such a device for the purposes of self-defense is likely a constitutionally protected activity. While there is yet no binding case precedent or law currently in effect that prohibits Tacoma from criminalizing possession of such devices, a careful review of the relevant federal and state constitutional provisions and case law indicates a proactive approach to modernizing the code is warranted to ensure the City's ordinances are on strong constitutional footing and less subject to challenge.

Currently it is a gross misdemeanor offense to sell, manufacture, purchase, possess, or carry any electroshock device in Tacoma.² An electroshock device is defined, in relevant part, as: "any electric or other conductive energy device such as a TASER, stun gun, or other device designed to

¹ TASER international recently changed its corporate name to Axon, though according to Axon's website, TASER is to remain a flagship product of Axon. See <https://www.axon.com/company/news/our-future-as-axon>

² TMC 8.66.080(A)(1)&(4)



deliver an electronic charge, which apparently is capable of producing bodily harm or incapacitation to any degree, whether directly from the device or through a missile or projectile.”³ The only recognized exceptions to this prohibition are for law enforcement personnel, corrections officers, animal control officers, and military personnel, while in the performance of official duties.⁴ There are no other statutory exceptions. Importantly, there is no exception for the possession of such device in one’s home, business, or for the purposes of self-defense.

At the state level, there is no general prohibition regarding possessing or carrying an electroshock device. Instead, state law prohibits the possession in certain sensitive locations such as public or private elementary or secondary schools or courthouses. While not illegal to possess an electroshock device under state law, it is a crime to furtively carry with the intent to conceal a dangerous weapon.⁵ Additionally, it is a crime to “carry, exhibit, display, or draw ... any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.”⁶ However, even this prohibition has exceptions for acts committed in a person’s place of abode or fixed place of business, for official public safety duties, self-defense, making or assisting in a lawful felony arrest, or military personnel.⁷

Given the foregoing, the City Attorney’s Office is recommends removing electroshock devices from the list of prohibited weapons. Any public safety concerns will be addressed using other section of the municipal code and existing state law.

ISSUE:

Amending the TMC to decriminalize the sale, manufacture, purchase, possession, or carrying of any electroshock device under TMC 8.66.080(A)(1) in the City of Tacoma in recognition of the state and federal constitutional protections afforded to certain arms and the relevant case law analysis and discussion pertaining thereto.

ALTERNATIVES:

The City could retain current status and continue to prohibit the possession and use of such items.

FISCAL IMPACT:

There is no fiscal impact.

RECOMMENDATION:

Staff recommends that the City Council pass the proposed TMC amendments.

³ TMC 8.66.010(E)

⁴ TMC 8.66.080(A)(3)

⁵ RCW 9.41.250(1)(b)

⁶ RCW 9.41.270(1).

⁷ RCW 9.41.270(3)(a)-(e)



Chapter 8.66

WEAPONS

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8.66.010 Definitions.

The following definitions apply to this chapter:

A. "Ball flail" means any device consisting of a ball, with or without spikes, attached by a chain, rope, strap, or similar method, to a handle and which can be used for striking.

B. "Blade" has its usual and ordinary meaning and includes the shank.

C. "Dangerous knife" means any knife having a blade more than three and one-half inches in length or any dagger, sword, bayonet, bolo knife, hatchet, straight-edge razor, or razor blade not in its package, dispenser, or shaving appliance.

D. "Deadly weapon" is an instrument capable of being used offensively or defensively and likely to cause death or serious bodily harm.

~~E. "Electroshock device" means any electric or other conductive energy device such as a TASER, stun gun, or other device designed to deliver an electronic charge, which apparently is capable of producing bodily harm or incapacitation to any degree, whether directly from the device or through a missile or projectile. It does not include any electric livestock prod purchased for and used exclusively in animal husbandry, or any automatic external defibrillator used in emergency medical situations.~~

~~F.~~ E. "Fighting knife" means:

1. Any knife with a handle or guard with spikes, serrations, sharp edges, or metal knuckles;
2. Any knife that is designed for fighting or self-defense and utilizes two or more blades at once;
3. A balisong knife. "Balisong knife" means a single- or double-edged blade knife which has a two-piece handle. The two halves of the handle sheathe the blade when it is in the closed position. In the open position, the two halves of the handle form a haft. A balisong knife is also known as a butterfly knife.
4. A disguised knife. "Disguised knife" means any knife, blade, or pointed tool encased in or disguised as a writing pen or any knife, blade, or pointed tool encased in or disguised as a cane.
5. Any knife which opens automatically when pulled from its sheath.
6. Any knife or device which consists of three or more blades radiating from a central hub or handle.
7. A ballistic knife. "Ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

~~G.~~ F. "Martial arts weapon" includes, but is not limited to, the following devices in common usage in what is known as the martial arts or arts of self-defense: Nuchaku (chako sticks), consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means; throwing stars, which are multi-pointed, metal objects designed to



embed upon impact from any aspect; ninja chains; sai; tonfa; three section staffs; spike balls; telescopic metal stick (telescopic police baton); jutte; and kama.

H.G. "Slung shot" means a metal ball or metal shot or similar substance encased in leather or other material with a cord or strap attached for swinging.

I.H. "Switchblade knife" means any knife having a blade that opens automatically by hand pressure applied to a button, spring mechanism, or other device, or a blade that opens, falls, or is ejected into position by force of gravity or by an outward, downward, or centrifugal thrust or movement.

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8.66.080 Unlawful use of weapons.

A. Violations. It is unlawful for a person:

1. To sell, manufacture, purchase, possess, or carry any blackjack, sandclub, slungshot, metal knuckles, switchblade knife, fighting knife, martial arts weapon, or ball flail; ~~or electroshock device; or~~
2. Except as otherwise provided in Section 8.66.090 hereof, to carry on his or her person or in any vehicle any dangerous knife or deadly weapon; or to sell or give away to any person under 18 years of age any dangerous knife or deadly weapon; or for any such person to purchase or possess any such dangerous knife or deadly weapon.
3. Exceptions. The prohibitions contained in this section on ~~electroshock devices and police batons~~ shall not apply to any law enforcement officer or corrections officer while in the performance of his or her official duties, to any animal control officer while in the performance of his or her official duties, or to any military personnel while in the performance of his or her duties.
4. Penalties. Any violation of this section is a gross misdemeanor. Any person convicted of violating this section shall be guilty of a gross misdemeanor and subject to a maximum penalty of \$5,000 or one year in jail, or both such fine and imprisonment.
5. Should any subsection, paragraph, sentence, clause, or phrase of this section, or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this section or its application to any other person or situation. The City Council of the City of Tacoma hereby declares that it would have adopted this section, and each subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.