



## Memorandum

To: Honorable Mayor and Members of the City Council

From: W. Grant Farrar, Corporation Counsel

Subject: Ordinance 76-O-13, an ordinance to ban assault weapons in the City of Evanston

Date: July 11, 2013

Recommended Action:

Staff submits for consideration Ordinance 76-O-13, with revisions, following the extensive comments received from Council and residents at the July 8, 2013 meeting, and responsive to further comments received since the meeting.

Funding Source:

n/a

Summary:

Ordinance 76-O-13 amends Title 9, Chapter 8 of the Evanston City Code of 2012 to specifically ban the possession, transfer, sale or display of assault weapons in the City of Evanston.

The ordinance provides a definition of what an “assault weapon” is by listing certain features/equipment which make a firearm an “assault weapon”. The original version of the ordinance followed definitional language found in the City of Chicago and Cook County assault weapons ban ordinances. The ordinance definition also comports with Section 13.1 of the “Firearms Owners Identification Card Act” enacted and/or revised by PA 98-0063, which provided that a municipality could define an assault weapon by utilizing “...a list of cosmetic features that cumulatively would place the firearm into a definition of assault weapon....”.

The new Section 9-8-14 sets forth the parameters of the ban. Exceptions to the ban exist for law enforcement, military and organized state militia. Transportation of assault weapons in the City may only be done if they are first broken down, nonfunctioning, and not immediately accessible. Violators are subject to a misdemeanor fine and/or incarceration. Section 9-8-15 prescribes regulations for the confiscation and disposal of assault weapons by the Evanston Police Department.

Based upon prior Council direction, the proposed effective date of this ordinance is July 15, 2013, which concurs with the currently enacted and effective PA 98-0063.

### Legislative History:

On June 10, 2013, the City Council directed the Law Department to draft an ordinance to ban the possession or transport of assault weapons in the City of Evanston.

House Bill 183 was adopted by the General Assembly on May 31, 2013. The General Assembly overrode Governor Quinn's amendatory veto on July 9, 2013 and Public Act 98-0063 is now law. However, the bill set forth a strict 10 day limit for home rule municipalities to enact assault weapons ban legislation. This ordinance was drafted with this time limit in mind.

On July 8, 2013 Alderman Wilson asked that the ordinance be revised to address concerns he expressed on the Record. Many residents and other Council members also highlighted possible concerns with the ordinance as drafted. This version submitted for consideration on July 15<sup>th</sup> speaks to issues regarding high capacity magazines for assault weapons, and other functional aspects. The revisions are underscored. The revisions to the assault weapons definition are similar to regulations promulgated by the City of Chicago which exempt the pump action or lever action weapons which are colloquially known as "hunting rifles/shotguns". The additional definitions for "rifle", "semi-automatic", and "shotgun" are similar to those promulgated by Denver, Colorado and the Village of Skokie on July 1, 2013. Concerns over the workability of the cosmetic feature components of the ordinance led to some provisions being deleted, yet these can be added back in by the Council on July 15<sup>th</sup>, or in a subsequent ordinance revision.

In the interests of completeness, and following the discussion at that meeting, the revised ordinance contains an exception speaking to Jordan Zoot's requested issue regarding federally licensed firearms collectors. This exception can be removed if requested by Council. Owing to the technical nature and wording of the exception, it was advisable to state it in this revised draft, however, such exception can be removed upon Council direction.

As a practical matter in the limited time available, there is no completely effective way to define and apply legislative terms/prohibitions to weapons which by their very nature are easily adaptable from a technical and engineering standpoint. Staff worked with Chief Eddington in order to consider and evaluate the complex technical issues implicated by this ordinance. Furthermore, what constitutes "sporting uses", "hunting", and "target shooting", are subject to different definitions based upon colloquialisms, regional differences, or disagreements about historical interpretation.

Section 90 of the "Firearm Concealed Carry Act", and Section 13.1 of the "Firearms Owners Identification Card Act" enacted and/or revised by PA 98-0063 explicitly preempt home rule regulation or licensing of handguns and ammunition for handguns. Section 13.1 explicitly states that any ordinance adopted within the 10-day time limit may be amended later. Responsive to a question raised at the last meeting, the City charges misdemeanors on a "long form" ticket, which is then heard in the 2<sup>nd</sup> Municipal District in Skokie. Other jurisdictions which have adopted bans have instituted "fine

only” penalty provisions, not misdemeanor charging. Armor piercing ammunition has been banned by federal statute for many years.

Alternatives:

n/a

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Attachments:

Ordinance 76-O-13

7/10/2013  
7/02/2013  
6/18/2013  
6/13/2013

**76-O-13**

**AN ORDINANCE**

**Amending Title 9, Chapter 8 of the City Code  
to Ban Assault Weapons**

**WHEREAS**, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

**WHEREAS**, Article VII, Section (6)a of the Illinois Constitution of 1970 states that, generally, “a home rule unit may exercise any power and perform any function pertaining to its government and affairs;” and

**WHEREAS**, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); and

**WHEREAS**, the Local Government Committee to the delegates of the Sixth Illinois Constitutional Convention found that,

home-rule powers are most urgently needed by larger municipalities in the more highly urbanized areas of the state. Although the problems of urban society affect many small localities, they are felt most intensely in larger cities and villages. Dense concentrations of population and industry call

for the creative use of flexible governmental powers to achieve and maintain order, social justice and a satisfactory quality of life. (7 Record of Proceedings, Sixth Illinois Constitutional Convention, 1628-29); and

**WHEREAS**, the Supreme Court of Illinois held that,

[t]he City of Evanston is a densely populated and highly urbanized municipality... In accordance with the goals attempted to be achieved by the creation of home rule, the local governing body can create an ordinance specifically suited for the unique needs of its residents and is keenly and uniquely aware of the needs of the community it serves... (*City of Evanston v. Create, Inc.*, 85 Ill.2d 101, 113-15); and

**WHEREAS**, pursuant to Public Act 98-0063, as enacted on July 9, 2013, the Illinois General Assembly provided that home rule units of government could enact an ordinance regulating possession or ownership of assault weapons, within certain parameters; and

**WHEREAS**, this amendatory ordinance is considered and adopted in accordance with the 10-day limit prescribed in Public Act 98-0063, is adopted within the expedited time frame set forth in Public Act 98-0063, and is therefore not subject to State preemption of the City's home rule powers; and

**WHEREAS**, the Village of Skokie, the City of Chicago, Cook County, and many nearby municipalities have adopted or are considering assault weapon ordinances which define assault weapons and ban possession and ownership of assault weapons as a result of Public Act 98-0063; and

**WHEREAS**, Public Act 98-0063 did not define what an "assault weapon" is, however, this ordinance provides a list of cosmetic features that cumulatively place a firearm into the definition of an "assault weapon"; and

**WHEREAS**, the International Association of Chiefs of Police recommends enactment of effective bans on military-style assault weapons in order to prevent criminals from “outgunning” law enforcement officers; and

**WHEREAS**, the United States Supreme Court in *District of Columbia v. Heller* found that the right secured by the Second Amendment of the United States Constitution is not unlimited; and

**WHEREAS**, assault weapons have certain characteristics that make these weapons more dangerous than ordinary weapons typically possessed by law-abiding citizens for lawful purposes, and that these combat-designed characteristics enhance lethality and make assault weapons conducive to criminal applications; and

**WHEREAS**, an assault weapons ban furthers the City’s interest in crime prevention in the City’s densely populated environs, and prevents dangers to innocent people and law enforcement officers; and

**WHEREAS**, this ordinance is reasonably tailored to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits so that one may act accordingly; and

**WHEREAS**, assault weapons are not among the “Arms” protected by the Second Amendment because they are both “dangerous and unusual,” *District of Columbia v. Heller*, 554 U.S. at 627, and because prohibiting them minimally burdens a prospective plaintiff; hence the ban is constitutional; and

**WHEREAS**, in the second *Heller* case, *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244 (U.S. App DC 2011), the District Court of Appeals for the

District of Columbia determined that the intermediate scrutiny standard applied to consideration of the constitutionality of an assault weapons ban; and

**WHEREAS**, the *Heller II* Court held that an assault weapons ban does not prohibit the possession of “the quintessential self-defense weapon”, to wit, the handgun citing *Heller I*, 554 U.S. at 629; and

**WHEREAS**, a ban on certain semi-automatic rifles does not prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting, whether a handgun or a non-automatic long gun. *Heller II*, citing Gary Kleck and Marc Gertz, Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with Gun, 86 J. Crim. L. & Criminology 150, 185 (1995); and

**WHEREAS**, there is no published study which statistically indicates or demonstrates that assault weapons are well-suited to or preferred for the purpose of self-defense or sport, *Id.*; and

**WHEREAS**, in fact, the United States Department of the Treasury in its *Study on the Sporting Suitability of Modified Semi-automatic Assault Rifles* 38 (1998) stated that semi-automatic assault rifles are not generally recognized as particularly suitable for or readily adaptable to sporting purposes; and

**WHEREAS**, the modest burden of the assault weapons ban enacted in this ordinance, as an exercise of home rule authority expressly sanctioned by the Illinois General Assembly in Public Act 98-0063, does not effectively disarm individuals or substantially affect their ability to defend themselves, and thus it is lawful under the intermediate scrutiny standard, *Heller II supra*; and

**WHEREAS**, it is difficult to draw meaningful distinctions between the AR-15 (the “civilian” version of the military’s M-16 rifle), which would be an “assault weapon” as defined in this ordinance, and the M-16, *Heller II*, citing *Staples v. United States*, 511 U.S. 600, 603 (1994); and

**WHEREAS**, in *Wilson v. The County of Cook*, 2012 IL 112026, the Illinois Supreme Court held that certain enumerated characteristics such as “barrel shroud” or “protruding grip” were appropriate features that could define what an “assault weapon” was; and

**WHEREAS**, in accordance with the holdings in the *Heller II* and *Wilson* cases, this ordinance provides standards and a reasoned basis to determine what is defined as an assault weapon and is therefore banned in the City of Evanston, and

**WHEREAS**, on June 10, June 24, and July 15, 2013, the City Council held meetings in compliance with the provisions of the Illinois Open Meetings Act, considered the, statements, points and authorities made in the legislative Record, and received additional input from the public,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

**SECTION 1:** The foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** Title 9, Chapter 8 of the Evanston City Code of 2012, as amended, is hereby further amended and revised, to read as follows:

**9-8-1: DEFINITIONS:**

“Assault weapon” means:

- (A) A semiautomatic rifle shall mean and include a rifle with a that has the capacity to accept a detachable or fixed magazine with a capacity of fifteen (15) or more rounds. and has one or more of the following:
- ~~(1) A handgun grip without a stock attached;~~
  - ~~(2) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;~~
  - ~~(3) A folding, telescoping or thumbhole stock;~~
  - ~~(4) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or~~
  - ~~(5) A muzzle brake or muzzle compensator; or a flash suppressor or grenade launcher.~~
- (B) A semiautomatic handgun that has the capacity to accept a shall mean and include a handgun with a detachable magazine and has one or more of the following:
- (1) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (2) A folding, telescoping or thumbhole stock;
  - (3) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or
  - (4) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (C) A semiautomatic shotgun that with a detachable magazine with a capacity of six (6) or more rounds. one or more of the following:
- ~~(1) Only a pistol grip without a stock attached;~~
  - ~~(2) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;~~
  - ~~(3) A folding, telescoping or thumbhole stock; or~~
  - ~~(4) An ability to accept a detachable magazine.~~
- (D) Any shotgun with a revolving cylinder.
- (E) Firearms which have been modified to be operable as an assault weapon as defined herein.
- (F) Short barreled rifles with a barrel length of less than 16 inches.

"Assault weapon" does not include any firearm that has been made permanently inoperable, is manually operated by bolt, pump, lever, or slide action, any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol which is designed to use black powder or a black powder substitute and which cannot use fixed ammunition, or satisfies the definition of "antique firearm", as defined in this Section 9-8-1.

“Detachable magazine” means any ammunition feeding device, box, clip or drum, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

“Muzzle brake” means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

“Muzzle compensator” means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

“Rifle” shall mean and include a firearm designed, made or retrofitted (1) to be fired from the shoulder or hip; and (2) uses the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger and shall include any such weapon which may be readily assembled, altered or restored to fire a fixed cartridge.

“Semi-automatic” shall mean and include a firearm which fires a single projectile for each single pull of the trigger which automatically inserts the next round for firing into the firearm chamber using a magazine.

“Shotgun” shall mean and include a firearm designed, made or retrofitted (1) to be fired from the shoulder or hip; and (2) uses the energy of the explosive in a fixed shotgun shell to fire a number of projectiles or a single projectile for each pull of the trigger and shall include any such weapon which may be readily assembled, altered or restored to fire a fixed shotgun shell.

**SECTION 3:** Title 9, Chapter 8 of the Evanston City Code of 2012, as amended, is hereby further amended and revised, to read as follows:

**9-8-14: ASSAULT WEAPONS; SALE AND POSSESSION PROHIBITED; EXCEPTIONS**

- (A) No person, in the City of Evanston, shall sell, offer or display for sale, give, lend, transfer ownership of, own, possess or carry any assault weapon. This subsection shall not apply to:
- (1) The sale or transfer to, or possession by any peace officer, corrections officer, members of the armed forces of the United States; or the organized militia of this or any other state; to the extent that any such person is otherwise authorized to acquire or possess an assault weapon, and is acting within the scope of his/her duties;
  - (2) A gun collector, within the confines of his/her permanent residence, who pursuant to Title I of the Gun Control Act of

1968 and all regulations issued thereunder, is the holder of a non-transferable license by the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) Transportation of assault weapons if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.

(B) Any person violating this Section shall be guilty of a misdemeanor and shall be fined not less than one thousand five hundred dollars (\$1,500.00) and/or incarcerated for up to six (6) months for each offense.

**9-8-15: CONFISCATION AND DISPOSITION OF ASSAULT WEAPONS**

- (A) Any assault weapon possessed, sold or transferred in violation of Section 9-8-14 is hereby declared to be contraband and shall be seized and disposed of. Whenever any assault weapon is surrendered or confiscated pursuant to this Section, the Evanston Police Department shall determine whether such assault weapon is needed as evidence or warrants further investigation and if the same is not needed as evidence, it shall be destroyed.
- (B) A record of the date and method of destruction the assault weapon so destroyed shall be maintained.

**SECTION 4:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5:** This ordinance shall be in full force and effect simultaneous with the enactment of Public Act 98-0063 into law for the State of Illinois.

**SECTION 6:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**SECTION 7:** If any provision of this Ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Introduced: \_\_\_\_\_, 2013

Approved:

Adopted: \_\_\_\_\_, 2013

\_\_\_\_\_, 2013

\_\_\_\_\_  
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Rodney Greene, City Clerk

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W. Grant Farrar, Corporation Counsel