

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 detachable or fixed magazine with a capacity of fifteen (15) or more rounds.
- (B) A semiautomatic handgun 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 with a detachable magazine with a capacity of six (6) or more rounds.
- (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: June 24, 2013

Approved:

Adopted: July 15, 2013

July 17, 2013

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene
Rodney Greene, City Clerk

W. Grant Farrar
W. Grant Farrar, Corporation Counsel

