

Effective Date: April 5, 2015

3/12/2015  
1/2/2015

**6-O-15**

**AN ORDINANCE**

**Amending the Text of Title 9, Chapter 8, Weapons**

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

**SECTION 1: Legislative Statement.**

At the time of passage of this Ordinance, the City of Evanston determined that there is a need to revise firearm regulations following recent court rulings concerning Second Amendment rights and new legislative action in the State of Illinois. The Firearm Concealed Carry Act, Public Act 98-63 ("the Act"), effected significant changes to firearm regulations. The City Council of the City of Evanston specifically notes its disagreement with the language and effect of the home rule preemption provisions set forth in that Act. While this state law concerning the licensing, possession and registration of firearms indicates that it is the exclusive domain of the State, the City still retains constitutional powers to regulate the location of firearm sales. The City is always concerned for the safety and welfare of its residents, and is cognizant of recent court rulings concerning Second Amendment rights, as well as the new legislative action in the State of Illinois. This ordinance enactment compliments the City's ongoing compliance with the Act, following the Act's adoption in 2013.

Article VII, Section (6)a of the Illinois Constitution of 1970 states that, "a home rule unit may exercise any power and perform any function pertaining to its government

and affairs including, but not limited to, the power... to license.” As a home rule unit, the City of Evanston’s powers shall be construed liberally. *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992). This ordinance is presumed constitutional and the burden of rebutting that strong presumption is on the party challenging the validity of the statute to clearly demonstrate a constitutional violation. *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008). It is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid. *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747, (2nd Dist. 1991). A court has a duty to uphold the constitutionality of a statute/ordinance when reasonably possible, and if a statute’s/ordinance’s construction is doubtful, the court will resolve the doubt in favor the statute’s/ordinance’s validity. *Id.* citing to *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 291 (2003).

The City Council and City staff reviewed and considered comparable ordinances from similarly situated jurisdictions regarding firearm regulations, as well as relevant court precedent. The City Council finds that that there is a compelling governmental interest in implementing reasonable regulations on firearms in the City under this Ordinance to promote the health, safety, and welfare of City residents and visitors alike. These regulations comply with the Act and recent court rulings.

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);

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

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. The modest burdens in this Ordinance, as an exercise of home rule authority, do not effectively disarm individuals or substantially affect their ability to defend themselves, and thus it is lawful under the intermediate scrutiny standard. *Heller v. District of Columbia* ("*Heller II*"), 670 F.3d 1244 (U.S. App DC 2011). The regulations on firearm sales and firearm ranges are constitutional under *Heller II*, as well as recent federal court decisions issued in the Northern District of Illinois in case nos. 10 C 5135 and 10 C 04184. The regulations regarding acquisition, use, and firing of firearms adjacent to sensitive places such as schools, places of worship, daycare facilities, or residential zoning districts within the City, are constitutionally proper. Limiting sales of firearms to firearm ranges creates an inextricable link between the acquisition of a firearm, and the training necessary to ensure it is handled and used safely. Simply put, this ordinance codifies that the purchase of a firearm should be linked to responsible firearm training and safety, and enhances the welfare of the City. Lastly, space requirements, noise levels, parking impacts, and City wide planning concerns are legitimate impacts to consider, such impacts which are considered for all proposed special uses in the City.

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.

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

**Title 9, Chapter 8 - WEAPONS**

**9-8-1. - DEFINITIONS.**

|                            |  |
|----------------------------|--|
| <b>AMMUNITION:</b>         | Any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm; excluding, however:                                      |
|                            | (A) Any ammunition exclusively designed for use with a device used exclusively for signaling or safety and required by the United States Coast Guard or the Interstate Commerce Commission; or |
|                            | (B) Any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.  |
|                            | (C) Any blank ammunition specifically designed to simulate gunfire without expelling a projectile where used for sporting or theatrical events.  |
| <b>ANTIQU<br/>HANDGUN:</b> | (A) Any handgun (including any handgun with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898; and                                    |
|                            | (B) Any replica of any handgun described in Subsection (A) of this definition if such replica is not designed or redesigned for using ammunition.  |
| <b>ASSAULT<br/>WEAPON:</b> | (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 (1) 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. |
| CONCEALED FIREARM        | Any loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle.  |
| CURIO OR RELIC HANDGUNS: | Any handgun which, as defined by 18 USC 921, as amended, by reason of its date of manufacture, value, design and/or other characteristics is primarily a collector's item and is not likely to be used as a weapon.   |

|                                 |   |
|---------------------------------|---|
| <b>DETACHABLE<br/>MAGAZINE:</b> | 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.                               |
| <b>FIREARM:</b>                 | Any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas; excluding, however:  |
|                                 | (A) Any pneumatic gun, spring gun, paintball gun, or BB gun which expels a single globular projectile not exceeding 0.18 inches in diameter which has a maximum muzzle velocity of less than seven hundred feet (700') per second or breakable paintballs containing washable marking colors. |
|                                 | (B) Any device used exclusively for signaling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.   |
|                                 | (C) Any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition.   |
|                                 | (D) An antique firearm (other than a machine gun) which, although designed as a weapon, the Illinois State Police finds by reason of the date of its manufacture, value, design and other characteristics is primarily a collector's item and is not likely to be used as a weapon.           |
|                                 | (E) Model rockets designed to propel a model vehicle in a vertical position.  |
|                                 | (F) Any stun gun or taser.  |
| <b>FIREARM<br/>DEALER:</b>      | Any person engaged in the business of sale or other transfer of firearms, handguns or ammunition at wholesale or retail including any person who is a pawnbroker.   |
| <b>HANDGUN:</b>                 | Any firearm which: a) is designed or redesigned or made or remade, and intended to be fired while held in one (1) hand; or b) having a barrel of less than ten (10) inches in length.   |
| <b>LICENSED<br/>FIREARM</b>     | Any person licensed as a collector by the Secretary of the Treasury of the United States under and by virtue of Title 18, United States   |

|                                |   |
|--------------------------------|---|
| <b>COLLECTOR:</b>              | Code, Section 923.  |
| <b>LICENSEE</b>                | A person issued a license to carry a concealed firearm under the Illinois Firearm Concealed Carry Act, 430 ILCS 66/, et seq., as amended.   |
| <b>MUZZLE BRAKE:</b>           | A device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.  |
| <b>MUZZLE COMPENSATOR:</b>     | A device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.  |
| <b>PEACE OFFICER:</b>          | Any person who by virtue of his/her office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.  |
| <b>PERSON:</b>                 | Any individual, corporation, company, association, firm, partnership, club, society, organization, or joint stock company.  |
| <b>RIFLE:</b>                  | 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. |
| <b>SALE OR OTHER TRANSFER:</b> | Any sale, gift, exchange, loan, rental or other transfer of firearms, handguns or ammunition but not including any of the following:  |
|                                | (A) Acquisition of a handgun or ammunition or both as the executor, administrator or other legal representative of a decedent's estate; or  |
|                                | (B) Transfer of a handgun or ammunition or both by bequest or intestate succession; or  |
|                                | (C) Acquisition or transfer of a handgun or ammunition or both by a trustee in bankruptcy in the administration of a bankrupt's estate; or  |
|                                | (D) Return of a handgun or ammunition or both to a person, firm or corporation from whom it was received; or  |
|                                | (E) Transfer of a handgun or ammunition or both where it is   |

|                        |  |
|------------------------|--|
|                        | required by or in accordance with a judgment or decree of any court of lawful jurisdiction; or   |
|                        | (F) Transfer of a handgun or ammunition or both to any federal, state or local government, or any department, agency, bureau, institution or commission thereof; or  |
|                        | (G) Transfer of a handgun or ammunition or both to a private museum, society, institution or other private organization which customarily acquires and holds handguns or ammunition as curios and relics or for scientific or research purposes; or to theatrical organizations providing a regular performance schedule to the public and utilizing said handguns or ammunition only pursuant to Subsection 9-8-4(B)1. of this Chapter. |
| <b>SEMI-AUTOMATIC:</b> | 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.   |
| <b>SHOTGUN:</b>        | 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.   |

#### 9-8-2. – CARRYING FIREARM OR HANDGUN; POSSESSION.

- (A) No person shall carry on or about their person any handgun or firearm unless they are in compliance with all State statutes and requirements. Persons who carry concealed firearms shall comply with the Illinois Firearm Concealed Carry Act, 430 ILCS 66/, et seq., as amended, and possess a current and valid firearm owner's identification card issued by the State of Illinois.
- (B) Persons who do not possess a valid Illinois Firearm Concealed Carry Act license shall not possess any firearm or handgun in the City of Evanston if:
- (1) He or she is under eighteen (18) years of age and said handgun is of a size which may be concealed upon the person; or
  - (2) He or she is under twenty-one (21) years of age and has been convicted of a felony or a misdemeanor other than a minor traffic offense or adjudged delinquent for a misdemeanor or felony; or
  - (3) He or she is addicted to, or habitually uses, a controlled substance; or
  - (4) He or she has been a voluntary or involuntary patient in a psychiatric facility within the past five (5) years; or



- (5) He or she has been diagnosed with a mental illness or condition and, as a result of that illness or condition, may be prone to display aggressive, dangerous, or threatening behavior, or as a result of that illness or condition is unable to appreciate the responsibility inherent in handgun possession or
- (6) Does not have within his or her possession a valid Illinois Firearm Owner's Identification Card.

### **9-8-3. - FIREARM DEALERS ONLY PERMITTED AT LICENSED FIREARMS RANGE**

No person, firm or corporation shall engage in the business of a dealer in firearms or handguns or ammunition in the City, including exchange, loan, rental or other transfer for consideration, unless such dealer is located within a licensed firearms range. No such licensed firearms range shall be located in any district but an I1, I2, or I3 zoning district. Any such range shall only be licensed as a special use and shall not be located within 350 feet of any R1, R2, R3 district, or within 350 feet of any school, child daycare facility, or public park, as measured from lot line to lot line. This subsection shall not apply to the sale, exchange, or transfer of firearms, handguns, or ammunition by and between City of Evanston peace officers.

### **9-8-4. - DISCHARGE OF FIREARMS.**

(A) No person shall fire or discharge without legal justification under the laws of the State of Illinois any handgun, firearm, or antique firearm within the corporate limits of the City, unless within a licensed firearms range or firearms range operated by the City of Evanston Police Department.

(B) Exempt from Subsection (A) of this Section are:

1. Members of established theater organizations located in Evanston and performing a regular performance schedule to the public who utilize firearms only during rehearsals, classes or performances with only blank firearms or ammunition pursuant to Subsection 9-8-5(A)12. of this Chapter.
2. Members of established film production organizations having prior written approval from the City Manager or his/her designee to conduct their activities in the City, during the period of such approval pursuant to Subsection 9-8-5(A)13. of this Chapter.
3. Persons utilizing a "starter" handgun solely capable of firing blank ammunition during an athletic event sponsored by a publicly or privately owned educational institution located in Evanston pursuant to Subsection 9-8-5(A)14. of this Chapter.

**9-8-5. - GENERAL EXEMPTIONS.**

(A) Subsection 9-8-2 of this Chapter shall not apply to or affect the following:

1. Peace officers.
2. Persons, who in the performance of their official duties as defined by Illinois or federal law or Evanston ordinances are required to carry handguns.
3. Retired peace officers in compliance with the requirements of the "Law Enforcement Officers Safety Act" of 2004, 18 USC 926(c), as amended.
4. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.
5. Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duties.
6. Any person summoned by any peace officer to assist in making arrests or preserving the peace while that person is actually engaged in assisting such officer and if such handgun was provided by the peace officer or was otherwise legally possessed under this Chapter.
7. Special agents employed by a railroad or a public utility to perform police functions; guards of armored car companies, watchmen while actually engaged in the performance of their duties of employment and security guards actually and regularly employed in commercial or industrial operation for the protection of persons employed and private property related to such commercial or industrial operation, provided said security guards are in compliance with 720 ILCS 5/24-2(a)(6), as amended, relating to registration, training, and other requirements imposed by the Illinois Department of Professional Regulation, while actually engaged in the performance of the duties of their employment or commuting between their homes and places of employment.
8. Agents and investigators of the Illinois Legislative Investigating Commission authorized by the Commission to carry handguns.
9. Gun collectors, licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, within the confines of their permanent residence.
10. A person who possesses an antique handgun within the confines of their permanent residence.
11. Transportation of firearms or handguns that:
  - i. Are broken down in a nonfunctioning state; or
  - ii. Are not immediately accessible; or
  - iii. Are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.
12. An established theater, provided it maintains possession and control of handguns in a safe place, under control of the designated armorer, at all

times when they are not being used for rehearsals, performances, or class purposes on the theater premises; and members of theatrical casts and crews while such persons are using said handgun on the theater premises.

13. An established film production organization, provided it has prior written approval from the City Manager or his/her designee to conduct its activities in the City, and provided that the use of the handgun was disclosed in the request for approval, and is used in accordance with any requirements imposed in the approval including, but not limited to, maintaining possession and control in a safe place under control of the designated armorer at all times when not in use for rehearsals or filming.
14. Persons utilizing a "starter" handgun solely capable of firing blank ammunition during an athletic event sponsored by a publicly- or privately-owned educational institution located in Evanston.
15. Persons who qualify for exceptions under the Illinois Firearm Owner's Identification Card Act that are not otherwise specified herein.

(B) To qualify for the exemptions of Subsections (A)9., (A)10., (A)12., and (A)13. of this Section, persons so defined shall be registered with, and approved by, the Evanston Police Department.

#### **9-8-6. - PENALTY.**

- (A) Any person violating Section 9-8-2 of this Chapter 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.
- (B) Upon a finding of a violation of Section 9-8-2 of this Chapter, any handgun seized shall be confiscated by the trial court and when no longer needed for evidentiary purposes, the court shall transfer such handgun to the City Police Department who shall destroy it.
- (C) Any person violating any provision of this Chapter for which a penalty is not provided for shall be fined seven hundred fifty dollars (\$750.00).

#### **9-8-7. - VOLUNTARY DELIVERY TO POLICE DEPARTMENT.**

- (A) If a person voluntarily and personally delivers and abandons to the Evanston Police Department any handgun, such delivery shall preclude the arrest and prosecution of such person on a charge of violating any provision of this Chapter with respect to the handgun voluntarily delivered. Delivery under this Section shall be made by summoning a police officer. Every handgun to be delivered and abandoned to the police department under this Subsection shall

be unloaded and in open view. No person who delivers and abandons a handgun under this Section shall be required to furnish identification, photographs or fingerprints. No amount of money shall be paid for any handgun delivered or abandoned under this Subsection.

- (B) Whenever any handgun is surrendered under this Section, the Police Department shall determine whether such handgun is needed as evidence or warrants further investigation and if the same is not needed as evidence, it shall be destroyed.

#### **9-8-8. - GUN BUY BACK PROGRAM.**

Notwithstanding anything to the contrary in this Chapter or this Code, the Police Department may conduct a "gun buy back program" pursuant to authorization of the City Council whereby, in exchange for appropriate consideration, persons may voluntarily surrender any handgun. A person voluntarily delivering and abandoning a handgun to the Evanston Police Department pursuant to a gun buy back program authorized by the City Council shall deliver the handguns in the manner provided for in Subsection 9-8-7(A) of this Chapter and shall be afforded the protections provided for therein.

#### **9-8-9. - DISPOSITION OF HANDGUNS.**

- (A) All handguns ordered confiscated by the court under the provisions of Subsection 9-8-6(B) of this Chapter and all handguns received by the Evanston Police Department under and by virtue of Subsection 9-8-7(A) and Section 9-8-8 of this Chapter, shall be held and identified as to owner, where possible, by the Evanston Police Department, for a minimum of two (2) years prior to their being destroyed.

#### **9-8-10. - CONSTRUCTION.**

Nothing in this Chapter shall be construed or applied to necessarily require or excuse noncompliance with any provision of the laws of the State of Illinois or to the laws of the United States. This Chapter and the penalties prescribed for violation hereof, shall not supersede, but shall supplement all statutes of the State of Illinois or of the United States in which similar conduct may be prohibited or regulated.

#### **9-8-11. - RULES AND REGULATIONS.**

The Evanston Chief of Police shall have the authority to promulgate rules, procedures, and regulations to enforce the provisions of this Chapter.

#### **9-8-12. - FEES.**

The Evanston Police Department shall assess a processing fee of fifty dollars (\$50.00) for each exemption application.

**9-8-13. - SEVERABILITY.**

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter and the applicability of such provision to any other persons not similarly situated or to other circumstances shall not be affected thereby.

**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 nontransferable 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 [of] the assault weapon so destroyed shall be maintained.

**SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4:** 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.

**SECTION 5:** This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

**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.

Introduced: March 9, 2015

Approved:

Adopted: March 23, 2015

March 25, 2015

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