



Legislation Text

File #: 1154-2005, Version: 2

BACKGROUND:

The 10-year old federal assault weapon ban expired on September 13, 2004, and there is no Ohio state law addressing assault weapons. Because the most recent version of the City's assault weapon ban was found unconstitutional with respect to the definition of "assault weapon" (see *Peoples Rights Organization, Inc. v. City of Columbus*, 152 F.3d 522 (6th Cir. 1998), as had the prior version, see *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250 (6th Cir. 1994)), this ordinance is designed to fill the legislative void that leaves the sale and possession of semi-automatic assault weapons essentially unregulated. In setting forth a new definition of "assault weapon," this ordinance corrects the constitutional deficiency of vagueness identified by the Sixth Circuit in the City's prior ordinances, and it closes the loopholes that were left open by the federal ban throughout the course of its enforcement. This ordinance balances the prohibitions on the sale and possession of assault weapons with exemptions designed to accommodate the ability of law-abiding citizens to engage in legitimate sporting activities.

To amend Sections 2323.11, 2323.31 and 2323.32 and enact new Section 2323.33 of the Columbus City Codes, 1959, to define assault weapons and to prohibit the unlawful possession or sale of assault weapons.

WHEREAS, gun violence continues to be one of the most serious crime problems plaguing America's cities; and

WHEREAS, semi-automatic assault weapons are particularly dangerous because they are designed to fire a high capacity of rounds with enhanced control during rapid firing; and

WHEREAS, the military-style features of assault weapons make them particularly attractive to drug dealers, gangs and other criminals; and

WHEREAS, as reported by the ATF in 1989 and as reflected in the federal assault weapons ban and similar bans enacted in other state and local jurisdictions, certain military-style features characteristic of assault weapons distinguish them from sporting weapons; and

WHEREAS, among these military-style features is a well-defined, conspicuously protruding pistol grip that is designed to assist in controlling the weapon during rapid fire or one-handed firing, while the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions; and

WHEREAS, use of the language "a pistol grip that protrudes conspicuously beneath the receiver of the weapon" in the definition of an "assault weapon" in this ordinance is intended to distinguish between these two types of pistol grips; and

WHEREAS, assault weapons are the weapons of choice for terrorists, as evidenced by a captured al-Qaida training manual instructing members to obtain AK-47's or AK-47 variants legally available in the United States; and

WHEREAS, Congress failed to take action and renew the federal ban on assault weapons that expired on September 13, 2004, despite support for its renewal by a majority of Americans and virtually all major law enforcement organizations; and

WHEREAS, the expiration of the federal assault weapons ban has resulted in a renewed manufacture, ~~importation~~, sale and possession of military-style assault weapons that previously were prohibited except for military and law enforcement personnel and,

as evidenced by recent reports from the Columbus Division of Police, these weapons are being found more frequently on Columbus streets; and

WHEREAS, even under the federal assault weapons ban, gun manufacturers were able to circumvent the ban with minor design modifications that resulted in functionally equivalent versions of the same weapons being sold legally to civilians; and

WHEREAS, the Columbus Division of Police currently has in its property room confiscated semi-automatic assault weapons, some of which could have been obtained legally even under the expired federal ban; and

WHEREAS, in the period of 1998-2001, one in five law enforcement officers slain with a weapon was slain by a criminal using an assault weapon; and

WHEREAS, assault weapons typically fire ammunition that can penetrate an officer's body armor and kill or severely injure the officer; and

WHEREAS, the Safety and Judiciary Committee of this Council conducted a series of five public hearings at which testimony on assault weapons was heard from representatives the Columbus Division of Police, the Ohio Fraternal Order of Police, various organizations advocating for gun rights or gun control, as well as individual concerned citizens; and

WHEREAS, this Council determines that in order to protect and preserve the safety and welfare of the citizens of Columbus it is necessary to take affirmative action to stop the proliferation of weapons on the streets of Columbus that have been described through testimony as being primarily designed to kill humans quickly and efficiently; and

WHEREAS, this Council recognizes that while no constitutional rights are absolute and there is no constitutional right to possess an assault weapon, regulation of the sale and possession of firearms must be reasonable, and further that reasonable regulation of assault weapons can be accomplished in a way that accommodates the ability of law-abiding citizens to engage in legitimate sporting activities; now therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. That Sections 2323.11, 2323.31 and 2323.32 of the Columbus City Codes, 1959, be and are hereby amended to read as follows:

2323.11 Definitions.

As used in Chapter 2323 of the Columbus City Codes:

(A) "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

(B) (1) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm which is inoperable but which can readily be rendered operable.

(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.

(C) "Handgun" means any firearm designed to be fired while being held in one hand.

(D) "Semi-automatic firearm" means any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

(E) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semiautomatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges.

(F) "Large capacity magazine" means a box, drum, clip or other container which holds more than twenty rounds of ammunition to be fed continuously into a semi-automatic firearm, except a magazine designed to hold only .22 caliber rimfire

cartridges.

(G) "Assault weapon" means:

- (1) Any semiautomatic action, center fire rifle or carbine that accepts a detachable magazine with a capacity of twenty rounds or more;
- (2) Any semiautomatic shotgun with a magazine capacity of more than six rounds;
- (3) Any semi-automatic handgun that is:
 - (a) A modification of a rifle described in Division (G)(1), or a modification of an automatic firearm; or
 - (b) Originally designed to accept a detachable magazine with a capacity of more than twenty rounds.
- (4) Any firearm which may be restored to an operable assault weapon as defined in Division (G)(1), (2) or (3) of this section.
- (5) Any part, or combination of parts, designed or intended to convert a firearm into an assault weapon as defined in Division (G)(1), (2) or (3) of this section, or any combination of parts from which an assault weapon as defined in Division (G)(1), (2) or (3) of this section, may be readily assembled if those parts are in the possession or under the control of the same person.

(G) "Detachable magazine" means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, and which can be removed from the firearm manually without the use of any tool or device.

(H) "Receiver" means that part of a firearm also referred to as the frame, which houses the firing mechanism and **which is usually threaded at its forward portion to receive the barrel.** ~~attached to which is the barrel on the front and the stock on the rear.~~

(I) "Thumbhole stock" means a stock with a hole through it to accommodate the thumb of the trigger hand.

(J) "Muzzle brake" means a device attached to the muzzle of a firearm that utilizes escaping gas to reduce recoil.

(K) "Muzzle compensator" means a device attached to the muzzle of a firearm that utilizes escaping gas to control muzzle movement.

(L) "Assault weapon" means any:

(1) Semi-automatic rifle that has the capacity to accept a detachable magazine and has one or more of the following:

- (a) A pistol grip that protrudes conspicuously beneath the receiver of the weapon;
- (b) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (c) A folding, telescoping or thumbhole stock;
- (d) 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
- (e) A muzzle brake or muzzle compensator;

(2) Semi-automatic pistol **with a fixed magazine**, or any semi-automatic, centerfire rifle with a fixed magazine, that has the capacity to accept more than ten rounds of ammunition;

(3) Semi-automatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

- (a) Any feature capable of functioning as a protruding grip than can be held by the non-trigger hand;
- (b) A folding, telescoping or thumbhole stock;
- (c) 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;
- (d) A muzzle brake or muzzle compensator; or
- (e) The capacity to accept a detachable magazine at any location outside of the pistol grip;

(4) Semi-automatic shotgun that has ~~one~~ **two** or more of the following:

- (a) A pistol grip that protrudes conspicuously beneath the receiver of the weapon;
- (b) A folding, telescoping or thumbhole stock;
- (c) A fixed magazine capacity in excess of five standard two and three quarters inch (**2 ¾"**), or longer, rounds; or
- (d) An ability to accept a detachable magazine;

(5) Shotgun with a revolving cylinder;

(6) Conversion kit or combination of parts from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.

~~(H)~~ (M) Assault weapon does not include any of the following:

~~(1) Any firearm that uses .22 caliber rimfire ammunition with a detachable magazine with a capacity of twenty rounds or less.~~

~~(2) Any assault weapon which antique firearm or any firearm that has been modified to either render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon.~~

~~(A)~~ (N) "Antique firearm" means any firearm manufactured prior to 1898.

~~(A)~~ (O) "Curio or collectible firearm" means any firearm manufactured fifty (50) or more years ago.

2323.31 Unlawful possession of assault weapons.

(A) No person shall knowingly sell, offer or display for sale, give, lend or transfer ownership of, acquire or possess any assault weapon.

(B) This section does not apply:

(1) To law enforcement officers of the United States, this State, this City, and members of the armed forces of the United States or this state if such person is authorized to acquire or possess an assault weapon and is acting within the scope of his duties;

(2) To the transportation of firearms through the City of Columbus in accordance with federal law;

~~(3) To any person who lawfully possessed an assault weapon and who registered that assault weapon pursuant to former Columbus City Codes Section 2323.05 in 1989.~~

(3) To the possession of an assault weapon by any person who lawfully owned and possessed that assault weapon prior to the effective date of the ordinance enacting this paragraph, provided that the person complies with all of the following:

(a) Within ninety days of the effective date of the ordinance enacting this paragraph, the owner of the assault weapon must file a completed registration form with the License Section of the Department of Public Safety, which form shall be prescribed by the Director and which shall require the following information be provided:

(i) the owner's name and address,

(ii) the make, model, and serial number of the assault weapon(s) being registered, and

(iii) a statement by the owner, sworn to before a notary public, that the information provided on the form is complete and accurate and that the owner is in compliance with all applicable Federal and State of Ohio statutes and regulations regarding the ownership and possession of the firearm(s) being registered;

(b) Except as otherwise provided in this section, the owner of an assault weapon registered pursuant to this paragraph shall not sell, give, lend or transfer ownership of a registered assault weapon;

(4) To the transfer to and possession of an assault weapon by a licensed gunsmith for purposes of service to or repair of the firearm, and the transfer of the assault weapon from the gunsmith to the assault weapon's lawful owner;

(5) To the sale or transfer of an assault weapon by a firearms dealer that is properly licensed under federal, state and local laws to any branch of the armed forces of the United States, or to a law enforcement agency for use by that agency or its employees for law enforcement purposes, and to the acquisition and possession of an assault weapon by the licensed firearms dealer for the purpose of such sale or transfer;

(6) To the possession of an assault weapon by any person while the person is either:

(a) Lawfully engaged in shooting while at a shooting range that is operating in accordance with all applicable laws and requirements and that has obtained all licenses, permits, and insurance coverage required for that operation; or

(b) Lawfully participating in a competitive sporting event that is officially sanctioned by USA Shooting, which is the national governing body for Olympic shooting competition in the United States, or by the Civilian Marksmanship Program, which is the program that was created by the United States Congress and that is supervised and controlled by the Corporation for the Promotion of Rifle Practice and Firearms Safety pursuant to 36 U.S.C. Sec. 40701, et seq.;

(7) To any person who receives an assault weapon as the result of the lawful distribution of a decedent's property by will or intestate succession, provided that, within ninety days of acquiring possession of the weapon, that person shall either:

(a) Remove the assault weapon from the City of Columbus;

(b) Render the assault weapon permanently inoperable or to permanently make it a device no longer defined as an assault weapon; or

(c) Relinquish the assault weapon to the Columbus Division of Police for destruction.

(C) Whoever violates this section is guilty of unlawful possession of assault weapons, a misdemeanor of the first degree. If the offender previously has been convicted under this section, upon the second conviction the Court shall impose a sentence of imprisonment of at least thirty days, which sentence is mandatory and may not be suspended, modified, or subject to probation during that thirty day period. If the offender has twice previously been convicted under this section, upon the third or more conviction the Court shall impose a sentence of imprisonment of at least ninety days, which sentence is mandatory and may not be suspended, modified, or subject to probation during that ninety day period.

2323.32 Unlawful possession of a large capacity magazine.

(A) No person shall knowingly possess a large capacity magazine.

(B) (1) This section does not apply to law enforcement officers of the United States, this State, or City, and members of the armed forces of the United States or this state, if such person is authorized to possess such large capacity magazine and is acting within the scope of his duties.

(2) This section does not apply to a large capacity magazine which belongs to a firearm or which is possessed by the owner of a firearm which is registered with federal authorities under the National Firearms Act (26 U.S.C.A. Secs. 5801-5871), or if the large capacity magazine belongs to or is a part of an assault weapon ~~which has been registered under Section 2323.05(C)~~ that is lawfully possessed by the person under Section 2323.31(B) or has been rendered totally inoperable or inert and the firearm cannot be readily rendered operable or activated and which is kept as a trophy, souvenir, curio or museum piece.

(C) Whoever violates this section is guilty of unlawful possession of a large capacity magazine, a misdemeanor of the first degree.

Section 2. That new Section 2323.33 of the Columbus City Codes, 1959, be and is hereby enacted to read as follows:

2323.33 Severability.

If any section, subsection, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held unconstitutional or otherwise invalid by a court of competent jurisdiction, such holding shall not affect the other provisions of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Section 3. That this ordinance shall take effect and be in force from and after the earliest date allowed by law.