

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1754 CD 2019

FIREARM OWNERS AGAINST CRIME, ET AL.,

Appellees,

v.

CITY OF PITTSBURGH, ET AL.,

Appellants.

**APPELLANTS' OPENING BRIEF
APPEAL FROM THE TRIAL COURT'S
OCTOBER 29, 2019 OPINION & ORDER**

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TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF JURISDICTION	3
ORDER OR OTHER DETERMINATION IN QUESTION	3
STATEMENT OF THE SCOPE AND STANDARD OF REVIEW.....	3
STATEMENT OF THE QUESTIONS INVOLVED	3
STATEMENT OF THE CASE.....	4
I. Form of Action and Procedural History.....	4
II. Prior Determinations	5
III. Judge Whose Determination is to be Reviewed	5
IV. Statement of Facts	5
A. The Commonwealth’s statutes authorizing cities to prevent unnecessary and unlawful discharge of firearms.	5
B. The Commonwealth’s firearm preemption statutes.....	6
C. The City passes three ordinances to curb gun violence.....	7
D. Three organizations and three individuals challenge the Ordinances.	14
E. The Common Pleas Court invalidates the three Ordinances in their entirety.	15
V. Order to be Reviewed.....	16
VI. Statement of Place of Raising or Preservation of Issues.....	16
SUMMARY OF ARGUMENT.....	16
ARGUMENT	19
I. The City acted within its home rule authority and express statutory authority when enacting firearms-related regulations to protect the safety of its residents.	19

A. The Pennsylvania Constitution mandates a strong presumption against preemption of local ordinances enacted under home rule authority.....	20
B. The Legislature expressly granted power to municipalities to prevent unnecessary and dangerous firearm discharge.	22
II. The City’s firearms ordinances are not preempted by §§ 6120 or 2962.	25
A. By its plain language, the Commonwealth has only preempted four categories of firearms regulations.	25
B. None of the City’s Ordinances fall within the four preempted categories....	27
C. LCM and rapid fire devices are not firearms, ammunition, or ammunition components.	32
III. The General Assembly has not preempted the entire field of firearms regulation.	35
A. The trial court’s decision rewrites the plain language of the statutes.	35
B. The trial court’s decision extends beyond all existing precedent.	40
IV. No plaintiff has standing to challenge the City’s ERPO provision.....	47
V. To the extent this Court determines that any parts of the City’s Ordinances are invalid, it should sever them and uphold the remaining portions of the Ordinances.....	52
CONCLUSION	54

TABLE OF AUTHORITIES

Cases

<i>Adams v. City of New Kensington</i> , 55 A.2d 392 (Pa. 1947)	21
<i>Armstead v. Zoning Bd. of Adjustment of City of Philadelphia</i> , 115 A.3d 390 (Pa. Commw. Ct. 2015).....	51
<i>Atcovitz v. Gulph Mills Tennis Club, Inc.</i> , 812 A.2d 1218 (Pa. 2002)	27
<i>Bailey v. United States</i> , 516 U.S. 137 (1995)	9, 28
<i>Balent v. City of Wilkes-Barre</i> , 669 A.2d 309 (Pa. 1995)	20
<i>Carroll v. Ringgold Educ. Ass’n</i> , 680 A.2d 1137 (Pa. 1996)	24, 39
<i>City Council of City of Bethlehem v. Marcincin</i> , 515 A.2d 1320 (Pa. 1986)	25
<i>City of Philadelphia v. Schweiker</i> , 858 A.2d 75 (Pa. 2004)	20
<i>Clarke v. House of Representatives</i> , 957 A.2d 361 (Pa. Commw. Ct. 2008).....	<i>passim</i>
<i>Commonwealth v. Hicks</i> 208 A.3d 916 (Pa. 2019)	44-45
<i>Commonwealth v. Johnson</i> , 26 A.3d 1078 (Pa. 2011)	27
<i>Commonwealth v. Segida</i> , 985 A.2d 871 (Pa. 2009)	26
<i>Commonwealth v. Tilghman</i> , 673 A.2d 898 (Pa. 1996)	45
<i>Council of Middletown Twp. v. Benham</i> , 523 A.2d 311 (Pa. 1987)	37
<i>Delaware Cty. v. Middletown Twp.</i> , 511 A.2d 811 (Pa. 1986)	19, 21
<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Commw. Ct. 2014).....	<i>passim</i>
<i>E.D.B. ex rel. D.B. v. Clair</i> , 987 A.2d 681 (Pa. 2009)	36
<i>FOAC v. City of Harrisburg</i> , 218 A.3d 397 (Pa. Commw. Ct. 2019).....	<i>passim</i>

<i>FOAC v. Lower Merion Twp.</i> , 151 A.3d 1172 (Pa. Commw. Ct. 2016).....	<i>passim</i>
<i>Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.</i> , 186 A.3d 525 (Pa. Commw. Ct. 2018).....	52
<i>Gulnac by Gulnac v. S. Butler Cty. Sch. Dist.</i> , 587 A.2d 699 (Pa. 1991)	45
<i>Gun Range, LLC v. City of Philadelphia</i> , 2018 WL 2090303 (Pa. Commw. Ct. May 7, 2018)	43
<i>Harris-Walsh, Inc. v. Borough of Dickson City</i> , 216 A.2d 329 (Pa. 1966)	36
<i>Hoffman Mining Co., Inc. v. Zoning Bd. of Adams Twp.</i> , 32 A.3d 587 (Pa. 2011)	<i>passim</i>
<i>Huntley & Huntley, Inc. v. Borough Council of Oakmont</i> , 964 A.2d 855 (Pa. 2009)	34
<i>In re Borough of Downingtown</i> , 161 A.3d 844 (Pa. 2017)	24
<i>Kiec v. Sherrerd</i> , 764 A.2d 39 (Pa. 2001)	35
<i>Mars Emergency Med. Servs., Inc. v. Twp. of Adams</i> , 740 A.2d 193 (Pa. 1999)	37
<i>Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch.</i> , 918 N.W.2d 756 (Mich. 2018)	38
<i>Minich v. Cty. of Jefferson</i> , 869 A.2d 1141 (Pa. Commw. Ct. 2005).....	43
<i>Mt. Lebanon v. Cty. Bd. of Elections of Allegheny Cty.</i> , 368 A.2d 648 (Pa. 1977)	45
<i>NRA v. City of Philadelphia</i> , 977 A.2d 78 (Pa. Commw. Ct. 2009).....	<i>passim</i>
<i>Nutter v. Dougherty</i> , 938 A.2d 401 (Pa. 2007)	<i>passim</i>
<i>Nye v. Erie Ins. Exch.</i> , 470 A.2d 98 (Pa. 1983)	47
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (Pa. 1996)	<i>passim</i>
<i>Penn. Waste Indus. Ass’n v. Monroe Cty. Mun. Waste Mgmt. Auth.</i> , 80 A.3d 546 (Pa. Commw. Ct. 2013).....	38
<i>Penn. State Lodge v. Dep’t of Labor & Indus.</i> , 692 A.2d 609 (Pa. Commw. Ct. 1997).....	47
<i>Penn. Restaurant Lodging Ass’n v. City of Pittsburgh</i> , 211 A.3d 810 (Pa. 2019)	<i>passim</i>

<i>Phantom Fireworks Showrooms, LLC v. Wolf</i> , 198 A.3d 1205 (Pa. Commw. Ct. 2018) (en banc).....	47
<i>Pilchesky v. Lackawanna Cty.</i> , 88 A.3d 954 (Pa. 2014)	27-28
<i>Schneck v. City of Philadelphia</i> , 383 A.2d 227 (Pa. Commw. Ct. 1978).....	41
<i>State v. Phillips</i> , 63 A.3d 51 (Md. App. 2013).....	38
<i>Unified Sportsmen of Penn. ex rel. Their Members v. Pennsylvania Game Comm'n</i> , 903 A.2d 117 (Pa. Commw. Ct. 2006).....	52
<i>Waste Mgmt. of Penn., Inc. v. Com., Dep't of Env'tl. Prot.</i> , 107 A.3d 273 (Pa. Commw. Ct. 2015).....	39
<i>Watson v. City of Seattle</i> , 189 Wash. 2d 149, 401 P.3d 1 (Wash. 2017).....	38
<i>Ziegler v. City of Reading</i> , 142 A.3d 119 (Pa. Commw. Ct. 2016).....	21

Statutes

1 Pa.C.S. § 1921.....	36
1 Pa.C.S. § 1932(b).....	24
18 Pa.C.S. § 5515(a).....	32
18 Pa.C.S. § 6101.....	35
18 Pa.C.S. § 6120.....	<i>passim</i>
42 Pa.C.S. § 762(a)(4)(i).....	3
53 Pa.C.S. § 2961.....	20
53 Pa.C.S. § 2962(g).....	<i>passim</i>
53 P.S. § 3703	<i>passim</i>
53 P.S. § 23131	<i>passim</i>
Ala. Code § 13A-11-61.3(a)	34
Ala. Stat. § 29.35.145(a)	27
Ariz. Rev. Stat. § 13-3108	27, 31
Idaho Code § 18-3302J(2)	31
Ind. Code § 35-47-11.1-2.....	31
Ky. Rev. Stat. § 65.870(1)	31, 34
La. R.S. 40:1796(A).....	34
Me. Stat. 25 § 2011	27
Mo. Stat. § 21.750(2).....	27
Mont. Code § 45-8-351(1)	27
N.H. Rev. Stat. § 159:26(I).....	27

Nev. Rev. Stat. Ann. § 268.418(1)(b)	31
Okl. Stat. Section 21 § 1289.24(B) § 1289.24(B).....	27
Ore. Rev. Stat. § 166.170	27
Tenn. Code Ann. § 39-17-1314(a).....	27
Utah Code § 53-5a-102(5)	27
Wis. Stat. § 66.0409(2)	27

Regulations

27 C.F.R. § 478.11	33
--------------------------	----

Other

<i>In re Reestablishment of the Magisterial District,</i>	
34 Pa. B. 6507 (2004).....	31
Municipal Control Over Hunting, 17 Op. Att’y Gen.,	
64 Pa. D. & C.2d 233, 1974 WL 377832 (1974)	39
Pa. Const. Art. IX, § 2	20

INTRODUCTION

On October 27, 2018, a gunman armed with an assault rifle and three semi-automatic pistols entered Tree of Life Synagogue in the Squirrel Hill neighborhood of Pittsburgh. As the Court is well aware, the result was tragic. He opened fire on worshipers, murdering eleven people and injuring six others, including four police officers. This tragedy sparked public discussion and debate. What common sense gun-safety reforms could the city implement that might prevent not only horrific mass shootings but other needless gun violence in the future? The citizens demanded that the City act, to the extent it could, to save lives. Through its democratically elected leaders, the City enacted three ordinances aimed at doing just that (the “Ordinances”). Together they prohibit the “use” of large capacity magazines and assault weapons in public places, penalize those whose negligent gun storage practices lead to a minor harming someone with their firearm, and set up a procedure for family members or law enforcement to request a judge to intervene if an individual with a gun is likely to harm themselves or others.

In enacting these Ordinances, the City was mindful that state preemption laws constrain its ability to regulate firearms—but do not eliminate it. Without state preemption, the City would have gone further and prohibited the purchase and possession of assault weapons and large capacity magazines—the same types of devices used to mass murder the worshipers at Tree of Life. But instead, respectful of the

statutory scheme, it did not do that. Two state statutes, by their plain language, prevent the City from regulating the “ownership, possession, transfer, and transportation of firearms.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g). Accordingly, the City narrowly crafted and limited the operative portions of the Ordinances to comply with Pennsylvania law and avoid impinging these four preempted categories.

The trial court however, ignoring the plain language of the statutes, held that the City lacks *all* power to regulate in the field of firearms even outside of the preempted categories. That is not so. Neither the General Assembly nor the Pennsylvania Supreme Court has ever expressly said or held that cities are completely powerless to act in this area. The trial court, following the Plaintiffs’ argument, took some overbroad statements out of context to support its view that the General Assembly has preempted the “entire field.” But no case has found any local firearm ordinance preempted where its scope was exclusively outside of the four enumerated categories. By contrast, in addition to its home rule power, the General Assembly has explicitly granted municipalities the authority to “regulate,” “prevent,” and “punish” the unnecessary discharge of firearms in public places. 53 P.S. §§ 23131, 3703. The trial court’s decision, then, not only rewrites the preemption statutes but also destroys the statutory scheme and extends beyond all existing precedents. The City respectfully requests that it be reversed.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 42 Pa.C.S. § 762(a)(4)(i).

ORDER OR OTHER DETERMINATION IN QUESTION

Exhibit A contains a copy of the October 29, 2019 Opinion of the Court of Common Pleas. The Opinion concludes:

Therefore, for the foregoing reasons, the Plaintiffs' Motion for Summary Judgment is granted and the City's Cross Motion for Summary Judgment is denied.

Exhibit B contains a copy of the October 29, 2019 Order of the Court of Common Pleas. The Order states:

AND NOW, this 29th day of October 2019, based upon the foregoing Opinion, Ordinances 2018-1218, 2018-1219, 2018-1220 are void and unenforceable due to field preemption by the Legislature.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

This appeal rests upon questions of statutory construction. Statutory interpretation is a question of law, so this Court's standard of review is *de novo* and scope of review is plenary. *Pennsylvania Restaurant Lodging Ass'n v. City of Pittsburgh*, 211 A.3d 810, 822 (Pa. 2019).

STATEMENT OF THE QUESTIONS INVOLVED

1. Are the City of Pittsburgh's firearm safety Ordinances (Nos. 2018-1218, 2018-1219, and 2018-1220), which do not regulate the ownership, possession, transfer or

transportation of firearms, preempted by 18 Pa.C.S. § 6120 or 53 Pa.C.S. § 2962(g), which state that municipalities may not regulate the lawful “ownership, possession, transfer or transportation” of firearms?¹

Suggested Answer: No.

Answer Below: Yes.

2. Do the Plaintiffs have standing to challenge the Extreme Risk Protection Order provision of Ordinance No. 2018-1220 despite the fact that no plaintiff averred facts demonstrating that he was ever likely to be subject to such a protection order?

Suggested Answer: No.

Answer Below: Yes.

STATEMENT OF THE CASE

I. Form of Action and Procedural History

On April 9, 2019, the Firearms Owners Against Crime, Firearm Policy Coalition, Inc., Firearm Policy Foundation, Matthew Boardley, Saadyah Averick, and Fred Rack (collectively “Plaintiffs” or “FOAC”) filed a complaint against the City of Pittsburgh, Mayor William Peduto, and all the members of City Council (collectively “Defendants” or the “City”). The Plaintiffs requested a declaration that the three City firearms ordinances signed into law that day (Nos. 2018-1218, 2018-1219, 2018-1220, collectively the “Ordinances”) were invalid and sought an injunction against their

¹This case has been marked related to *Anderson, et al. v. City of Pittsburgh, et al.*, No. 1754 CD 2019 because of overlapping issues.

enforcement. On June 10, 2019, the City filed an Answer that denied the legal conclusions in the complaint. R. 369a-446a. The parties thereafter filed cross-motions for summary judgment. R. 494a-95a; R. 675a.

The Court of Common Pleas of Allegheny County granted FOAC's motion for summary judgment and denied the City's motion for summary judgment. R. 941a-45a. It found the Ordinances void and unenforceable due to field preemption. R. 946a.

II. Prior Determinations

All prior determinations are listed above.

III. Judge Whose Determination is to be Reviewed

The Honorable Joseph M. James of the Court of Common Pleas of Allegheny County issued the decision below.

IV. Statement of Facts

In response to the horrific mass shooting at the Tree of Life Synagogue and dozens of other tragic shootings each year, the City had a "moral imperative to take lawfully available steps to reduce gun violence." R. 184a. Accordingly, on April 2, 2019, the Pittsburgh City Council passed three Ordinances aimed at curbing gun violence within its borders. And on April 9, 2019 the Mayor signed them into law.

A. The Commonwealth's statutes authorizing cities to prevent unnecessary and unlawful discharge of firearms.

In passing these Ordinances, the City recognized that, under its Home Rule Charter, it has authority to "perform any function and exercise any power not denied

by the Constitution [or] the laws of Pennsylvania.” R. 316a. Further, the City recognized that the General Assembly had explicitly granted Pittsburgh the authority to “regulate, prevent, and punish” the unlawful and unnecessary discharge of firearms. *See* 53 P.S. § 23131 (granting municipalities the power “to regulate, prevent and punish the discharge of firearms, . . . in the streets, lots, grounds, alleys, or in the vicinity of any buildings.”); 53 P.S. § 3703 (granting municipalities the power “to regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.”). With this authority—both the general and specific grants of authority—Pittsburgh decided to act to protect its residents.

B. The Commonwealth’s firearm preemption statutes.

The City, of course, also recognized that its authority was constrained by two Pennsylvania statutes preempting local laws that regulate the “ownership, possession, transfer or transportation of firearms.” R. 185a. Specifically, 18 Pa.C.S. § 6120(a), the preemption provision in the Uniform Firearms Act (“UFA”), states that:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

Likewise, 53 Pa.C.S. § 2962(g) places a limit on the authority of home-rule municipalities, like Pittsburgh, stating: “A municipality shall not enact any ordinance or

take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”

Therefore, although the City, through its democratically elected leaders, desired to pass more stringent gun safety measures—including prohibiting possession and ownership of certain types of weapons that have the ability to cause mass carnage—it recognized it could not under existing preemption statutes. Thus, it opted to enact two types of local laws: some more modest reforms that would not regulate the “ownership, possession, transfer, and transportation of firearms,” and would be effective 60 days after enactment, and others that were broader, but would not be effective unless and until the state preemption statutes changed. With this dual approach, the City fulfilled “its responsibility to respect governing law,” while providing for the safety of its residents. R. 185a.

C. The City passes three ordinances to curb gun violence.

With this background, the City enacted three Ordinances aimed at curbing gun violence, as well as the injury and death associated with the use of particularly dangerous firearms and the use of firearms by particularly dangerous persons.

1. The Assault Weapons Ordinance.

Ordinance 2018-1218—the Assault Weapons Ordinance (“AW”)—regulates the “use” of an “Assault Weapon” in “any public place within the City of Pittsburgh.” AW § 1102.02. As the City Council concluded, the use of assault weapons “results in a higher number of fatalities and injuries during mass shootings and other serious crimes,

including murders of police officers.” AW § 1101.10(A)(3). Quite simply, assault weapons can “fire more rounds with greater destructive capacity” in less time—a “tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh.” *Id.*

Given the destruction that assault weapons cause, and the City’s determination that there is no need for assault weapons “especially in a crowded urban jurisdiction” like Pittsburgh, the Council contemplated a total prohibition on the possession of assault weapons within City limits. *Id.*; R. 120a-122a. But after much deliberation, the City Council refrained from enacting a total prohibition that would be immediately effective, and transformed it into a call-to-action; the Assault Weapons Ordinance contains a prohibition on assault weapons that will take effect only if and when “the Pennsylvania General Assembly or the Pennsylvania Supreme Court [takes action] that has the effect of authorizing” such a provision. AW §§ 1103.02, 1103.06. That total prohibition is thus not now enforceable law.

The operative regulation of assault weapons in the Ordinance is much more limited. It applies to specific “Assault Weapons” that are listed in the ordinance, such as AR-15 and other similar rifles, as well to other firearms that have like characteristics. *Id.* § 1102.01(B). And it only prohibits their use in “public place[s],” defined as “streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort.” *Id.* § 1102.02(B). It does not

prohibit their use in “a private home or residence” or any authorized gun store or shooting range. *Id.*

Likewise, the Ordinance does not prohibit possessing, carrying, transferring, or transporting any assault weapons. It prohibits only the “Use” of assault weapons, which includes but is not limited to the following: “(1) Discharging or attempting to discharge an Assault Weapon; (2) Loading an Assault Weapon with Ammunition; (3) Brandishing an Assault Weapon; (4) Displaying a loaded Assault Weapon; (5) Pointing an Assault Weapon at any person; and (6) Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.” *Id.* § 1102.02(C). Because “use” requires, at a minimum, some “active employment” of a firearm, simply carrying an assault weapon—concealed or openly—does not violate the Assault Weapon Ordinance. R. 696a-97a. (quoting *Bailey v. United States*, 516 U.S. 137, 147 (1995)). And, lest there be any doubt, the definition of “use” in the Ordinance expressly excludes “possession, ownership, transportation, and transfer.” AW § 1102.02(C). There is also a carve-out for self-defense and hunting. The Ordinance provides that: “Nothing in this Chapter shall be deemed to restrict a person’s ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person’s or another person’s person or property or for lawful hunting purposes.” *Id.* § 1104.04(B).

Lastly, in addition to regulating the use of assault weapons, Ordinance 2018-1218 includes a separate section entitled the “General Weapons Provision” that prohibits: (1)

possession of weapons that are not firearms (*e.g.*, bazookas, bombs, booby traps, and grenades), *see* AW Ordinance § 1101.02; (2) publicly carrying facsimile firearms, *see id.* § 1103.03; and (3) the unlawful public discharge of firearms, *see id.* § 1101.04.

An individual who violates the Ordinance may be fined up to \$1,000. *Id.* §§ 1101.06, 1102.03, 1103.04.

2. The Large Capacity Magazine Ordinance.

Ordinance 2018-1219—the Large Capacity Magazine Ordinance (“LCM”)—regulates the “use” of “large capacity magazines” in “public places” in Pittsburgh. LCM § 1104.03(A). Adopting the same definition of “use” and “public places” as the Assault Weapons Ordinance, this Ordinance extends the same limitations (and exceptions) as described above with respect to assault weapons but applies them to large capacity magazines. LCM § 1104.03(C). A firearm magazine is a “spring loaded-container for cartridges”—essentially, where the ammunition goes—and it may either be fixed in the firearm or detachable. Glossary, NRA-ILA, <https://www.nraila.org/for-the-press/glossary/> (last visited Apr. 21, 2020). A “Large Capacity Magazine,” as defined by the Ordinance, is any “firearm magazine, belt, drug, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition.” LCM § 1104.01(D).

As with the Assault Weapons Ordinance, the City Council also enacted a provision that would make it unlawful to “own, possess, transfer, or transport” any large capacity magazine if (and when) there is a change in the state law regarding

preemption that would make that prohibition permissible. *Id.* §§ 1105.02, 1105.06. But the immediately effective portion of the Ordinance only prohibits “use” in public places, which, again, expressly excludes “possession, ownership, transportation [and] transfer.” *Id.* § 1104.03.

Along with large capacity magazines, this Ordinance also prohibits the use in public places of “Armor or Metal Penetrating Ammunition”—specific ammunition designed “primarily to penetrate a body vest or a body shield”—and “Rapid Fire Devices”—parts designed to “accelerate substantially the rate of fire” of a firearm (including bumpstocks). *Id.* §§ 1104.01(B), (F), 1104.02, 1104.04.

3. The Extreme Risk Ordinance.

The third Ordinance—the Extreme Risk Ordinance (“ER”)—has two provisions targeted at keeping firearms out of dangerous hands; namely, those of children and persons who pose an imminent risk to themselves or others. With these provisions, the City responded to the tragedy of children who “gain access to a gun and unintentionally shoot themselves or someone else,” and to the fact that each year tens of thousands of Americans, including children and teens, die by firearm suicide. ER § 1106.07. The City Council relied upon meta-analyses of scientific studies demonstrating that access to a firearm “triples the risk of death by suicide of anyone in the household.” *Id.* And it recognized that millions of children in America live in homes with at least one gun that is loaded and unlocked. *Id.* The result can be fatal. *Id.* The City Council further relied upon studies demonstrating that child access prevention laws reduce the

risk of “self-inflicted shootings among, and unintentional shootings by, children and teenagers.” *Id.*

The first part of this Ordinance is the Child Access Prevention (“CAP”) provision. It imposes a fine up to \$1000 upon a firearm’s custodian if a “minor gains access to and uses the Firearm” and the custodian “knew or reasonably should have known that the minor was likely to gain access” to it. *Id.* § 1106.02(A). There can be no violation of the provision unless the minor “use[s]” the firearm, which is defined as (1) discharging, (2) loading, (3) brandishing, (4) pointing it at a person, or (5) using it for another purpose prohibited by state or federal law. *Id.* Again, “use” specifically exempts “possession, ownership, transportation or transfer.” *Id.* § 1106.02(B).

The CAP provision contains several safe harbors, exempting firearm owners from liability if they responsibly store their weapons—by, for example, keeping the firearm in a locked box or secured with a trigger lock. *Id.* § 1106.02(C). Nor does the CAP fine apply if the minor obtained the firearm while it was being “carried on the person of the Firearm’s custodian” or was within his or her close proximity. *Id.*

The second part of this Ordinance creates a process by which family members or law enforcement can petition a court for an Extreme Risk Protection Order (“ERPO”) to temporarily prevent a person at risk of harming themselves or others from possessing or acquiring a firearm. The Ordinance only allows ERPOs in highly dangerous circumstances. A court must conclude that a person presents a “risk of suicide or of causing the death of or Serious Bodily Injury to[] another person through

use of a firearm.” ER § 1107.09(A). To make this determination, a court is to consider eight nondispositive factors, including whether the person has already made suicide attempts or threats, has a history of domestic abuse, or has recklessly used a firearm. *Id.* §§ 1107.04, 1107.05(A). When the risk is “imminent,” the court may order an ERPO temporarily before holding a hearing, but then must have a hearing within ten days of service of the petition for the order. *Id.* § 1107.05. At the hearing, which provides the respondent with an opportunity to be heard and to present and rebut evidence, the court must find by “clear and convincing evidence” that there is a risk of suicide or causing serious bodily harm or death to another person such that the individual should be temporarily prohibited from having firearms. *Id.* § 1107.09. If an ERPO is issued, the individual must relinquish her or her firearms within 24 hours, and, after the order expires (which could be between three months or a year, or less if the individual petitions), the firearms are returned. *Id.* §§ 1107.05–.13.

4. Severability Provisions.

Each section within each of the three Ordinance contains a severability provision that states in relevant part:

“Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons.”

AW §§ 1101.09, 1102.07, 1103.07; LCM §§ 1104.09, 1105.07; ER §§ 1106.06, 1107.19.

D. Three organizations and three individuals challenge the Ordinances.

The Plaintiffs filed their complaint on the day the Mayor signed the Ordinances into law, seeking a declaration that the Ordinances were invalid and to enjoin their enforcement. Several of the counts challenged portions of the Ordinances as preempted by 18 Pa.C.S. § 6120(a) and 53 Pa.C.S. § 2962(g). *See* R. 57a-63a, 70a-76a. They also claimed that the Ordinances were invalid because the City failed to follow various procedural rules, set unlawfully high fines, violated provisions of the State Constitution, and placed improper signage in front of the City-County Building. R. 63a-69a, 76a-98a. The parties conducted limited, expedited discovery, and, by agreement and order, the Ordinances' effective dates were stayed during the pendency of the litigation. R. 362a-64a.

The Plaintiffs moved for summary judgment to invalidate the Ordinances, arguing *inter alia* that localities have no authority to regulate any matter relating to firearms given state statutes and existing caselaw. R. 494a-95a.

In response, the City filed a cross-motion for summary judgment defending the Ordinances' validity. R. 675a. As an initial matter, the City argued that the Plaintiffs did not have standing to challenge many of the provisions of the Ordinances. The organizational Plaintiffs based their standing on the interests of the individual Plaintiffs, and the individual Plaintiffs did not demonstrate through their complaint or interrogatory responses that they would be harmed by the enforcement of all the provisions. In particular, the City emphasized that no plaintiff had set forth any

evidence that they are a danger to themselves or others, so as to be potentially subject to the ERPO provision. R. 692a-93a. Moreover, no plaintiff would be likely to—or could—be injured by the unenforceable “call-to-action” provisions of the Ordinances that do not go into effect unless and until state law changes. R. 719a-21a.

On the merits, the City argued that because the Ordinances did not regulate the “ownership, possession, transfer or transportation” of firearms—and only prohibited the active use of specified high-capacity firearms and firearms accessories in public places—they were not preempted based on the plain language of the preemption statutes. R. 701a-15a. To the extent that prior precedent suggested that the preemption statutes sweep broader than the statutory language, the City argued that it was dicta and instead the well-established presumption in favor of local authority should control. R. 715a-19a, 732a-40a.

E. The Common Pleas Court invalidates the three Ordinances in their entirety.

The trial court invalidated all three Ordinances in their entirety. R. 946a. As to standing, the sole analysis was that the interrogatories demonstrated that “all Plaintiffs have Declaratory Judgment Standing to challenge” all three Ordinances. R. 944a.

With respect to preemption, the trial court held that 18 Pa.C.S. § 6120 preempted the entire field of firearms regulation, precluding municipalities from passing any “regulation pertaining to the regulation of firearms” regardless of its specific subject matter. R. 945. It recognized the City’s “efforts to avoid the specific preemption set

forth in § 6120,” but irrespective of the statute’s actual language—which the court did not even quote—it held that “the obvious intent of the Legislature [was] to preempt this entire field.” R. 944a. For this proposition, the trial court relied upon the statement in *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996) that “the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” R. 945a. The trial court did not consider severability, nor whether any provisions that do not relate to firearms or that are not even enforceable until state law changes could stand.²

V. Order to be Reviewed

The October 29, 2019 opinion is attached at Exhibit A. The text of the October 29, 2019 order is copied above and attached at Exhibit B.

VI. Statement of Place of Raising or Preservation of Issues

All the issues the City raises in this appeal were preserved in the pleadings and the City’s cross-motion for summary judgment filed in the Court of Common Pleas. R. 369a-446a, 675a-847a.

SUMMARY OF ARGUMENT

At the heart of this appeal is a single question: do local governments have *any* authority to regulate firearms within their borders to protect the safety of their citizens? The answer is yes; their authority may be limited, but it is not extinguished. That answer

² Nor did the trial court adopt the Plaintiffs’ alternative arguments in counts 3-4, 7-8, or 9-14, and therefore the City does not address them here. They are without merit for the reasons stated in the City’s briefing below. R. 721a-26a.

follows the plain text of the Commonwealth’s preemption provisions, the structure of the statutory scheme, and the cases of the Pennsylvania Supreme Court. Because the Ordinances fall outside the statutes’ preemptive reach, this Court should reverse and uphold Pittsburgh’s local democratic authority.

First, Pittsburgh acted within its home rule authority and upon expressly granted statutory authority when it enacted these three public safety Ordinances. As a home-rule municipality, Pittsburgh’s Ordinances are entitled to a presumption of validity and any ambiguity as to whether they are preempted or beyond the City’s power must, under the Pennsylvania Constitution, be construed in favor of the City. But there’s more. The General Assembly also expressly gave the City the power to “regulate,” “prevent” and “prohibit” the “unnecessary” and dangerous discharge of firearms in public. 53 P.S. §§ 23131, 3703. The Ordinances are each aimed at preventing unnecessary—and too often tragic—shootings.

Second, the Ordinances are not preempted by state law. There are two statutes that limit the authority of local governments to act in the firearms sphere. By their unambiguous plain language, they both prohibit localities from regulating the “ownership, possession, transfer or transportation of firearms, ammunition or ammunition components.” 18 Pa.C.S. § 6120(a); *see also* 53 Pa.C.S. § 2962(g) (listing same four categories). But they do not restrict local authority to regulate beyond those four categories. The Ordinances, therefore, were carefully crafted *not* to prevent anyone from “owning, possession, transferring or transporting” any firearm.

Third, and contrary to the trial court’s decision, the Legislature has not preempted the entire field of firearms regulation. To uphold that decision, the Court would have to add words to the state’s preemption provisions, which are explicitly limited to the four above-mentioned categories and do not include “use” or the “entire field.” Courts, of course, cannot do that, especially where the Legislature, as here, has not manifested a clear intent to preempt the entire field. Simply having a comprehensive scheme is not enough to preempt the field. And, by contrast, the Legislature has *granted* local power to prevent firearm discharge in public places—that is hardly implicitly preempting the field.

To be sure, there is some overbroad language in previous cases suggesting that “city councils” are not the place to be regulating firearms. But, as explained below, when read in context those statements are not declarations of field preemption, but instead refer to city councils regulating “possession” and the other preempted categories. Neither this Court nor the Pennsylvania Supreme Court has ever invalidated a local firearms ordinance that, like here, narrowly regulates only “use” and does not tread upon “ownership, possession, transfer or transportation.” If this Court affirms, particularly as to the ordinances limited to use, it would be extending beyond existing precedent to quash areas of local regulation.

Fourth, the Plaintiffs do not have standing to challenge the ERPO provision of the Ordinances. The ERPO provision does not place any current or imminent limitation on any Plaintiffs’ actions or any affirmative obligations with which any

plaintiff must comply. And no plaintiff has alleged facts demonstrating that he is likely to be subject to an emergency order under the terms of the Ordinance.

Lastly, to the extent the Court finds any parts of the Ordinances impermissible, the Court should sever them. The trial court did not consider severability and even invalidated the portions of the Ordinances that regarded “nonfirearms” and that were inoperable calls-to-action until the General Assembly or Pennsylvania Supreme Court authorizes. That, too, was wrong.

ARGUMENT

I. The City acted within its home rule authority and express statutory authority when enacting firearms-related regulations to protect the safety of its residents.

The City’s authority to enact the Ordinances rests on two strong pillars: (1) its well-established home rule authority to regulate for public safety and (2) explicit statutory grants of municipal power from the Legislature for cities to prevent unnecessary discharge of firearms. Although the trial court focused only on the preemption provision of 18 Pa.C.S. § 6120, this Court should instead “begin with the view” that local ordinances enacted under home rule authority are valid and construe any ambiguity in favor of local democracy. *Delaware Cty. v. Middletown Twp.*, 511 A.2d 811, 813 (Pa. 1986) The Court must also recognize that, far from preempting the field, the Legislature has explicitly invited localities to be partners in preventing unnecessary shooting in public places. That is what Pittsburgh has done.

A. The Pennsylvania Constitution mandates a strong presumption against preemption of local ordinances enacted under home rule authority.

In passing the Ordinances, the City exercised its foundational home rule power to protect the safety of its residents. *See Penn. Restaurant and Lodging*, 211 A.3d at 816-17. It is the “first duty” of the City to “protect [its] people,” AW § 1101.10(A), and the Pennsylvania Constitution grants home rule municipalities like Pittsburgh the authority to do just that. *See* 53 P.S. § 23101 et seq. (designating Pittsburgh a city of the second class). Under Article IX, § 2 of the Commonwealth’s Constitution, “[a] municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” And the City’s home rule charter bestows “all home rule powers.” R. 316a. That means the City can “legislate concerning municipal governance without express statutory warrant for each new ordinance” as it sees fit, as long as it does so “without running afoul of the Pennsylvania Constitution or state statutory law.” *Penn. Restaurant and Lodging*, 211 A.3d at 816 (quoting *City of Phila. v. Schweiker*, 858 A.2d 75, 84 (Pa. 2004)). The Legislature has instructed that “[a]ll grants of municipal power to municipalities governed by a home rule charter . . . shall be liberally construed in favor of the municipality.” 53 Pa.C.S. § 2961.

At the core of the City’s home rule authority is the basic police power to enact ordinances to “promote the health, safety and general welfare of the people.” *Penn. Restaurant and Lodging*, 211 A.3d at 817 (quoting *Balent v. City of Wilkes-Barre*, 669 A.2d

309, 314 (Pa. 1995)). Courts recognize that, in exercising these “traditional police powers,” municipalities have ““ample authority for the reasonable exercise, bona fide, of broad and varied municipal activity to protect the health, morals, peace and good order of the community.”” *Id.* (quoting *Adams v. City of New Kensington*, 55 A.2d 392, 395 (Pa. 1947)). The police power Pittsburgh holds is “fundamental” because it enables the City, through its elected leaders, “to respond in an appropriate and effective fashion to changing political, economic, and social circumstances”—like the tragedy at Tree of Life and the crisis of gun violence—“and thus to maintain its vitality and social order.” *Id.* at 817.

The home rule power of local governments to respond to the needs of their residents is “not lightly intruded upon.” *Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007). To be sure, state law can preempt local authority, and localities have no authority, even under home rule powers, to act in contravention of these legislative mandates. *Id.* But courts are to “begin with the view” that an act of a home rule municipality “is valid,” and they must “resolve any ambiguities in favor of the municipality.” *Delaware Cty.*, 511 A.2d at 813; *see also Penn. Restaurant and Lodging*, 211 A.3d at 823 (courts must “resolve . . . ambiguity in the home-rule municipality’s favor”); *Ziegler v. City of Reading*, 142 A.3d 119, 131 (Pa. Commw. Ct. 2016) (“To the extent the City’s powers under the Code are ambiguous, any ambiguities regarding home rule authority must be resolved in favor of the municipality.”). That means when courts face questions of statutory interpretation—as here—preemption statutes are to be narrowly construed as to

preserve municipal power. The trial court’s failure to even acknowledge this presumption was wrong and infected its analysis.

B. The Legislature expressly granted power to municipalities to prevent unnecessary and dangerous firearm discharge.

Given the City’s home rule authority, it does not need specific statutory authority for its Ordinances—but it has that too. Two statutes afford Pittsburgh express authority to enact these Ordinances. The first gives Pittsburgh express authority “to regulate, prevent and punish the discharge of firearms . . . in the streets, lots, grounds, alleys, or in the vicinity of any buildings” in the municipality. 53 P.S. § 23131. The second similarly grants Pittsburgh the power “to regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places [of the municipality] and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.” 53 P.S. § 3703.

By giving municipalities the express authority to *prevent* the unnecessary firing and discharge of firearms in public places, the Legislature granted them broad power—not just to punish unnecessary use of guns, but to regulate in ways that will stop it from happening in the first place. The word “prevent” means to “to stop from happening; to hinder or impede.” Prevent, *Black’s Law Dictionary* (11th ed. 2019). The point is self-evident: When Smokey Bear warns that “[o]nly you can *prevent* wildfires,” he wants you to change your behavior to stop forest fires *before* they start. Prevention How-Tos, Smokeybear.com, <https://www.smokeybear.com/en/prevention-how-tos> (last visited

Apr. 22, 2020) (emphasis added). So too here. The Legislature granted the City the power to pass ordinances focused on stopping the unnecessary firing of firearms in public places before it happens, before there are unnecessary deaths and injuries.

That is what the Ordinances do. Regulating the “use” of assault weapons, large capacity magazines, rapid fire devices, and other dangerous weapons in “public places” is a direct way to reduce the likelihood of—and thereby “prevent”—unnecessary firing and discharges of firearms. *See* AW and LCM Ordinances. Notably, the Ordinances do not prevent mere carrying of a loaded firearm in public, and do not restrict one’s ability to use these weapons—even assault weapons or firearms fitted with large capacity magazines—in self-defense or for hunting or sport. Hence, they only are aimed to prevent and prohibit the *unnecessary firing* of these weapons in *public places*—the core features of the authorizing statutes.

Likewise, by its terms, the CAP provision is aimed at preventing, impeding, and hindering children from obtaining firearms and tragically shooting themselves, neighbors, and others. *See* ER §§ 1106.02, 1106.03, 1106.07. The ERPO orders are similarly aimed at preventing dangerous or unstable persons from misusing firearms because it is those persons who, the City reasonably determined, are more likely to unnecessarily and, again, tragically, discharge a firearm, killing themselves or others.³

³ Evidence suggests that ERPOs reduce suicides and mass shootings. One study found Connecticut’s ERPO law was associated with an almost 14 percent reduction in the state’s firearm suicide rate, and in the ten years after Indiana passed its ERPO law, firearm suicide decreased by 7.5 percent. Aaron Kivisto & Peter Phalen, *Effects Of Risk-*

ER §§ 1107.03-1107.16. Each locality has different needs, and may choose to use allotted powers to prevent gun violence in different ways. Pittsburgh, through its democratically elected representatives, decided that these measures were necessary to prevent (or hinder) gun violence within the City’s borders. And the two statutes that permit Pittsburgh to regulate to prevent discharge of firearms in public places afford just that power.

That is not to discount 18 Pa.C.S. § 6120, the preemption provision at the center of Plaintiffs’ challenge, discussed fully below. Because multiple statutes both granting and restricting a municipality’s authority to regulate firearms exist, these statutes must be reconciled, if possible. *In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017) (courts are “obligated to construe the [statutes] in harmony, if possible, so as to give effect to both”); 1 Pa.C.S. § 1932(b) (“Statutes in pari materia shall be construed together, if possible, as one statute.”); *see also Carroll v. Ringgold Educ. Ass’n*, 680 A.2d 1137, 1142 (Pa. 1996) (“[S]tatutes should be construed in harmony with the existing law, and repeal by implication is carefully avoided by the courts.”). And they must also be reconciled with a City’s “liberally construed” home rule authority, as described

Based Firearm Seizure Laws in Connecticut And Indiana on Suicide Rates, 1981-2015, 69 *Psychiatric Services* 855, 855-62 (2018). As to mass shooting, the U.S. Secret Service and the U.S. Department of Education studied targeted school violence incidents and found behavioral warning signs that caused others to be concerned in 93 percent of cases. U.S. Secret Service and U.S. Department of Education, *Prior Knowledge of Potential School-based Violence: Information Students Learn May Prevent a Targeted Attack* at 4 (2008), available at https://rem.s.ed.gov/docs/DOE_BystanderStudy.pdf.

above. *City Council of City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1326 (Pa. 1986) (“Where an ordinance conflicts with a statute, the . . . ordinance will be respected unless the conflict between the statute and the ordinance is irreconcilable.”).

That harmonization is possible here. As discussed below, the firearm preemption statutes, by their plain text, preempt only certain categories of firearm regulations: “ownership, possession, transfer [and] transportation” of “firearms, ammunition or ammunition components.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g). Any regulation by the City pursuant to its affirmative grants of authority to prevent discharge or its home rule powers can—and must—be upheld so long as it falls outside that specific preempted scope.

II. The City’s firearms ordinances are not preempted by §§ 6120 or 2962.

The Ordinances are not preempted by 18 Pa.C.S. § 6120(a) or 53 Pa.C.S. § 2962(g). By their plain text, those statutes only preempt four areas of local gun regulation. The Ordinances do not fall within any of those four categories. Even if there were any ambiguity based on the plain text, “[i]t bears repeating” that the Court “must resolve that ambiguity in the home-rule municipality’s favor.” *Penn. Restaurant and Lodging*, 211 A.3d at 823.

A. By its plain language, the Commonwealth has only preempted four categories of firearms regulations.

The first step in interpreting a statute is to examine its plain language. *Penn. Restaurant and Lodging*, 211 A.3d at 822. When that language is clear, as here, the inquiry

“begins and ends with the plain language of the statute,” as courts have no power to “add words” or expand a statute’s “scope and operation” through the guise of statutory interpretation. *Id.*; *Commonwealth v. Segida*, 985 A.2d 871, 875 (Pa. 2009).

The plain text of these statutes is clear—they preempt four categories of firearms regulation: (1) ownership; (2) possession; (3) transfer and (4) transportation. Section 6120(a) states: “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” Section 2962(g) repeats these four categories, stating: “A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.” Based on that plain language, then, local governments cannot regulate in the four enumerated areas—ownership, possession, transfer and transportation. *See Ortiz v. Commonwealth*, 681 A.2d 152, 155 (Pa. 1996) (“[T]he General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or [transportation] of firearms.”).

But outside of those four areas, there is no preemption of a locality’s authority to regulate firearms. Nothing in the plain language of these statutes preempts any local firearm regulation as long as it does not cover the possession, ownership, transfer, or transportation of firearms. “[A]lthough one is admonished to listen attentively to what a statute says[,] one must also listen attentively to what it does not say.” *Pilchesky v.*

Lackawanna Cty., 88 A.3d 954, 965 (Pa. 2014) (quoting *Commonwealth v. Johnson*, 26 A.3d 1078, 1090 (Pa. 2011)).

Here, the Legislature did not say that firearm “use” or any other types of firearm regulation outside of these four categories are preempted. It certainly could have, as many states across the country have. *See, e.g.*, Ariz. Rev. Stat. § 13-3108; Ala. Stat. § 29-35-145(a); Me. Stat. 25 § 2011(2); Mo. Stat. § 21.750(2); Mont. Code § 45-8-351(1); N.H. Rev. Stat. § 159:26(I); Okl. Stat. Section 21 § 1289.24(B); Ore. Rev. Stat. § 166.170; Tenn. Code Ann. § 39-17-1314(a); Utah Code § 53-5a-102(5); Wis. Stat. § 66.0409(2) (all explicitly preempting local laws that regulate the “use” of firearms). But it did not. Instead, the General Assembly specified only four areas of preemption. This “inclusion of a specific matter in a statute implies the exclusion of other matters.” *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223 (Pa. 2002). The upshot: outside of ownership, possession, transfer, and transportation, the City has authority to regulate firearms.

B. None of the City’s Ordinances fall within the four preempted categories.

None of the operative provisions of the City’s three firearm Ordinances fall within the four preempted categories specified in the statutes’ plain text, and thus they must be allowed to stand as an appropriate exercise of both the City’s home rule authority and additionally its power under 53 P.S. §§ 3703, 23131 to prevent the unnecessary discharge of firearms in public places within City boundaries.

Both the Assault Weapons Ordinance and the Large Capacity Magazine Ordinance regulate only the “use” of various firearms, ammunition, and nonfirearm weapons or accessories (e.g., rapid fire devices and armor or metal penetrating ammunition). Critically, “use” is not one of the preempted categories in sections 6120 or 2962. Nor is it defined in such a way as to overlap with any of the preempted categories. “Use” is defined in the Assault Weapons Ordinance to include discharging, loading, brandishing, or displaying a loaded assault weapon; pointing it at a person; or employing it for any unlawful purpose. AW § 1102.02(C). The Large Capacity Magazine Ordinance defines use in much the same way, but with respect to firearms fitted with large capacity magazines. *See* LCM § 1104.03(B). As the United States Supreme Court has clarified, based on common dictionary definitions, to “use” a firearm it needs to be “actively employed”—simple possession of a firearm or merely carrying one is not enough. *Bailey v. United States*, 516 U.S. 137, 143, 145-48 (1995).

Because of this narrow definition, to violate these two Ordinances, an individual has to do more than own, possess, transfer, or transport any of the listed firearms, ammunition, and accessories. Unlike local laws this Court has invalidated in the past, there is no ban on *owning* or *possessing* any type of firearm or ammunition. *See, e.g., NRA v. City of Philadelphia*, 977 A.2d 78 (Pa. Commw. Ct. 2009) (en banc), *overruled on other grounds by Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Commw. Ct. 2019). Nor is there a restriction on any sales or *transfers*. Firearm *transportation*, too, is unimpeded by these Ordinances. There is no restriction, for example, on an individual

carrying—concealed or openly—a loaded assault weapon, or one equipped with a large capacity magazine. Simply open carrying or transporting an assault weapon is not “actively” displaying it or brandishing it, so it does not come within the definition of “use” and is not prohibited.⁴ Nor do the Ordinances even prohibit all uses; there is no restriction on using these firearms and accessories for hunting or self-defense or in one’s home, another private location, gun store, or shooting range. AW § 1102.02(B); LCM § 1104.05(B). Rather, the definition of “use” is carefully crafted only to target potentially dangerous uses of firearms that occur in public places, and to fall outside of the scope of state preemption. Indeed, the Ordinance explicitly carves the four preempted categories out of its definition of “use,” ameliorating any concern that the Ordinances tread upon the preempted areas. AW § 1102.02(C) (“‘use’ . . . does not include possession, ownership, transportation or transfer”); LCM §§ 1104.02(C) (same), 1104.03(B) (same).⁵

⁴ While there is overlap between active display of a firearm and brandishing it, the two are not the same. “Brandishing” requires intent to “intimidate [a] person, regardless of whether the Firearm is directly visible to that person.” LCM § 1104.03(D); AW 1102.02(D).

⁵ In several cases, the court invalidated ordinances that limited the “use” of firearms as well as ownership, possession, transportation, or transfer, but none of the cases analyzed whether a “use” limitation on its own—as the Assault Weapons and Large Capacity Magazine Ordinances here—would be preempted. For example, in *Ortiz*, the Pittsburgh Ordinance provided that no person could “own, use, possess or transfer” any of the banned firearms. R. 887a. The Court invalidated the entire Ordinance because it regulated “the ownership, possession, transfer, or [transportation] of firearms” without considering whether the City could ban just the “use” of assault weapons. 681 A.2d at 155. No party argued that the ordinance should be severed to leave only the “use” ban in effect likely because the severability clause in that ordinance,

The Extreme Risk Ordinance, too, falls outside of the scope of preemption. Consider first the Child Access Provision, which imposes a fine if a “minor gains access to and uses the Firearm,” if the custodian knew or should have known that a minor was likely to gain access to it. ER § 1106.02(A). By its terms, this provision only applies if irresponsible storage of a firearm results in the “use” of that firearm, *id.*, and, again, “use” is not among the four preempted categories of regulation under state law.

To the extent that the provision incentivizes responsible storage of firearms, that subject, too—storage—is not preempted by state law. To be sure, the General Assembly could have preempted local firearm storage laws. Numerous other states expressly preempt local regulations related to firearms storage, in addition to ownership, possession, and other categories. *See, e.g.*, Ariz. Rev. Stat. § 13-3118(A) (preempting local laws “relating to the possession, transfer or storage of firearms”); Idaho Code § 18-3302J(2) (no locality may “regulate[] in any manner the sale, acquisition, transfer, ownership, possession, transportation, carrying or storage of firearms”); Ind. Code § 35-47-11.1-2 (barring local regulation of “the ownership, possession, carrying, transportation, registration, transfer, and storage of firearms”); Ky. Rev. Stat. §

unlike the severability clause in these Ordinances (see *infra* at Part V), did not allow for severing single words or phrases, but required severing the entire provision together. *See* R. 889a; *see also* *Dillon v. City of Erie*, 83 A.3d 467, 470, 473 (Pa. Commw. Ct. 2014) (invalidating ordinance banning the “possession and use” of firearms in City parks without considering whether “use”-only ban would be permitted); *FOAC v. Lower Merion Twp.*, 151 A.3d 1172, 1177 (Pa. Commw. Ct. 2016) (same as to ordinance prohibiting “carrying or discharging” firearms in a park).

65.870(1) (same with respect to the “manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms”); Nev. Rev. Stat. Ann. § 268.418(1)(b) (declaring the “regulation of the transfer, sale, purchase, possession, carrying, ownership, transportation, storage, registration and licensing of firearms” within the “exclusive” domain of the Legislature”). But Pennsylvania has not. By not preempting local firearm-storage regulations—a category commonly preempted by other states—the General Assembly left the regulation of storage to municipalities. *See Atowitz*, 812 A.2d at 1223. Thus, the City’s authority, particularly when liberally construed as it must be, encompasses the power to enact the Child Access Provision.

Lastly, the Court need not even consider the Extreme Risk Protection Order Provision because, as described in Part V, no plaintiff has standing to challenge it. But even so, it is not preempted. While a person subject to an ERPO can be forced to temporarily relinquish possession, and thus it is arguably closer to the preempted categories than any of the other parts of the Ordinances, it is not a decision by the City that prohibits possession, ownership, transfer, or transportation. Instead, it provides for a cause of action by family members and law enforcement, and it designates a state judicial officer, *see In re Reestablishment of the Magisterial District Within the 5th Judicial District*, 34 Pa.B. 6507 (2004) (establishing the Pittsburgh Municipal Court as part of the statewide judicial system), to be the decision-maker with respect to whether a weapon should be temporarily removed from a dangerous situation. Thus, it is qualitatively

different than the restrictions on possession previously invalidated by Pennsylvania courts, where cities have decided to outright ban possession, discussed in detail below.

C. LCM and rapid fire devices are not firearms, ammunition, or ammunition components.

The LCM Ordinance’s provisions regarding large capacity magazines (§ 1104.03) and rapid fire devices (§ 1104.04) are not preempted for a further reason: the preemption statutes are expressly limited to “firearms, ammunition, or ammunition components.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g) (preempting only laws regulating “firearms”). Large capacity magazines and rapid fire devices are not any of those.

A firearm magazine is not a “firearm, ammunition or ammunition component[.]” A firearm magazine is a spring-loaded container that holds cartridges, or ammunition, and is often detachable from the firearm. It is not the firearm itself. Under state law, a firearm is “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver or any such weapon.” 18 Pa. C.S. § 5515(a) (cross referenced in 18 Pa.C.S. § 6120(b)). While “frame” and “receiver” are not defined in the state code, under federal law they are defined synonymously as “[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” 27 C.F.R. § 478.11. That does not include the magazine, which can often be fully removed from the firearm’s frame or receiver. Likewise, the

magazine is not ammunition itself nor a component—i.e., a “part” or “ingredient”—of the ammunition; it is the place where the ammunition goes. *See Component*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/component>.

Rapid fire devices, too, are not “firearms, ammunition, or ammunition components.” As defined by the LCM Ordinance, rapid fire devices are devices that attach to or modify a firearm to accelerate the rate of fire with, for example, a “binary trigger,” “multi-burst trigger activator” or “trigger crank.” LCM § 1104.01(F). They are not the firearm itself, but an accessory to the firearm that can be added to the gun and are not necessary to its function. They are also not the ammunition itself or any component part of the ammunition.

While large capacity magazines⁶ and rapid fire devices are commonly referred to as “firearms accessories” (and some might even argue they are firearms “components”), neither of Pennsylvania’s preemption statutes, by their plain terms, extend to those types of objects—only to “*ammunition* components.” Again, like other states, Pennsylvania could have expressly preempted *firearm* components and accessories as well as ammunition components. *See, e.g.*, Ala. Code § 13A-11-61.3(a) (preempting laws

⁶ Many gun manufacturers and sellers advertise firearms magazines as firearms accessories. *See, e.g.*, Gun Accessories, www.Berettausa.com, (last visited Apr. 28, 2020), <https://www.berettausa.com/en-us/>; Magazines & Loaders, www.shopruger.com, (last visited Apr. 28, 2020), <https://shopruger.com/Magazines-Loaders/departments/5000/>; Magazines, SportsmansOutdoorSuperstore.com, (last visited Apr. 28, 2020), <https://www.sportsmansoutdoorsuperstore.com/category.cfm/sportsman/firearm-magazines>

respecting “firearms, ammunition, and firearm accessories”); Ky. Rev. Stat. Ann. § 65.870(1) (preempting local laws regarding “firearms, ammunition, components of firearms, components of ammunition, firearms accessories, or combination thereof”); La. R.S. 40:1796(A) (same as to “firearms, ammunition, or components of firearms or ammunition”). But the Pennsylvania Legislature did not choose to preempt firearm components and accessories. It is not for this Court to add words to the text of the statutes, especially here because courts are admonished to construe preemption statutes narrowly in favor of local authority.

Particularly in the context of preemption, the Pennsylvania Supreme Court has mandated that statutes be interpreted strictly in accordance with their text, with any ambiguity resolved in the municipality’s favor. *See Penn. Restaurant and Lodging*, 211 A.3d at 817. Thus, the High Court has time and time again read preempted categories narrowly. In *Huntly*, the Court held that a state laws preempting local ordinances “regarding mining or drilling *operations* are distinct from” and thus do not preempt, ordinances “regarding the proper *location* for such operations.” *Hoffman Mining Co., Inc. v. Zoning Bd. of Adams Twp.*, 32 A.3d 587, 600 (Pa. 2011) (citing *Huntley & Huntley, Inc. v. Borough Council of Oakmont*, 964 A.2d 855, 863–66 (Pa. 2009)). In *Hoffman Mining* the Court likewise held that a state law preempting “regulation of surfacing mining” did not displace local zoning laws directly addressing local setbacks for surface mining. *Id.* at 600.

So too here the Court should heed the narrow text of § 6120 and § 2962 and confine their preemptive scope to “ownership, possession, transfer or transportation” of “firearms, ammunition, and ammunition components.” The Court “cannot stress enough that a home rule municipality’s exercise of its local authority is not lightly intruded upon.” *Nutter*, 938 A.2d at 414. The Ordinances have been carefully crafted so as not to intrude upon these preempted categories; they do not, and even if there were any ambiguity as to whether they do, it must be construed to uphold the Ordinances.

III. The General Assembly has not preempted the entire field of firearms regulation.

Contrary to the trial court’s decision, the General Assembly has not preempted the entire field of firearms regulation. The trial court held that the UFA, 18 Pa. C.S. §§ 6101–27, “implicit[ly]” preempts “any local regulation pertaining to the regulation of firearms.” R. 945a. Its decision contravenes the plain text of the UFA’s preemption statute—§ 6120—which it did not even quote. Nor is its decision required by precedent. If not reversed, the trial court’s decision threatens to extend firearm preemption in Pennsylvania beyond where it has gone in any previous case.

A. The trial court’s decision rewrites the plain language of the statutes.

In holding that state law preempts the “entire field” of firearms regulation, the trial court rewrote § 6120, violating “a most fundamental canon of construction.” *Kiec v. Sherrerd*, 764 A.2d 39, 41 (Pa. 2001). As described above, by its terms, § 6120 only covers four categories of firearm regulation: ownership, possession, transfer, and

transportation. By extending preemption to “any” local regulation “pertaining to” firearms, the trial court, quite simply, added words to the statute that just do not exist. It not only added a whole new category to the list of preempted topics—firearm “use”—but wrote in a new provision preempting the “entire field” of firearm regulation. Courts do not have that power.

The trial court justified doing so by asserting that it was the “obvious intent of the Legislature to preempt this entire field.” R. 944a. But the “best indication of legislative intent” is to examine the “plain language” of the statute, which the trial court did not even quote. *E.D.B. ex rel. D.B. v. Clair*, 987 A.2d 681, 684 (Pa. 2009). “When the words of a statute are clear and free from all ambiguity,” as here, “the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921.

The Legislature could have, of course, explicitly preempted the field of firearms regulation in § 6120, but it did not. *See Nutter*, 938 A.2d at 416 (reasoning that “the General Assembly may preempt such legislation, and has done so in enough other cases that its collective awareness of the value of so providing in explicit terms cannot be disputed,” the fact that it “has not done so” defeats preemption). The General Assembly knows how to draft statutes that preempt the entire field. *Compare Harris-Walsh, Inc. v. Borough of Dickson City*, 216 A.2d 329, 334 (Pa. 1966) (concluding statute preempted field that stated “*all* coal stripping operations coming within the provisions of this act shall be under the *exclusive jurisdiction* of the department” (emphasis in original)) *with* 18 Pa.C.S. § 6120(a), (“No county, municipality or township may in any

manner regulate the *lawful ownership, possession, transfer or transportation* of firearms . . . (emphasis added)).

In the absence of explicit field preemption language, the Pennsylvania Supreme Court has mandated a stringent bar for implying field preemption. *Hoffman Mining*, 32 A.3d at 593. Thus far, the “Court has determined that the General Assembly has evidenced a clear intent to totally preempt local regulation in only three areas: alcoholic beverages, anthracite strip mining, and banking.” *Id.* Firearms is not one of them.

Regardless, the trial court relied on the fact that the UFA is a “comprehensive statute.” R. 945a. But that alone is not enough to imply field preemption. The Supreme Court rejected that same argument in *Hoffman Mining*, where the challengers asserted that a “comprehensive statutory scheme” evidenced that the Legislature has “implicitly forbidden” local enactments, even those not in direct conflict with state law. 32 A.3d at 606. The Court explained that “the mere fact that the General Assembly has enacted legislation in a field”—or even the extensive legislation in that case—“does not lead to the presumption that the state has precluded all local enactments in that field.” *Id.* at 593. “[R]ather, the General Assembly must clearly evidence its intent to preempt.” *Id.* That clear intent generally has to come from the text: “Absent a clear statement of legislative intent to preempt, state legislation will not generally preempt local legislation on the same issue.” *Id.* (quoting *Mars Emergency Med. Servs., Inc. v. Twp. of Adams*, 740 A.2d 193, 196 (Pa. 1999)); see also *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 314 (Pa. 1987) (“The state is not presumed to have preempted a field merely by legislating

in it. The General Assembly must clearly show its intent to preempt a field in which it has legislated.”). The Pennsylvania Supreme Court demands “clarity” “because of the severity of the consequences” of finding field preemption—extinguishing all local democratic power “in that area.” *Hoffman Mining*, 32 A.3d at 593.

The UFA does not “clearly evidence” its intent to preempt the entire field of firearms regulations. “Had the General Assembly intended to assume total responsibility and authority” over every single facet of firearms regulation, “the wording of [the statute] would surely have reflected such an intent.” *Id.* at 605–06. Instead, it “clearly evidence[s]” an intent to preempt only four categories of firearm regulation. The General Assembly’s “silence” as to other categories does not “manifest its desire to prevent” local regulation, “but rather its desire to leave the field open to locally tailored restrictions” outside of the preempted areas, “such as those contained in the Ordinance[s].” *Nutter*, 938 A.2d at 413–14. In short, the “express preemption language of [the UFA] does not contemplate field preemption.” *Penn. Waste Indus. Ass’n v. Monroe Cty. Mun. Waste Mgmt. Auth.*, 80 A.3d 546, 560 (Pa. Commw. Ct. 2013).⁷

⁷ Likewise, other states have rejected the notion that their express preemption provisions imply a broader field preemption. *See, e.g., Watson v. City of Seattle*, 189 Wash. 2d 149, 172, 401 P.3d 1, 12 (Wash. 2017) (holding that Washington’s express firearms preemption law did not occupy the field because “[l]egislative silence is a poor foundation on which to build a case for express field preemption”); *Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch.*, 918 N.W.2d 756, 762 (Mich. 2018) (holding that Michigan’s firearms preemption law did not occupy the field); *State v. Phillips*, 63 A.3d 51, 76 (Md. App. 2013) (“[T]he State has not so extensively regulated the field of firearm use, possession, and transfer that all local laws relating to firearms are preempted.”).

Nor is field preemption congruent with the overall statutory scheme. The General Assembly has expressly granted municipalities the authority to regulate, prevent, and punish the discharge of weapons in public places, as described above. *See* 53 P.S. §§ 23131, 3703. It would be antithetical to that grant of local authority to hold that the General Assembly instead meant to quash all local regulation related to firearms. *See Waste Mgmt. of Penn., Inc. v. Com., Dep't of Env'tl. Prot.*, 107 A.3d 273, 280 (Pa. Commw. Ct. 2015) (“Field preemption is not applicable because counties and municipalities have roles in implementing [the recycling Act’s] goals and purposes.”); *see also* Municipal Control Over Hunting, 17 Op. Att’y Gen. 64 Pa. D. & C.2d 233, 236–37, 1974 WL 377832 (1974) (“It appears clear from [53 PS §§ 23131, 3703, 37403(26)] that most cities are given the right to control to a certain extent the discharge of weapons subject to prevailing State law.”). It would be tantamount to invalidating those statutes for this Court to find that the UFA implies field preemption. *See Carroll v. Ringgold Educ. Ass’n*, 680 A.2d 1137, 1142 (Pa. 1996) (“[S]tatutes should be construed in harmony with the existing law, and repeal by implication is carefully avoided by the courts.”). The way to harmonize the statutory scheme is to recognize that the UFA, per its express preemption provision in § 6120, only bars local regulation of ownership, possession, transfer, and use of firearms, ammunition, and ammunition accessories, and cities can otherwise make locally tailored regulations to prevent gun violence consistent with their needs.

B. The trial court’s decision extends beyond all existing precedent.

Not only does the trial court’s field preemption decision break from the text, it also breaks from precedent. No previous decision of the Supreme Court of Pennsylvania or this Court has held that a local firearms ordinance that falls exclusively outside of the four enumerated categories (ownership, possession, transfer, and transportation) is preempted. Likewise, no firearms preemption case has addressed an ordinance, as with the Assault Weapons and Large Capacity Magazine Ordinances, that is narrowly and exclusively limited to the “use” of particular firearms and accessories. The trial court and the Plaintiffs cite to some broad language from previous cases suggesting field preemption, but they take that language out of context.

Examining the existing precedents demonstrates that they have only invalidated ordinances that fall within the preempted categories listed in § 6120: ownership, possession, transfer, and transportation. *First*, courts have held that blanket prohibitions on *owning* and *possessing* certain types of firearms are preempted. *See Ortiz*, 681 A.2d at 155 (concluding that the “municipalities’ attempt to ban the possession of certain types of firearms is constitutionally infirm”); *NRA v. Philadelphia*, 977 A.2d at 80, 82 (invalidating local assault weapons ordinance that “prohibit[ed] the possession, sale and transfer of certain offensive weapons.”).

Second, courts have held that ordinances restricting the *possession* or *transportation* (i.e., carrying) of firearms in particular public places, like parks, were preempted. *See Dillion v. City of Erie*, 83 A.3d 467, 473 (Pa. Commw. Ct. 2014) (invalidating an ordinance

“regulating the possession of firearms in parks” because section 6120(a) “precludes the City from regulating the lawful possession of firearms”); *FOAC v. Lower Merion Twp.*, 151 A.3d 1172, 1177 (Pa. Commw. Ct. 2016) (invalidating locality’s “broad proscription against carrying or discharging any kind of firearm in a park absent a ‘special permit’”).

Lastly, this Court has held that ordinances regulating the *transfer* of firearms are preempted. *See Schneek v. City of Philadelphia*, 383 A.2d 227, 228-29 (Pa. Commw. Ct. 1978) (invalidating ordinance stating that “no person shall acquire or transfer any firearm in the City” without a license); *NRA v. City of Philadelphia*, 977 A.2d at 82 (local ordinance banning straw purchases preempted by state law).

All of these holdings are consistent with the City’s plain-text construction of the statutes: that § 6120 (and § 2962) preempt only local laws on “ownership, possession, transfer or transportation.” None of these cases depends on a court holding that the state has preempted the *entire field* of firearms regulation.

The key language that the trial court relied on in finding field preemption is from the Pennsylvania Supreme Court’s decision in *Ortiz v. Commonwealth*: “[R]egulation of firearms is a matter of concern in all Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” R. 945a (quoting *Ortiz*, 681 A.2d 152, 156 (Pa. 1996)). Taken in isolation, this may sound like a declaration of field preemption. But in context, it is not.

In *Ortiz*, the Court considered whether local home-rule governments could pass ordinances that “regulate the ownership of so-called assault weapons” despite the state’s then newly modified preemption statute, § 6120. 681 A.2d at 154–55. The Court said “no.” Looking at the text of § 6120, the Court held: “[T]he General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or transportation of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate”—namely, “the possession of certain types of firearms” *Id.* at 155. Indeed, the municipalities conceded that the ordinances regulated within these preempted categories. *Id.* at 154.

Given that the assault weapons ban “undisputed[ly]” fell within the text of § 6120, the city’s challenge was to the *validity* of the preemption statute, not its *scope*. *Id.* And that is where the language the trial court cites arises. Philadelphia and Pittsburgh claimed that a home rule municipality could not be deprived of its ability to protect its citizens from violence, and hence that regulating firearms is “an irreducible ingredient of constitutionally protected Home Rule.” *Id.* at 156. The cities argued that home rule municipalities could be restricted in their powers, but “only when the General Assembly has enacted statutes on matters of statewide concern.” *Id.*

It was in this context that the Court held that the regulation of firearms is a matter of statewide concern. It reasoned that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern.” *Id.* As the Court reasoned, “[t]he constitution,” of course, extends also to Pittsburgh and

Philadelphia, “[t]hus regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Id.* With this background, it is clear that the Court was talking about the authority of the state to enact § 6120 and, in particular, to preempt local laws about the “ownership” of firearms. This statement on the *validity* of § 6120 did not abridge what this Court later called *Ortiz*’s “crystal clear holding” on that statute’s *scope*: that it “‘denie[s] all municipalities the power to regulate ownership, possession, transfer or possession of firearms.’” *NRA v. City of Philadelphia*, 977 A.2d at 82 (quoting *Ortiz*, 681 A.2d at 155).

The upshot: the Court did not declare in *Ortiz* that § 6120 or the UFA generally implies that the “entire field” of firearms regulation is preempted, as the trial court here held. It did not identify the requisite “clear[] evidence” that the Legislature intended field preemption, as described above. *See Hoffman Mining*, 32 A.3d at 593. And, hence, unsurprisingly, even after *Ortiz*, the Pennsylvania Supreme Court did not identify firearms regulation among the few areas where there is field preemption in state law. *Id.* (identifying field preemption in “only three areas: alcoholic beverages, anthracite strip mining, and banking”). That is why, even after *Ortiz*, this Court has rejected firearms preemption challenges and upheld local regulation of firearms at least twice—holdings that are incompatible with field preemption. *See, e.g., Minich v. Cty. of Jefferson*, 869 A.2d 1141 (Pa. Commw. Ct. 2005) (upholding an ordinance designed to keep guns out of court facilities); *Gun Range, LLC v. City of Philadelphia*, No. 1529 C.D. 2016, 2018 WL

2090303, at *6 (Pa. Commw. Ct. May 7, 2018) (upholding a zoning regulation affecting the location of gun shops).

The City does not dismiss that the quoted language from *Ortiz* has been repeated multiple times in subsequent cases. Typically, courts have included it as part of long block quotations from *Ortiz*. See *FOAC v. Lower Merion Twp.*, 151 A.3d at 1176; *Dillon*, 83 A.3d at 472–73; *NRA v. City of Philadelphia*, 977 A.2d at 83; *Clarke v. House of Representatives*, 957 A.2d 361, 363–64 (Pa. Commw. Ct. 2008) (all quoting the “not city councils” language in block quotations from *Ortiz*). But this Court should not allow the passive repetition of this overbroad language to solidify it into an atextual holding massively expanding the scope of preemption beyond what the Legislature enacted in § 6120 and § 2962. Despite repeating this language, none of these cases rests on a finding that only the state legislature, and “not city councils” may legislate *at all* regarding firearms. Instead, as described above, they largely focused on the fact that a municipality was attempting to regulate one of the four categories explicitly preempted in § 6120. See *FOAC v. Lower Merion Twp.*, 151 A.3d at 1181 (invalidating ordinance because it regulated “firearm *possession*”); *Dillon*, 83 A.3d at 473 (ordinance preempted because state law “precludes the City from regulating the lawful *possession* of firearms”).⁸

⁸ A footnote in *Commonwealth v. Hicks*, likewise cites *Ortiz* referring to the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth.” 208 A.3d 916, 926 n.6 (Pa. 2019). But that case was about the legality of searches and seizures and cited *Ortiz* only in noting that firearms licensing laws are prescribed by state, not municipalities. It did not address preemption; it is passing dicta.

The decision in *Clarke*, moreover, does not support the trial court’s field preemption decision. In that case, after repeating the above-quoted language from *Ortiz*, this Court summarized that firearms “is an area of statewide concern over which the General Assembly has assumed sole regulatory power.” *Clarke*, 957 A.2d at 364. The trial court then cited that language in invalidating the Ordinances here. But that language in *Clarke* is dicta. As the Court itself recognized in *Clarke*, its decision was a limited one. Notwithstanding any broad discussion of § 6120, the case turned on standing. The Ordinances in *Clarke* “specifically provide[d]” that they would become effective only “upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” *Id.* at 362. Because it was “undisputed” that the General Assembly had “not done so,” the Court found that “the very terms of the ordinance would preclude [its] granting the relief requested.” *Id.* at 365. So the ordinances were inoperative without Court intervention and regardless of anything the Court said about § 6120. *Id.* Beyond that justiciability holding, the rest is dicta.⁹ See *Gulnac by Gulnac v. S. Butler Cty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991) (“The trial court’s decision on standing ended this case” and other statements were “academic and advisory only.”); *Mt. Lebanon v. Cty. Bd. of Elections of Allegheny Cty.*, 368 A.2d 648, 650 (Pa. 1977) (“Since

⁹ The Supreme Court affirmed *Clarke* in a per curiam order without adopting the opinion of the Commonwealth Court. That order has no precedential value. See *Com. v. Tilghman*, 673 A.2d 898, 904 (Pa. 1996) (explaining that unless the Supreme Court adopts the opinion of the lower tribunal in its order, the order “is not to be interpreted as adopting the rationale employed by the lower tribunal”).

an alternative, nonconstitutional ground existed and was discussed, the statement in question was not only dictum, but dictum that flew in the face of existing case law and proper appellate procedure.”). This dicta from *Clarke*, and the out-of-context and overbroad statements from *Ortiz*, need not be—and should not be—used to rewrite and expand the scope of Pennsylvania’s firearm preemption statutes and quash local democracy.

To the extent, moreover, that this Court reads the above-quoted language from *Clarke* or its other precedent interpreting *Ortiz* as controlling and requiring it to preempt the Ordinances despite their compliance with the plain text of § 6120 and § 2962 (it shouldn’t), those cases should be reconsidered. It has been more than twenty years since the Pennsylvania Supreme Court has addressed the Commonwealth’s firearm preemption laws. In that time, large cities like Pittsburgh and Philadelphia—bearing the brunt of the gun-violence epidemic—have been hamstrung in their ability to protect their residents. This Court has already identified ways that language from prior decisions has been interpreted to go beyond the statute’s text. *See NRA v. City of Philadelphia*, 977 A.2d at 82 (criticizing prior decisions for not recognizing that § 6120 only prohibits local regulation of the “lawful” ownership, possession, transportation and use and preempting, but feeling compelled by precedent to nevertheless preempt local regulation of “unlawful” firearm activity). Here, too, it should sound the alarm that courts need to realign their precedents to the text of the statutes. Pittsburgh respectfully

submits that now is the time for the courts of this Commonwealth to revisit these statutes and heed the Constitution's mandate to respect local democracy.

IV. No plaintiff has standing to challenge the City's ERPO provision.

The City also asserts a separate defense specifically as to the ERPO provision: no plaintiff has standing to challenge it, so that portion of the complaint must be dismissed on that basis. The trial court's analysis as to standing did not focus on the ERPO provision. It was a single sentence stating: "A review of the Interrogatories and Answers thereto establish that all Plaintiffs have Declaratory Judgment Standing to challenge [the] Ordinances." R. 944a. That is wrong as to the ERPO provision.

"A party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action." *Nye v. Erie Ins. Exch.*, 470 A.2d 98, 100 (Pa. 1983). There is no exception for cases brought under the Declaratory Judgment Act. *See Penn. State Lodge v. Dep't of Labor & Indus.*, 692 A.2d 609, 613 (Pa. Commw. Ct. 1997). To establish standing, plaintiffs must demonstrate that they have been aggrieved by the challenged action, which requires that they have a "substantial, direct, and immediate interest in the outcome in the litigation." *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (en banc). Their interest cannot be "remote or speculative." *Id.*

While the City does not contest standing as to any other operative parts of the Ordinances, none of the three individual plaintiffs has directly suffered, or is imminently (or ever) likely to suffer, an injury stemming from the ERPO provision. Specifically,

none of the plaintiffs established that they were a risk to themselves or others, and hence that they were ever at risk of an ERPO order being issued against them. As the interrogatories demonstrate, each plaintiff affirmatively stated that he was *not* at risk of harming himself or another with a firearm. R. 757a; R. 779a-80a; R.801a. There is no basis in the record, then, for believing that any of these plaintiffs will ever be subject to an Extreme Risk Protection Order.

The most the plaintiffs can muster for standing is their allegations in the complaint that they could be subject to an emergency order because they have purchased a firearm within the last 180 days and two plaintiffs use guns for their jobs—which are two of eight non-dispositive factors for a judge to consider before issuing an ERPO. *See* R. 48a; R. 52a; R. 55a; ER § 1107.04(D)(7) (listing “recent acquisition or attempted acquisition of a Firearm” and use or control of a Firearm as a part of the respondent’s employment among potential factors). But an ERPO cannot be issued simply because one recently purchased a firearm, nor simply because a person uses a gun as part of their job (nor even the two in combination). Indeed, the ERPO provision is neutral as to how the factors should be taken into account, and in some instances using a gun as part of employment may counsel against issuing an ERPO. The determinative inquiry, as set forth in the Ordinance, is whether a person is at risk for harming themselves or another—which each Plaintiff has expressly said he is not. The possibility of any harm from the ERPO order to any of these plaintiffs is “remote” and “speculative.”

The Plaintiffs primarily rely on this Court’s recent decision in *FOAC v. City of Harrisburg*, urging that plaintiffs need not show they are likely to be subject to enforcement to have standing to challenge a law. 218 A.3d 497. That case is now being reviewed by the Pennsylvania Supreme Court.¹⁰ Regardless, that case supports the City, not the Plaintiffs. There, this Court held that the plaintiffs had standing to challenge a city’s laws that, *inter alia*, prohibited individuals from discharging firearms except in approved locations, prohibited possession and use of firearms in city parks, and required individuals to report a lost or stolen firearm within 48-hours of discovering its loss or theft. *Id.* at 503. Violation of any of the laws in that case, unlike here, could lead to criminal proceedings and imprisonment. *Id.*

In holding that the plaintiffs—each a gun owner—had standing to challenge these specific laws, the Court concluded that the ordinances had a “current impact” on the plaintiffs’ interests and, therefore, that they did not have to wait until enforcement to bring their lawsuit. *Id.* at 514. The ordinances meant that the plaintiffs could not carry or use their firearms in ways they desired to without risking criminal penalties. Without

¹⁰ The Pennsylvania Supreme Court granted allocatur on the question: “Whether the Commonwealth Court’s decision to grant Plaintiffs, who have not been cited under the City of Harrisburg’s gun control ordinances and for whom any harm is remote and hypothetical, individual and associational standing to challenge the City of Harrisburg’s gun control ordinances, directly conflicts with this Court’s jurisprudence.” *See* Order Granting Allocatur, *FOAC v. Harrisburg*, No. 724 MAL 2019 (Apr. 28, 2020). If the Pennsylvania Supreme Court reverses the Commonwealth Court’s decision in *Harrisburg*, it would only further the City’s argument that the Plaintiffs here lack standing to challenge the ERPO provision given that they have not demonstrated any likelihood that it would be enforced against them.

standing for their pre-enforcement lawsuit, the plaintiffs were faced with a dilemma either “curb their conduct to conform to the ordinances’ mandates or . . . willfully violate the law and face criminal penalties.” *Id.* at 513. And although the reporting obligation was “triggered only in the event a firearm is lost or stolen,” the Court reasoned that “the reporting obligation nonetheless exists now” and “Plaintiffs will have only 48 hours to comply”—making it a present interest that is not “remote.” *Id.* at 509.

Notably, however, the Court also held that the plaintiffs did *not* have standing to challenge a separate ordinance that prohibited possessing and transferring firearms if the mayor declared a state of emergency. The Court recognized that, because the State of Emergency Ordinance only became operative in remote, narrow circumstances, it did “not currently impose any duty on the Individual Plaintiffs,” and in no way interfered with their current “ability to use or possess firearms within the City.” *Id.* at 509.

This precedent undermines the Plaintiffs’ standing argument because Pittsburgh’s ERPO provision is akin to the Emergency Ordinance in *Harrisburg* and distinguishable from the other ordinances in that case. Unlike the other ordinances in *Harrisburg*, Pittsburgh’s ERPO provision does not restrict any actions of the Plaintiffs and thus has no “current impact” on them. It does not prohibit them from carrying or using their firearms in any place or manner. Hence, there is no Hobson’s choice that was the lynchpin in the Court’s conclusion in favor of standing. Quite simply, no

Plaintiff faces jailtime based on the ERPO provision if he does not “curb” his behavior. Unlike the lost/stolen ordinance in *Harrisburg*, the ERPO provision does not place any affirmative obligations upon Plaintiffs now; the ERPO provision does *not require* Plaintiffs to report persons likely to be of harm to themselves or others. Instead, like the Emergency Order ordinance in *Harrisburg*, the Plaintiffs’ interest with respect to the ERPO provision is speculative and remote because no plaintiff is likely ever to experience an emergency order. A plaintiff gun owner who has a history of violence, domestic abuse, or other reasonable basis to be concerned that an order could be issued against them could perhaps challenge the ERPO provision. But, as the Court reasoned there, the Plaintiffs here likewise have “fail[ed] to allege any facts in their Complaint” demonstrating “that this particular ordinance directly and immediately affects, regulates, or impairs the Individual Plaintiffs’ possession, use or enjoyment of their firearms.” *Id.* at 510. The individual Plaintiffs, therefore, lack standing.

Nor is there standing for the organizational Plaintiffs, Firearm Owners Against Crime, Firearm Policy Coalition, and Firearm Policy Foundation. Their only claim to standing is derivative of their individual members’ injuries, pointing to the individual Plaintiffs described above. *See* R. 656a; R. 829a-31a; R. 836a-38a; R. 843a-45a. “[S]tanding” is not conferred “simply by virtue of [an] organizational purpose.” *Armstead v. Zoning Bd. of Adjustment of City of Philadelphia*, 115 A.3d 390, 400 (Pa. Commw. Ct. 2015). An organization may have standing to bring suit as a representative of its members only if it “allege[s] that at least one of its members is suffering immediate or

threatened injury as a result of the challenged action.” *Unified Sportsmen of Penn. ex rel. Their Members v. Pennsylvania Game Comm’n*, 903 A.2d 117, 122 (Pa. Commw. Ct. 2006); *see also Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525 (Pa. Commw. Ct. 2018). Because the individual plaintiff members do not have standing to challenge the ERPO provision, neither do the organizations.

V. To the extent this Court determines that any parts of the City’s Ordinances are invalid, it should sever them and uphold the remaining portions of the Ordinances.

Were this Court to determine that, contrary to the arguments above, any part of these Ordinances is preempted or otherwise invalid, it must sever that part of the Ordinances and allow the remaining portions to stand. Each of the Ordinances—indeed, each provision within each of the Ordinances—contains the same detailed severability clause. AW §§ 1101.9, 1102.07; LCM §§ 1104.09, 1105.07; ER §§ 1106.06, 1107.19. It specifies that if a court concludes that any part of the Ordinances is invalid, the court should excise to the minimum extent possible (e.g., just a single phrase, sentence, subsection, or provision) and that it “shall not affect” the validity of the remaining parts of the Ordinances. It reads:

Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons

Id. Accordingly, the City expressed its clear intention that any infirmity regarding one provision, or part of one provision, should be severed.

The trial court did not even consider severability and invalidated all three Ordinances writ large. R. 941a-46a. Even assuming that, as the trial court erroneously determined, the UFA requires field preemption of firearm regulations, it still was overbroad to invalidate everything. The trial court inexplicably invalidated the provision regarding *nonfirearms*, prohibiting the City from regulating bombs, bazookas, and grenades, and the provision about publicly carrying facsimile or fake firearms. *See* AW §§ 1101.02, 1101.03.

Additionally, the trial court invalidated the dormant prohibitions on large capacity magazines and assault weapons that do not even go into effect until authorized by the General Assembly or the Pennsylvania Supreme Court. *See* LCM § 1105.06; AW § 1103.02. These are calls-to-action, like a proclamation, and not actionable laws. As the City argued below, no one has standing to challenge these laws because they are inoperative; *Clarke* held as much, as described above. *See Clarke*, 957 A.2d at 365. And they are not preempted because they do not “regulate” anything. 18 Pa.C.S. § 6120.

More relevant, to the extent that the Court concludes that any part of the Ordinances violates the plain language of § 6120 by regulating ownership, possession, transfer, or transportation, it should remove the parts that intrude on those spheres but allow the rest of the Ordinances to remain. It is that plain language that should guide the preemption analysis and any severability analysis. The City crafted the Ordinances

carefully not to intrude on those areas, as described above. But if the Court disagrees, only minimal portions should be severed.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court reverse the trial court decision and hold that its Ordinances are not preempted.

Date: April 30, 2020

Respectfully Submitted

By: s/ Kelly Iverson
Kelly K. Iverson, Esquire

s/ Yvonne S. Hilton
Yvonne S. Hilton, City Solicitor

City of Pittsburgh, Department of Law

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Kelly K. Iverson, Esquire
Attorney for the City of Pittsburgh

Exhibit A

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

FIREARM OWNERS AGAINST CRIME,
FIREARM POLICY COALITION, INC;
FIREARM POLICY FOUNDATION;
MATTHEW BOARDLEY, SAADYAH
AVERICK, FRED RAK,

No. GD 19-005330

Plaintiffs,

v.

CITY OF PITTSBURGH, MAYOR WILLIAM
PEDUTO; COUNCILMAN BRUCE KRAUS,
COUNCILMAN COREY O'CONNOR;
COUNCILMAN R. DANIEL LAVELLE;
COUNCILWOMAN DEB GROSS;
COUNCILWOMAN ERIKA
STRASSBURGER; and COUNCILMAN
RICKY BURGESS,

Defendants.

OPINION AND ORDER OF COURT

Honorable Joseph M. James

Copies Sent To:

Joshua Prince, Esquire
Eric Tirschwell, Esquire
William James Tayler, Esquire
Ryan Gerber, Esquire
Kelly K. Iverson, Esquire
John Doherty, Esquire
Wendy Kobee, Esquire

DEPT OF PUBLIC RECORDS
CIVIL DIVISION
ALLEGHENY COUNTY PA

2019 OCT 29 PM 3:23

FILED

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

FIREARM OWNERS AGAINST CRIME,
FIREARM POLICY COALITION, INC;
FIREARM POLICY FOUNDATION;
MATTHEW BOARDLEY, SAADYAH
AVERICK, FRED RAK,

Plaintiffs,

v.

CITY OF PITTSBURGH, MAYOR
WILLIAM PEDUTO; COUNCILMAN
BRUCE KRAUS, COUNCILMAN
COREY O'CONNOR; COUNCILMAN R.
DANIEL LAVELLE; COUNCILWOMAN
DEB GROSS; COUNCILWOMAN
ERIKA STRASSBURGER; and
COUNCILMAN RICKY BURGESS,

Defendants.

No. GD 19-005330

OPINION

James, J.

October 29, 2019

Before the Court are two motions. Plaintiffs have filed a Motion for Summary Judgment and the Defendants have filed a Cross Motion for Summary Judgment. For the reasons that follow, the Court finds that Plaintiffs have established standing and that the Uniform Firearms Act 18 Pa. C.S. §§ 6101-6127 precludes the City from passing these Ordinances. As such, the Court will grant Plaintiffs' Motion for Summary Judgment and deny the City's Cross Motion for Summary Judgment.

The Plaintiffs are three organizations: Firearm Owners Against Crime “FOAC”, Firearms Policy Coalition, Inc. “FPC”, Firearms Policy Foundation “FPF”, and three individuals: Saadyah Averick, Matthew Boardley and Fred Rak. The Defendants are Mayor William Peduto, Councilman Bruce Kraus, Councilman Corey O’Connor, Councilman R. Daniel Lavelle, Councilwoman Deb Gross, Councilwoman Erika Strassburger and Councilman Ricky Burgess.

Summary judgment is appropriate when “there is no genuine issue of any material fact as to a necessary element of the cause of action or defense” and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. No. 1035.2. In ruling on a motion for summary judgment, the facts must be viewed in light most favorable to the non-moving party. Ertel v. Patriot News, Co., 674 A.2d 1038, 1041 (Pa. 1996).

The underlying Complaint for Declaratory Judgment and Injunctive Relief was filed contending that the City violated numerous statutory and constitutional provisions by enacting Ordinances 2018-1218, 2018-1219, 2018-1220 and erecting a sign in front of the City-County Building. On or about December 14, 2018, the City announced its intent to introduce three proposals regulating firearms, ammunition and firearm accessories. On January 2, 2019, the City erected a sign outside of the City-County Building declaring it unlawful to possess a firearm within the building. On April 9, 2019, Mayor Peduto signed the Ordinances into law after City Council voted in favor of enactment. On May 20, 2019, this Court indefinitely stayed the effective date of the Ordinances.

Ordinance 2018-1218 regulates the use of assault weapons in any public place within the City. Ordinance 2018-1219 prohibits the use of large capacity magazines in any public place within the City. Ordinance 2018-1220 provides a process by which a

court may enter an order prohibiting a person who poses an imminent risk to themselves or others from possessing or acquiring a firearm. The Ordinances are attached to the Plaintiffs' Complaint as Exhibits C, D and E.

A review of the Interrogatories and Answers thereto establish that all Plaintiffs have Declaratory Judgment Standing to challenge Ordinances 2018-1218, 2018-1219 and 2018-1220.

As its name indicates, the Pennsylvania Uniform Firearms Act ("UFA") 18 Pa. C.S. §§ 6101-6127 regulates the entire field of firearms and ammunition across the state of Pennsylvania. Two types of preemption, express and field, are possibly implicated by a challenge of this Ordinance. The City has expended a large amount of energy attempting to categorize the restricted behavior in such a way that it is not expressly prohibited by § 6120 of the UFA. Despite the City's efforts to avoid the specific preemption set forth in § 6120, they are not able to avoid the obvious intent of the Legislature to preempt this entire field. The UFA purports to regulate firearms and ammunition in the Commonwealth whether a person is using, brandishing, carrying or loading them.

The Supreme Court stated in Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 964 A.2d 855 (Pa. 2009) that "[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations." The Court held "[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field." Id. at 862. "[L]ocal legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow." Id. (citing Liverpool Township v. Stephens, 900 A.2d 1030, 1037

(Pa. Cmwlth. 2006)). “[R]egulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” Ortiz v. Commonwealth, 681 A.2d 152, 156 (Pa. 1996). The regulation of anything involving firearms is that “which the General Assembly has assumed sole regulatory power.” Clarke v. House of Representatives of the Commonwealth of Pa., 957 A.2d 361, 364 (Pa. Cmwlth. 2008)

Stated simply, under the doctrine of field preemption, the UFA preempts any local regulation pertaining to the regulation of firearms. The Uniform Firearms Act is a comprehensive statute that evidences an intent by the Legislature to preempt the entire field of firearms and ammunition across the state of Pennsylvania.

Therefore, for the foregoing reasons, the Plaintiffs’ Motion for Summary Judgment is granted and the City’s Cross Motion for Summary Judgment is denied.

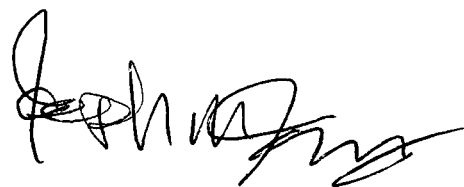
A handwritten signature in black ink, appearing to be "John [unclear]", written in a cursive style.

Exhibit B

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

FIREARM OWNERS AGAINST CRIME,
FIREARM POLICY COALITION, INC;
FIREARM POLICY FOUNDATION;
MATTHEW BOARDLEY, SAADYAH
AVERICK, FRED RAK,

Plaintiffs,

v.

CITY OF PITTSBURGH, MAYOR
WILLIAM PEDUTO; COUNCILMAN
BRUCE KRAUS, COUNCILMAN
COREY O'CONNOR; COUNCILMAN R.
DANIEL LAVELLE; COUNCILWOMAN
DEB GROSS; COUNCILWOMAN
ERIKA STRASSBURGER; and
COUNCILMAN RICKY BURGESS,

Defendant.

No. GD 19-005330

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CIVIL DIVISION
ALLEGHENY COUNTY PA

ORDER OF COURT

AND NOW, this 29th day of October 2019, based upon the foregoing
Opinion, Ordinances 2018-1218, 2018-1219, 2018-1220 are void and unenforceable due
to field preemption by the Legislature.

By the Court:

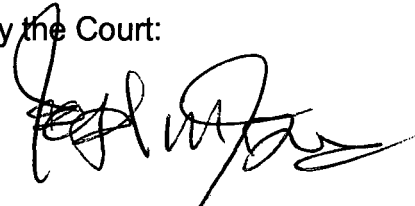


Exhibit C



Legislation Details (With Text)

File #:	2018-1218	Version:	3
Type:	Ordinance	Status:	Passed Finally
File created:	12/14/2018	In control:	Committee on Public Safety Services
On agenda:	3/27/2019	Final action:	4/2/2019
Enactment date:	4/2/2019	Enactment #:	14
Effective date:	4/9/2019		
Title:	An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by repealing Chapter 607: Firearms, Ammunition, and Other Weapons in its entirety, and enacting and adding Article XI: Weapons, Chapter 1101: General Weapons Provisions, Chapter 1102: Use of Assault Weapons in Public Places, and Chapter 1103: Authorized Prohibition of Assault Weapons to the Pittsburgh Code of Ordinances in order to meet the public safety needs of residents. (Public Hearing held 1/24/19; Post Agenda held 2/12/19)		
Sponsors:	Corey O'Connor, Erika Strassburger, Bruce A. Kraus, R. Daniel Lavelle, Reverend Ricky V. Burgess, Deborah L. Gross		
Indexes:	PGH. CODE ORDINANCES TITLE 06 - CONDUCT		
Code sections:			
Attachments:	1. 2018-1218 VERSION 2, 2. 2018-1218 [Resource A] An Updated Assessment of the Federal Assault Weapons Ban- Impacts on Gun Markets and Gun Violence, 1994-2003, 3. 2018-1218 [Resource B] Gunshot wounds, ballistics, bullets, weapons, 4. 2018-1218 [Resource C] Declaration of John J. Donohue, 5. 2018-1218 [Resource D] Declaration of Lucy P. Allen, 6. 2018-1218 [Resource E] Criminal Use of Assault Weapons and High-Capacity Firearms- An Updated Examination of Local and National Sources, 7. 2018-1218 [Resource F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 8. 2018-1218 [Resource G] Lethality of Civilian Active Shooter Incidents, 9. 2018-1218 [Resource H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 10. 2018-1218 [Resource I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban, 11. 2018-1218 [Summary A] An Updated Assessment of the Federal Assault Weapons Ban, 12. 2018-1218 [Summary B] Gunshot Wounds- A Review of Ballistics, Bullets, Weapons, and Myths, 13. 2018-1218 [Summary C] Declaration of John J. Donohue, 14. 2018-1218 [Summary D] Declaration of Lucy P. Allen, 15. 2018-1218 [Summary E] Criminal Use of Assault Weapons and High-Capacity Firearms- an Update Examination of Local and National Sources, 16. 2018-1218 [Summary F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 17. 2018-1218 [Summary G] Lethality of Civilian Active Shooter Incidents, 18. 2018-1218 [Summary H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 19. 2018-1218 [Summary I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban		

Date	Ver.	Action By	Action	Result
4/9/2019	3	Mayor	Signed by the Mayor	
4/2/2019	3	City Council	AMENDED BY SUBSTITUTE	Pass
4/2/2019	3	City Council	Passed Finally, As Amended	Pass
3/27/2019	2	Standing Committee	Affirmatively Recommended	Pass
3/20/2019	2	Standing Committee	AMENDED BY SUBSTITUTE	Pass
3/20/2019	2	Standing Committee	Held in Committee	Pass

3/13/2019	1	Standing Committee	Motion	Pass
3/13/2019	1	Standing Committee	Held in Committee	Pass
2/12/2019	1	Committee on Hearings	Post Agenda Held	
1/24/2019	1	Committee on Hearings	Public Hearing Held	
1/9/2019	1	Standing Committee	Held for Post Agenda	
1/3/2019	1	Standing Committee	Held for Public Hearing	Pass
12/18/2018	1	City Council	Read and referred	

An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by repealing Chapter 607: Firearms, Ammunition, and Other Weapons in its entirety, and enacting and adding Article XI: Weapons, Chapter 1101: General Weapons Provisions, Chapter 1102: Use of Assault Weapons in Public Places, and Chapter 1103: Authorized Prohibition of Assault Weapons to the Pittsburgh Code of Ordinances in order to meet the public safety needs of residents.

(Public Hearing held 1/24/19; Post Agenda held 2/12/19)

The Council of the City of Pittsburgh hereby enacts:

SECTION I. Chapter 607 of Title VI: Conduct, Article I: Regulated Actions and Rights of The Pittsburgh Code of Ordinances is repealed in its entirety.

SECTION II. The Pittsburgh Code of Ordinances is amended to add Article XI: Weapons.

SECTION III. Article XI: Weapons shall provide as follows in Chapter 1101: General Weapons Provisions:

§ 1101.01 DEFINITIONS

A. **Air Gun.** Any gun which uses air under pressure from pumping or other means to discharge projectiles at a muzzle velocity in excess of 200 feet per second.

B. **Ammunition.** Cartridge cases, shells, projectiles (including shot), primers, bullets, propellant powder, or other devices or materials designed, re-designed, or intended for use in a Firearm or destructive device.

C. **Facsimile Firearm.** Any toy, antique, starter pistol, or other object that bears a reasonable resemblance to an operable Firearm, or any object that impels a projectile by means of a spinning action, compression, or CO2 cartridge.

D. **Firearm.** Any pistol, handgun, rifle, machine gun, air rifle, air pistol, blank gun, BB gun, or other instrument from which steel or metal projectiles are propelled, or which may be readily converted to expel a projectile, or other instruments propelling projectiles which are designed or normally used for no other primary purpose than as a weapon, including, for the purposes of this Chapter, the frame or receiver of the weapon, and excluding the following:

1. A crossbow;

2. A recurve bow;
3. A compound bow; and
4. A longbow.

§ 1101.02 PROHIBITION ON WEAPONS THAT ARE NOT FIREARMS

A. It shall be unlawful to hold in one's possession within the City of Pittsburgh weapons designed or intended to cause injury or death to persons or damage to property for which no common lawful purpose exists, including, but not limited to the following:

1. An anti-tank gun;
2. A bazooka;
3. A bomb;
4. A booby trap;
5. A flamethrower;
6. A grenade;
7. A mine; and
8. A mortar shell.

B. Nothing in this Section shall be deemed to restrict a person's ability to possess a Firearm or weapon in circumstances permitted by 18 Pa. C.S. § 908.

§ 1101.03 CARRYING OF FACSIMILE FIREARMS PROHIBITED

A. No person shall carry in any vehicle or concealed or unconcealed on or about their person except when on their land or in their abode or fixed place of business any Facsimile Firearm with the intent to alarm, intimidate, terrify, or threaten any person.

§ 1101.04 USE OF WEAPONS BY DISCHARGE

A. No person shall use a weapon to discharge Ammunition or arrows in any public place within the City of Pittsburgh, except in the following circumstances:

1. Firearms, except:
 - a. When under appropriate supervision at duly-established target ranges; or

b. When in circumstances permitted by the Crimes Code Act of December 6, 1972, P.L. 334, as amended (18 Pa. C.S. Sec. 101 *et seq.*);

2. Air Guns, except:

a. When under appropriate supervision at duly-established target ranges; or

b. Where the firing or discharge and missile flight are wholly confined to the user's own property, or the property of another from whom express consent has been granted;

3. Bows, including those listed in "§ 1101.01(D)(1) through § 1101.01(D)(4)," except:

a. When under appropriate supervision at duly-established target ranges; or

b. Where the firing or discharge and arrow or projectile flight are wholly confined to the user's own property, or the property of another from whom express consent has been granted.

B. For purposes of this Section, "public place" shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

§ 1101.05 EXEMPTIONS

A. In addition to the exemptions otherwise enumerated herein, the contents of this Chapter shall not apply to:

1. Any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws; and

2. Any federal, state, or local historical society, museum, or institutional collection that is open to the public, provided that the following conditions are met:

a. The Firearm or item is housed appropriately;

b. The Firearm or item is secured from handling by those unauthorized to do so; and

c. The Firearm or device is unloaded, when and if possible.

B. Nothing in this Chapter shall be deemed to restrict a person's ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person's or another person's person or property or for lawful hunting purposes.

§ 1101.06 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY

A. Any person found in violation of this Chapter shall be fined up to \$1,000 and costs for each offense.

B. Each day of a continuing violation of or failure to comply with § 1101.02 of this Chapter shall constitute a separate and distinct offense.

§ 1101.07 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified in Title VI: Conduct, Article I: Regulated Actions and Rights or elsewhere in Article XI: Weapons.

§ 1101.08 EFFECTIVE DATE

A. This Chapter shall take effect 60 days after its enactment.

§ 1101.9 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1101.10 FINDINGS AND PURPOSES

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions of Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive

capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of military-style weaponry in the community; and

4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and

5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians by prohibiting Assault Weapons, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Firearms, as distinguished from their ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. Appropriate restrictions on the use of Assault Weapons will promote public safety, even if not as completely as a prohibition, both by imposing criminal liability on those who would use Assault Weapons in public spaces and by allowing police officers to intercede earlier and deter future tragedies.

SECTION IV. Article XI: Weapons shall provide as follows in Chapter 1102: Use of Assault Weapons in Public Places:

§ 1102.01 DEFINITIONS

A. Applicable definitions set forth in § 1101.01 shall apply as well in this Chapter 1102.

B. **Assault Weapon.** Any of the following, but not including any Firearm modified to render it permanently inoperable, or unassembled parts or a combination of parts possessed for the purposes of repairing or servicing a lawfully-possessed Firearm:

1. A Selective-Fire Firearm capable of fully automatic, Semi-Automatic or burst fire at the option of the user that has the ability to accept a Large Capacity Magazine;
2. Any of the following Semi-Automatic Firearms:
 - a. Algimec Agmi;
 - b. Armalite AR-180;
 - c. Australian Automatic Arms SAP Pistol;
 - d. Auto-Ordnance Thompson type;
 - e. Avtomat Kalashnikov AK-47 type;
 - f. Barrett Light-Fifty model 82A1;
 - g. Beretta AR-70;
 - h. Bushmaster Auto Rifle and Auto Pistol;
 - i. Calico models M-900, M-950 and 100-P;
 - j. Chartered Industries of Singapore SR-88;
 - k. Colt AR-15 and Sporter;
 - l. Daewoo K-1, K-2, Max-1 and Max-2;
 - m. Ecom MK-IV, MP-9 and MP-45;
 - n. Fabrique Nationale FN/FAL, FN/LAR or FN/FNC;
 - o. FAMAS MAS 223;
 - p. Feather AT-9 and Mini-AT;

- q. Federal XC-900 and XC-450;
- r. Franchi SPAS-12 and Law-12;
- s. Galil AR and ARM;
- t. Goncz High-Tech Carbine and High-Tech Long Pistol;
- u. Heckler & Koch HK-91, HK-93, HK-94 and SP-89;
- v. Holmes MP-83;
- w. Intratec TEC-9 and Scorpion;
- x. Iver Johnson Enforcer model 3000;
- y. MAC-10, MAC-11 and MAC-11 Carbine type;
- z. Ruger Mini-14/5F folding stock model only;
- aa. Scarab Skorpion;
- bb. SIG 57 AMT and 500 series;
- cc. Spectre Auto Carbine and Auto Pistol;
- dd. Springfield Armory BM59, SAR-48 and G-3;
- ee. Sterline MK-6 and MK-7;
- ff. Steyr AUG;
- gg. Street Sweeper and Striker 12 revolving cylinder shotguns;
- hh. USAS-12;
- ii. UZI Carbine, Mini-Carbine and Pistol;
- jj. Weaver Arms Nighthawk; and
- kk. Wilkinson "Linda" Pistol;

3. A Semi-Automatic Firearm not specifically listed in § 1102.01(B)(2) that meets any of the following criteria:

- a. The Firearm is a Semi-Automatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following:
 - i. A folding or telescoping stock;
 - ii. A pistol grip that protrudes conspicuously beneath the action of the weapon;

- iii. A thumbhole stock;
 - iv. A second handgrip or a protruding grip that can be held by the non-trigger hand;
 - v. A flash suppressor, muzzle brake, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle brake, or muzzle compensator; or
 - vi. A grenade launcher or flare launcher.
- b. The Firearm is a Semi-Automatic, centerfire rifle with a fixed magazine with the ability to accept more than 10 rounds.
- c. The Firearm is a Semi-Automatic, centerfire rifle that has an overall length of less than 30 inches.
- d. The Firearm is a Semi-Automatic, centerfire pistol that has an ability to accept a detachable magazine and has at least one of the following:
- i. Capacity to accept an Ammunition magazine that attaches to the pistol outside of the pistol grip;
 - ii. A second handgrip;
 - iii. A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; or
 - iv. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the Firearm with the non-trigger hand without being burned, except a slide that encloses the barrel.
- e. The Firearm is a Semi-Automatic, centerfire pistol with a fixed magazine that has the ability to accept more than 10 rounds.
- f. The Firearm is a Semi-Automatic, centerfire shotgun that has at least one of the following:
- i. A folding or telescoping stock;
 - ii. A pistol grip that protrudes conspicuously beneath the action of the weapon;
 - iii. A thumbhole stock;
 - iv. A vertical handgrip; or
 - v. An ability to accept a detachable magazine.
- g. Any shotgun with a revolving cylinder.

C. Large Capacity Magazine. A Firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of Ammunition. This definition shall not be construed to include the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of Ammunition;
2. A .22 caliber tube Ammunition feeding device;
3. A tubular magazine that is contained in a lever-action Firearm; and
4. A magazine that is permanently inoperable.

D. Selective Fire. Refers to the adjustment capability of weapons to fire in Semi-Automatic, multi-shot bursts, and / or automatic modes.

E. Semi-Automatic. A Firearm that fires a single round for each pull of the trigger and uses the force from the discharged round to chamber a new round immediately after each round is fired.

§ 1102.02 PROHIBITION ON USE OF ASSAULT WEAPONS

A. It shall be unlawful to use any Assault Weapon in any public place within the City of Pittsburgh.

B. For purposes of this Section, "public place" shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

C. For purposes of this Section, "use" of an Assault Weapon does not include possession, ownership, transportation or transfer. "Use" of an Assault Weapon shall include, but is not limited to:

1. Discharging or attempting to discharge an Assault Weapon;
2. Loading an Assault Weapon with Ammunition;
3. Brandishing an Assault Weapon;
4. Displaying a loaded Assault Weapon;
5. Pointing an Assault Weapon at any person; and
6. Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

D. For purposes of this Section, the term "brandishing" means, with respect to a Firearm, to display all or part of the Firearm, or otherwise make the presence of the Firearm known to another person, in order to intimidate that person, regardless of whether the Firearm is directly visible to that person.

E. For purposes of this Section, there shall be a rebuttable presumption that an Assault Weapon is loaded if fitted with a magazine.

§ 1102.03 PENALTIES FOR VIOLATIONS

A. Any person found in violation of this Chapter shall be fined up to \$1,000 and costs for each offense.

§ 1102.04 EXEMPTIONS

A. In addition to the exemptions otherwise enumerated herein, the contents of this Chapter shall not apply to:

1. Any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in executing its official duties, including those charged with the enforcement of laws; and
2. Any federal, state, or local historical society, museum, or institutional collection that is open to the public, provided that the following conditions are met:
 - a. The Firearm or item is housed appropriately;
 - b. The Firearm or item is secured from handling by those unauthorized to do so; and
 - c. The Firearm or device is unloaded, when and if possible.

B. Nothing in this Chapter shall be deemed to restrict a person's ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person's or another person's person or property or for lawful hunting purposes.

§ 1102.05 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI: Weapons.

§ 1102.06 EFFECTIVE DATE

A. This Chapter shall take effect 60 days after its enactment.

§ 1102.07 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1102.08 FINDINGS AND PURPOSES

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions of Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and
5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and
6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and
7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and
8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary

firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation”; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians by prohibiting Assault Weapons, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents’ justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Firearms, as distinguished from their ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. Appropriate restrictions on the use of Assault Weapons will promote public safety, even if not as completely as a prohibition, both by imposing criminal liability on those who would use Assault Weapons in public spaces and by allowing police officers to intercede earlier and deter future tragedies.

SECTION V. Article XI: Weapons shall provide as follows in Chapter 1103: Authorized Prohibition of Assault Weapons:

§ 1103.01 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01 and 1102.01 shall also apply in this Chapter 1103.

§ 1103.02 AUTHORIZED PROHIBITION OF ASSAULT WEAPONS

A. Following the Effective Date as set forth in § 1103.06, it shall be unlawful to own, possess, transfer or transport an Assault Weapon within the City of Pittsburgh.

§ 1103.03 EXEMPTIONS

A. In addition to the exemptions otherwise enumerated herein, the contents of this Chapter shall not apply to:

1. Any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws;
2. Any federal, state, or local historical society, museum, or institutional collection that is open to the public, provided that the following conditions are met:
 - a. The Firearm or item is housed appropriately;
 - b. The Firearm or item is secured from handling by those unauthorized to do so; and

c. The Firearm or device is unloaded, when and if possible; and

3. A person lawfully owning or otherwise possessing an Assault Weapon before the effective date of this Chapter.

§ 1103.04 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY

A. Any person found in violation of this Chapter or who otherwise fails to comply shall be fined up to \$1,000 and costs for each offense.

B. Each day of a continuing violation of or failure to comply with this Chapter shall constitute a separate and distinct offense.

§ 1103.05 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI.

§ 1103.06 EFFECTIVE DATE

A. Section 1103.02 of this Chapter shall take effect 60 days after, and to the extent permitted by, action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing the implementation and enforcement of § 1103.02 by the City of Pittsburgh.

§ 1103.07 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1103.08 FINDINGS AND PURPOSES

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and

2. As demonstrated by the following findings and purposes, gun violence presents a significant and

undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and

3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions of Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of military-style weaponry in the community; and

4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and

5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians by prohibiting Assault Weapons, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection;

and

10. The City Council has authority to legislate regarding the use of Firearms, as distinguished from their ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. Appropriate restrictions on the use of Assault Weapons will promote public safety, even if not as completely as a prohibition, both by imposing criminal liability on those who would use Assault Weapons in public spaces and by allowing police officers to intercede earlier and deter future tragedies.



Legislation Details (With Text)

File #:	2018-1219	Version:	3
Type:	Ordinance	Status:	Passed Finally
File created:	12/14/2018	In control:	Committee on Public Safety Services
On agenda:	3/27/2019	Final action:	4/2/2019
Enactment date:	4/2/2019	Enactment #:	15
Effective date:	4/9/2019		
Title:	An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by enacting and adding Article XI: Weapons, Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications, and Chapter 1105: Authorized Prohibition of Large Capacity Magazines. (Public Hearing held 1/24/19; Post Agenda held 2/12/19)		
Sponsors:	Corey O'Connor, Erika Strassburger, Bruce A. Kraus, R. Daniel Lavelle, Reverend Ricky V. Burgess, Deborah L. Gross		
Indexes:	PGH. CODE ORDINANCES TITLE 06 - CONDUCT		
Code sections:			
Attachments:	1. 2018-1219 VERSION 2, 2. 2018-1219 [Resource A] An Updated Assessment of the Federal Assault Weapons Ban- Impacts on Gun Markets and Gun Violence, 1994-2003, 3. 2018-1219 [Resource B] Gunshot wounds, ballistics, bullets, weapons, 4. 2018-1219 [Resource C] Declaration of John J. Donohue, 5. 2018-1219 [Resource D] Declaration of Lucy P. Allen, 6. 2018-1219 [Resource E] Criminal Use of Assault Weapons and High-Capacity Firearms- An Updated Examination of Local and National Sources, 7. 2018-1219 [Resource F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 8. 2018-1219 [Resource G] Lethality of Civilian Active Shooter Incidents, 9. 2018-1219 Resource H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 10. 2018-1219 [Resource I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban, 11. 2018-1219 [Summary A] An Updated Assessment of the Federal Assault Weapons Ban, 12. 2018-1219 [Summary B] Gunshot Wounds- A Review of Ballistics, Bullets, Weapons, and Myths, 13. 2018-1219 [Summary C] Declaration of John J. Donohue, 14. 2018-1219 [Summary D] Declaration of Lucy P. Allen, 15. 2018-1219 [Summary E] Criminal Use of Assault Weapons and High-Capacity Firearms- an Update Examination of Local and National Sources, 16. 2018-1219 [Summary F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 17. 2018-1219 [Summary G] Lethality of Civilian Active Shooter Incidents, 18. 2018-1219 [Summary H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 19. 2018-1219 [Summary I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban		

Date	Ver.	Action By	Action	Result
4/9/2019	3	Mayor	Signed by the Mayor	
4/2/2019	3	City Council	AMENDED BY SUBSTITUTE	Pass
4/2/2019	3	City Council	Passed Finally, As Amended	Pass
3/27/2019	2	Standing Committee	Affirmatively Recommended	Pass
3/20/2019	2	Standing Committee	AMENDED BY SUBSTITUTE	Pass
3/20/2019	2	Standing Committee	Held in Committee	Pass
3/13/2019	1	Standing Committee	Motion	Pass

3/13/2019	1	Standing Committee	Held in Committee	Pass
2/12/2019	1	Committee on Hearings	Post Agenda Held	
1/24/2019	1	Committee on Hearings	Public Hearing Held	
1/9/2019	1	Standing Committee	Held for Post Agenda	
1/3/2019	1	Standing Committee	Held for Public Hearing	Pass
12/18/2018	1	City Council	Read and referred	

An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by enacting and adding Article XI: Weapons, Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications, and Chapter 1105: Authorized Prohibition of Large Capacity Magazines.

(Public Hearing held 1/24/19; Post Agenda held 2/12/19)

The Council of the City of Pittsburgh hereby enacts:

SECTION I Article XI: Weapons shall provide as follows in Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications:

§ 1104.01 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01 and 1102.01 shall also apply to this Chapter 1104.

B. **Armor or Metal Penetrating Ammunition.** Any Ammunition, except a shotgun shell, that is designed primarily to penetrate a body vest or a body shield, and has either of the following characteristics:

1. Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness; or
2. Is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, teflon coating and / or Ammunition commonly known as “KTW Ammunition,” to breach or penetrate a body vest or body shield when fired from a Firearm.

C. **Binary Trigger.** A Firearm’s trigger designed to fire one round of Ammunition on the pull of the trigger and another round upon the release of the trigger.

D. **Large Capacity Magazine.** A Firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of Ammunition. This definition shall not be construed to include the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of Ammunition;
2. A .22 caliber tube Ammunition feeding device;
3. A tubular magazine that is contained in a lever-action Firearm; and

4. A magazine that is permanently inoperable.

E. Multi-Burst Trigger Activator. Either of the following:

1. A device designed or redesigned to be attached to a Semi-Automatic Firearm, which allows the Firearm to discharge two or more shots in a burst by activating the device; or
2. A manual or power-driven trigger-activating device constructed and designed so that it increases the rate of fire of a Semi-Automatic Firearm when attached to that Firearm.

F. Rapid Fire Device. Any device, part, accessory, attachment, or modification designed to accelerate substantially the rate of fire of a Firearm, including, but not limited to:

1. A binary trigger;
2. A multi-burst trigger activator; and
3. A trigger crank.

G. Trigger Crank. A trigger actuator that attaches to the trigger of a Semi-Automatic Firearm and causes the weapon to fire by turning the crank handle.

§ 1104.02 PROHIBITED USES OF ARMOR PENETRATING AMMUNITION

A. It shall be unlawful to use Armor or Metal Penetrating Ammunition in any public place within the City of Pittsburgh.

B. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

C. For purposes of this Section, “use” of Ammunition does not include possession, ownership, transportation or transfer. “Use” of Ammunition shall include, but is not limited to:

1. Discharging or attempting to discharge by means of a Firearm; and
2. Loading it into a Firearm or magazine.

§ 1104.03 PROHIBITED USE OF LARGE CAPACITY MAGAZINE

A. It shall be unlawful to use in any public place within the City of Pittsburgh any Large Capacity Magazine.

B. For purposes of this Section, “use” of a Large Capacity Magazine does not include possession, ownership, transportation or transfer. “Use” of a Large Capacity Magazine shall include:

1. Employing it to discharge or in attempt to discharge Ammunition by means of a Firearm;

2. Loading it with Ammunition;
3. Fitting or installing it into a Firearm;
4. Brandishing it with a Firearm;
5. Displaying it with a Firearm while loaded; and
6. Employing it for any purpose prohibited by the laws of Pennsylvania or of the United States.

C. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

D. For purposes of this Section, the term “brandishing” means, with respect to a Firearm, to display all or part of the Firearm, or otherwise make the presence of the Firearm known to another person, in order to intimidate that person, regardless of whether the Firearm is directly visible to that person.

§ 1104.04 USE OF RAPID FIRE DEVICES PROHIBITED

A. It shall be unlawful to use any rapid fire device in any public place within the City of Pittsburgh.

B. This Chapter shall not be construed to prohibit the use of a replacement trigger or trigger components manufactured and intended to decrease the weight of the trigger pull, or to improve the quality and release of the trigger pull in a Firearm.

§ 1104.05 EXEMPTIONS

- A. The contents of this Chapter shall not apply to any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws.
- B. Nothing in this Chapter shall be deemed to restrict a person’s ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person’s or another person’s person or property or for lawful hunting purposes.

§ 1104.06 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY

- A. Any person who violates the provisions of this Chapter shall be fined up to \$1,000 and costs for each offense.

§ 1104.07 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI: Weapons.

§ 1104.08 EFFECTIVE DATE

A. This Chapter shall take effect 60 days after its enactment.

§ 1104.09 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1104.10 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions on Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of such military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus routinely upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular

threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and

5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians with a prohibition on Assault Weapons and Large Capacity Magazines, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Ammunition and Ammunition components, as distinguished from ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. The City Council has authority to legislate regarding Firearm accessories that do not come within applicable state law definitions of Firearms or Ammunition and Ammunition components; and

12. The City Council has authority to legislate regarding accessories that increase the lethality of Firearms.

SECTION II. Article XI: Weapons shall provide as follows in Chapter 1105: Authorized Prohibition of Large Capacity Magazines:

§ 1105.01 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01, 1102.01 and 1104.01 shall apply as well in this Chapter 1105.

§ 1105.02 PROHIBITION OF LARGE CAPACITY MAGAZINES

A. Following the effective date set forth in § 1105.06, it shall be unlawful to own, possess, transfer or transport a Large Capacity Magazine within the City of Pittsburgh.

§ 1105.03 EXEMPTIONS

A. In addition to the exemptions otherwise enumerated herein, the contents of this Chapter shall not apply to:

1. Any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws;
2. Any federal, state, or local historical society, museum, or institutional collection that is open to the public, provided that the following conditions are met:
 - a. The Firearm or item is housed appropriately;
 - b. The Firearm or item is secured from handling by those unauthorized to do so; and
 - c. The Firearm or device is unloaded, when and if possible.

§ 1105.04 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY

A. Any person found in violation of this Chapter or who otherwise fails to comply shall be fined up to \$1,000 and costs for each offense.

B. Each day of a continuing violation of or failure to comply with this Chapter shall constitute a separate and distinct offense.

§ 1105.05 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI.

§ 1105.06 EFFECTIVE DATE

A. Section 1105.02 of this Chapter shall take effect 60 days after, and to the extent permitted by, action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing the implementation and enforcement of § 1105.02 by the City of Pittsburgh.

§ 1105.07 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1105.08 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions on Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of such military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus routinely upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and
5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal

regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians with a prohibition on Assault Weapons and Large Capacity Magazines, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Ammunition and Ammunition components, as distinguished from ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. The City Council has authority to legislate regarding Firearm accessories that do not come within applicable state law definitions of Firearms or Ammunition and Ammunition components; and

12. The City Council has authority to legislate regarding accessories that increase the lethality of Firearms.



Legislation Details (With Text)

File #:	2018-1220	Version:	3
Type:	Ordinance	Status:	Passed Finally
File created:	12/14/2018	In control:	Committee on Public Safety Services
On agenda:	3/27/2019	Final action:	4/2/2019
Enactment date:	4/2/2019	Enactment #:	16
Effective date:	4/9/2019		
Title:	An Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title VI: Conduct, Article XI: Weapons, by adding Chapter 1106: Prevention of Extreme Risk to Children and Chapter 1107: Extreme Risk Protection Orders. (Public Hearing held 1/24/19; Post Agenda held 2/12/19)		
Sponsors:	Corey O'Connor, Erika Strassburger, Bruce A. Kraus, R. Daniel Lavelle, Reverend Ricky V. Burgess, Deborah L. Gross		
Indexes:	PGH. CODE ORDINANCES TITLE 06 - CONDUCT		
Code sections:			
Attachments:	1. 2018-1220 VERSION 2, 2. 2018-1220 [Resource A] An Updated Assessment of the Federal Assault Weapons Ban- Impacts on Gun Markets and Gun Violence, 1994-2003, 3. 2018-1220 [Resource B] Gunshot wounds, ballistics, bullets, weapons, 4. 2018-1220 [Resource C] Declaration of John J. Donohue, 5. 2018-1220 [Resource D] Declaration of Lucy P. Allen, 6. 2018-1220 [Resource E] Criminal Use of Assault Weapons and High-Capacity Firearms- An Updated Examination of Local and National Sources, 7. 2018-1220 [Resource F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 8. 2018-1220 [Resource G] Lethality of Civilian Active Shooter Incidents, 9. 2018-1220 [Resource H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 10. 2018-1220 [Resource I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban, 11. 2018-1220 [Summary A] An Updated Assessment of the Federal Assault Weapons Ban, 12. 2018-1220 [Summary B] Gunshot Wounds- A Review of Ballistics, Bullets, Weapons, and Myths, 13. 2018-1220 [Summary C] Declaration of John J. Donohue, 14. 2018-1220 [Summary D] Declaration of Lucy P. Allen, 15. 2018-1220 [Summary H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 16. 2018-1220 [Summary E] Criminal Use of Assault Weapons and High-Capacity Firearms- an Update Examination of Local and National Sources, 17. 2018-1220 [Summary F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 18. 2018-1220 [Summary G] Lethality of Civilian Active Shooter Incidents, 19. 2018-1220 [Summary I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban		

Date	Ver.	Action By	Action	Result
4/9/2019	3	Mayor	Signed by the Mayor	
4/2/2019	3	City Council	AMENDED BY SUBSTITUTE	Pass
4/2/2019	3	City Council	Passed Finally, As Amended	Pass
3/27/2019	2	Standing Committee	Affirmatively Recommended	Pass
3/20/2019	2	Standing Committee	AMENDED BY SUBSTITUTE	Pass
3/20/2019	2	Standing Committee	Held in Committee	Pass
3/13/2019	1	Standing Committee	Motion	Pass
3/13/2019	1	Standing Committee	Held in Committee	Pass

2/12/2019	1	Committee on Hearings	Post Agenda Held	
1/24/2019	1	Committee on Hearings	Public Hearing Held	
1/9/2019	1	Standing Committee	Held for Post Agenda	
1/3/2019	1	Standing Committee	Held for Public Hearing	Pass
12/18/2018	1	City Council	Read and referred	

An Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title VI: Conduct, Article XI: Weapons, by adding Chapter 1106: Prevention of Extreme Risk to Children and Chapter 1107: Extreme Risk Protection Orders.

(Public Hearing held 1/24/19; Post Agenda held 2/12/19)

The Council of the City of Pittsburgh hereby enacts:

SECTION 1. Article XI: Weapons shall provide as follows in Chapter 1106 Prevention of Extreme Risk to Children:

§ 1106.01 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01, 1102.01 and 1104.01 shall also apply in this Chapter 1106.

§ 1106.02 PREVENTION OF UNAUTHORIZED USES OF FIREARMS BY MINORS

A. A Firearm's custodian shall be in violation of this Section if:

1. A minor gains access to and uses the Firearm; and
2. The Firearm's custodian knew or reasonably should have known that a minor was likely to gain access to the Firearm.

B. For purposes of this Section, "use" of a Firearm does not include possession, ownership, transportation or transfer. "Use" of a Firearm shall include, but is not limited to:

1. Discharging or attempting to discharge the Firearm;
2. Loading the Firearm with Ammunition;
3. Brandishing the Firearm;
4. Pointing the Firearm at any person; and
5. Employing the Firearm for any purpose prohibited by the laws of Pennsylvania or of the United States.

C. The provisions of this Section shall not apply if:

1. The minor gains access to the Firearm as the result of an illegal entry to any premises by any person;

2. The Firearm is stored in a locked box, locked gun safe, or other secure, locked space, or is secured with a trigger lock or other similar device that is properly engaged so as to render the Firearm inoperable by any person other than the Firearm's custodian or other lawfully authorized user;
3. The Firearm is carried on the person of the Firearm's custodian or within close enough proximity thereto that the Firearm's custodian can readily retrieve and use the Firearm as if carried on the person; or
4. The minor uses the Firearm in a lawful act of self-defense or defense of another person.
5. The minor was lawfully given authorization to use the Firearm by the minor's parent or legal guardian.

D. For purposes of this Section, "Firearm's custodian" means the person who exercises custody or control over the Firearm.

E. For purposes of this Section, "minor" means a person under 18 years of age.

F. For purposes of this Section, the term "brandishing" means, with respect to a Firearm, to display all or part of the Firearm, or otherwise make the presence of the Firearm known to another person, in order to intimidate that person, regardless of whether the Firearm is directly visible to that person.

§ 1106.03 PENALTIES FOR VIOLATIONS

A. Any person found in violation of this Chapter 1106 shall be fined up to \$1,000 and costs for each offense.

§ 1106.04 APPLICATION OF CHAPTER

A. This Chapter 1106 shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI.

§ 1106.05 EFFECTIVE DATE

A. This Chapter 1106 shall take effect 60 days after its enactment.

§ 1106.06 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a Court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article

XI: Weapons. Court

§ 1106.07 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. Gun violence and gun suicides present a public health and public safety crisis in the United States; and
3. From 2013 to 2017, the Centers for Disease Control and Prevention reported that the average number of Firearm deaths for all ages was 36,383 per year, and the average number of Firearm deaths for persons under 18 years old was 1,499 per year; and
4. From 2013 to 2017, 7,517 Pennsylvania residents died from a Firearm injury, including 301 children under the age of 18; and
5. From 2013 to 2017, a child or teen under the age of 18 was killed by gunfire in Pennsylvania every 6 days, on average; and
6. Law enforcement agencies in Pittsburgh and Allegheny County have partnered with the National Shooting Sports Foundation to distribute free gun locks to Pittsburgh residents through Project ChildSafe; and
7. A February 2018 Politico/Morning Consult poll found that 76 percent of registered voters across America supported requiring that all gun owners store their guns in a safe storage unit; and
8. Every year in the United States, on average, more than 250 children under 18 gain access to a gun and unintentionally shoot themselves or someone else, and nearly 600 more die by suicide performed with a gun; and
9. Storing household guns locked, unloaded, or separate from the Ammunition is associated with reductions in the risk of self-inflicted shootings among, and unintentional shootings by, children and teenagers; and
10. An estimated 4.6 million American children and teens under 18 still live in homes with at least one gun that is loaded and unlocked despite the lifesaving effect that responsible gun storage can have; and
11. Available evidence, as compiled by the RAND Corporation, indicates that child access prevention laws or safe storage laws reduce self-inflicted fatal or nonfatal Firearm injuries among youth and reduce unintentional Firearm injuries or unintentional Firearm deaths among children; and
12. Over 22,000 Americans every year, including over 1,000 children and teens, die by Firearm suicide; and
13. A meta-analysis of 14 different scientific studies concluded that access to a Firearm triples the risk

of death by suicide of anyone in the household; and

14. Among commonly used methods of self-harm, Firearms are by far the most lethal, with a fatality rate of approximately 85 percent, compared to less than five percent with other methods, such that while Firearms are used in less than six percent of suicide attempts, over half of suicide deaths result from suicide attempts performed with Firearms; and

15. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, Ammunition, and Ammunition components; and

16. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer, or transportation of Firearms, Ammunition, and Ammunition components unless and until governing law allows it to become effective; and

17. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution; and

18. The City Council has authority to legislate regarding the use of Firearms, as distinguished from their ownership, possession, transfer, or transportation, in order to protect members of the public.

SECTION 2. Article XI: Weapons shall provide as follows in Chapter 1107 Extreme Risk Protection Orders:

§ 1107.01 SCOPE OF CHAPTER

A. This Chapter 1107 relates to Extreme Risk Protection Orders.

§ 1107.02 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01, 1102.01 and 1104.01, and not otherwise expressly defined in this Chapter 1107, shall also apply in this Chapter 1107.

B. **Court.** The Pittsburgh Municipal Court.

C. **Extreme Risk Protection Order.** A Court order prohibiting a person from having in the person's possession or control, purchasing or receiving or attempting to purchase or receive, a Firearm, based upon a finding that the person presents a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm.

D. **Family or Household Member.** Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by first-degree consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

E. **Firearms Dealer or Dealer.** A person licensed to sell Firearms under 18 Pa. C.S. § 6113 (relating to

licensing of Dealers).

F. Firearms License or License. A concealed carry license issued under 18 Pa. C.S. § 6109 (relating to licenses), safekeeping license issued under 23 Pa. C.S. § 6108.3 (relating to relinquishment to third party for safekeeping), hunting license required under 34 Pa. C.S. § 2701 (relating to license requirements) or any similar license issued pursuant to the laws of another state.

G. Law Enforcement Officer. A City of Pittsburgh police officer who is empowered by law to conduct investigations of or to make an arrest for an offense enumerated in this Chapter 1107 or an equivalent crime in another jurisdiction and an attorney authorized by law to prosecute or participate in the prosecution of such offense.

H. Serious Bodily Injury. Bodily injury that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

§ 1107.03 PRELIMINARY MATTERS

A. The following individuals shall have standing to file a petition requesting that the Court issue an Extreme Risk Protection Order or renew an existing Extreme Risk Protection Order:

1. A Law Enforcement Officer; or
2. A Family or Household Member of a person believed to present a risk of suicide or of causing the death of, or extreme bodily injury to, another person through the use of a firearm.

B. No filing fee may be charged for a petition under this Chapter 1107.

C. An Extreme Risk Protection Order is effective at the time of service.

D. A respondent under this Chapter 1107 shall have the right to be represented by counsel. If the respondent cannot afford an attorney and meets the income guidelines applicable to representation by a public defender in a criminal case, the Court shall appoint counsel upon the request of the respondent.

§ 1107.04 PETITION FOR EXTREME RISK PROTECTION ORDER

A. A petition for an Extreme Risk Protection Order shall set forth facts that demonstrate the risk presented by the respondent's ability to purchase Firearms or have possession or control of Firearms, and shall describe the number, types and locations of any Firearms known or believed to be owned by the respondent or known or believed to be in the respondent's possession or control.

B. A petition for an Extreme Risk Protection Order, at the time of the filing, shall also identify all known restraining orders, orders of protection, and pending lawsuits, complaints, petitions, or actions pending, active, or filed within one year prior to the petition for an Extreme Risk Protection Order involving the respondent, including, but not limited to, an order entered pursuant to 23 Pa. C.S. Ch. 61 (relating to protection from abuse).

C. The Court may consider all relevant evidence, but in no case shall an order be issued under § 1107.05 (relating to interim Extreme Risk Protection Order) or § 1107.09 (relating to order after hearing) absent a

demonstration of risk due to behaviors or events occurring in the preceding 24 months.

D. In determining whether grounds exist to issue an Extreme Risk Protection Order, the Court shall consider evidence of the following factors and the recency of any behaviors or events:

1. Suicide threats or attempts.
2. Threats or acts of violence or attempted acts of violence.
3. Domestic abuse, including any violation of a protection from abuse order, under 23 Pa. C.S. Ch. 61 (relating to protection from abuse) or a similar law in another state.
4. Cruelty to animals under 18 Pa. C.S. Ch. 55 Subch. B (relating to cruelty to animals) or a similar law in another state.
5. Abuse of controlled substances or alcohol, or any criminal offense that involves controlled substances or alcohol.
6. Unlawful or reckless use, display or brandishing of a Firearm.
7. Recent acquisition or attempted acquisition of a Firearm.
8. The possession, use or control of a Firearm as a part of the respondent's employment.
9. Any additional information the Court finds to be reliable, including a statement by the respondent.

E. For purposes of this Section, the term "brandishing" means, with respect to a Firearm, to display all or part of the Firearm, or otherwise make the presence of the Firearm known to another person, in order to intimidate that person, regardless of whether the Firearm is directly visible to that person.

§ 1107.05 INTERIM EXTREME RISK PROTECTION ORDER

A. The Court reviewing a petition shall issue an interim Extreme Risk Protection Order if it finds, by a preponderance of the evidence, that:

1. The respondent presents a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm; and
2. The risk is imminent and other circumstances that would make it safe to proceed by ordering a hearing under § 1107.06 (relating to hearing on petition) without issuing an interim Extreme Risk Protection Order do not exist.

B. An interim Extreme Risk Protection Order shall include:

1. The date and time the order was issued.
2. Instructions for relinquishment of any Firearm or Firearms license that the respondent owns or that is

in the respondent's possession or control.

3. Notification of the penalties for violating the order.

4. If the order was issued by a Court and a hearing is scheduled under § 1107.05(D), the order shall include:

- a. Notice of the time, date and location of the hearing;
- b. Notice of the right to request a continuance, and instructions on requesting a continuance or waiving the hearing;
- c. Notice of the fact that, at the hearing, or if the hearing is waived, the Court may extend the order for up to one year; and
- d. Notice of the right to an attorney under § 1107.03 (relating to preliminary matters).

C. An interim Extreme Risk Protection Order issued by a Court shall be in effect until following a hearing it is either vacated or terminated.

D. If the Court orders an interim Extreme Risk Protection Order under § 1107.06(A), the Court shall schedule a hearing on the petition to be held no more than 10 days from the date of the order.

E. The respondent may request a continuance on a hearing scheduled to take place after the issuance of an interim order, which the Court shall grant. No hearing shall be continued except with the consent of the respondent.

§ 1107.06 HEARING ON PETITION

A. Upon reviewing a petition filed under § 1107.04 (relating to petition for Extreme Risk Protection Order), the Court may issue an order for a hearing on the petition, which shall be scheduled to be held no more than 10 days from the date of the petition.

B. If the hearing is scheduled to take place fewer than three business days after service of the order, the Court shall grant a continuance until at least three business days after service, if requested by the respondent. The Court shall notify the respondent of the respondent's right to a continuance under this § 1107.06.

C. If the respondent waives the right to be present at a hearing or fails to appear for a hearing on a petition scheduled under this § 1107.06, the Court may proceed with the hearing and may issue an Extreme Risk Protection Order in the respondent's absence.

§ 1107.07 NOTICE TO LAW ENFORCEMENT

A. The Court issuing an Extreme Risk Protection Order, an order for a hearing, or an order renewing, vacating or terminating an Extreme Risk Protection Order shall cause a copy of the order to be delivered to the sheriff, the local law enforcement agency and the Pennsylvania State Police.

B. Upon receipt of an Extreme Risk Protection Order or an order renewing, vacating or terminating an Extreme Risk Protection Order, the City of Pittsburgh Bureau of Police shall advise the Pennsylvania State Police and request or cause the Pennsylvania State Police to enter the order into the appropriate database so that notice of the order is provided through the Pennsylvania Instant Check System and the Federal Bureau of Investigation National Instant Criminal Background Check System.

§ 1107.08 SERVICE

A. Service of an Extreme Risk Protection Order or an order for a hearing shall be made in person by the sheriff or a Law Enforcement Officer, as directed by the Court issuing the order. At the time of service, the sheriff or Law Enforcement Officer shall provide the respondent with a copy of the petition.

B. Immediately upon completion of service of an Extreme Risk Protection Order, the sheriff or Law Enforcement Officer completing service shall make a return of service to the Court and shall provide a copy of the return of service to the petitioner.

§ 1107.09 ORDER AFTER HEARING

A. The Court shall issue an Extreme Risk Protection Order after conducting a hearing ordered under § 1107.05 (relating to interim Extreme Risk Protection Order) or § 1107.06 (relating to hearing on petition), or after the respondent waives the right to a hearing under § 1107.05, if the Court finds by clear and convincing evidence that the respondent presents a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm.

B. An Extreme Risk Protection Order issued after a hearing shall be made effective for no less than three months nor more than one year.

C. The order shall include:

1. The date and time the order was issued.
2. The time frame and manner in which the respondent may request a termination hearing.
3. Instructions for relinquishment of any Firearm that the respondent owns or that is in the respondent's possession or control, and any Firearms license that is issued to the respondent.
4. Notification of the penalties for violating the order.

§ 1107.10 TERMINATION HEARING

A. A respondent subject to an Extreme Risk Protection Order may submit one written request at any time during the effective period of the order for a hearing to determine whether the order should be terminated.

B. Upon receipt of a request for a termination hearing, the Court shall set a date for the hearing and shall provide notice of the hearing to the petitioner, the City of Pittsburgh Bureau of Police or other appropriate local

law enforcement agency and the Pennsylvania State Police.

C. At a termination hearing, the respondent seeking termination of the order shall have the burden of proving, by clear and convincing evidence, that the respondent does not present a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm.

§ 1107.11 RENEWAL OF ORDER

A. A petition to renew an Extreme Risk Protection Order shall set forth facts that support a renewal of the order. The Court may deny the petition based on the information set forth in the petition or may schedule a hearing. The Court shall provide notice of the hearing to the petitioner, the respondent, the local law enforcement agency and the Pennsylvania State Police.

B. If the Court finds by clear and convincing evidence, based on factors set forth under § 1107.04 (relating to petition for Extreme Risk Protection Order), that the respondent continues to present a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm, the Court may renew the Extreme Risk Protection Order for a duration of no fewer than three months and no more than one year from the date of the order.

C. The following limitations shall apply:

1. A petition under this § 1107.11 must be filed at least 60 days prior to the expiration of the order.
2. A renewal hearing shall take place no later than 30 days prior to the expiration date set in an existing order.
3. No Extreme Risk Protection Order may be renewed more than twice under this § 1107.11.

§ 1107.12 RELINQUISHMENT OF FIREARMS

A. An Extreme Risk Protection Order issued under § 1107.05 (relating to interim Extreme Risk Protection Order) or § 1107.09 (relating to order after hearing) shall require the relinquishment of all Firearms owned by the respondent or in the respondent's possession or control within 24 hours following service of the order, except for cause shown, in which case the Court issuing the order shall specify the time for relinquishment of any or all of the respondent's Firearms.

B. A Law Enforcement Officer or sheriff serving an Extreme Risk Protection Order shall request that all Firearms and any Firearms license in the respondent's possession or control be immediately relinquished into the custody of the Law Enforcement Officer or sheriff. A Law Enforcement Officer taking custody of a Firearm or Firearms license under § 1107.12(B) shall transfer the Firearm or Firearms license to the sheriff or to a Firearms Dealer for safekeeping.

C. A respondent shall, within the time frame specified in the order, relinquish to the sheriff or a Firearms Dealer any Firearm or license remaining in the respondent's possession or control after the time of service. A respondent relinquishing a Firearm directly to a Dealer shall, within the time frame specified in the order, provide to the law enforcement agency or sheriff a copy of the affidavit described in § 1107.12(F) in lieu of the Firearm listed in the affidavit. A sheriff accepting an affidavit in lieu of a Firearm shall file a copy with the

Court.

D. A sheriff or Law Enforcement Officer taking custody of a Firearm or license from a respondent shall provide the respondent with a copy of a signed and dated receipt. The receipt shall include a detailed description indicating the serial number and condition of each Firearm and notification that Firearms will be deemed abandoned when the conditions under 18 Pa. C.S. § 6128(a) (relating to abandonment of Firearm, weapon or Ammunition) are satisfied, and may then be disposed of in accordance with 18 Pa. C.S. § 6128. The sheriff or Law Enforcement Officer issuing the receipt shall file the original with the Court.

1. In addition, the appropriate law enforcement agency shall be liable to the lawful owner of said confiscated, seized or relinquished Firearm for any loss, damage or substantial decrease in value of said Firearm that is a direct result of a lack of reasonable care by the appropriate law enforcement agency.

E. A respondent whose Firearm is in the custody of a sheriff may request that the Firearm be transferred to a Firearms Dealer for consignment sale, lawful transfer or safekeeping. Upon receiving the request, the sheriff shall transport the Firearm to a Dealer at no cost to the respondent or the Dealer.

F. A Firearms Dealer accepting custody of a Firearm under this Chapter 1107 shall provide the respondent, sheriff or Law Enforcement Officer from which the Dealer accepts custody with an affidavit. A sheriff or Law Enforcement Officer delivering custody of a Firearm to a Dealer shall file a copy of the affidavit with the Court.

G. The affidavit shall include the following:

1. The caption of the case in which the Extreme Risk Protection Order was issued.
2. The name, address, date of birth and Social Security number of the respondent.
3. A list of all Firearms relinquished to the Dealer and a detailed description of each Firearm, including its condition and, if applicable, the manufacturer, model and serial number.
4. The name and license number of the Dealer and the address of the licensed premises.
5. An acknowledgment that the Dealer will not return a Firearm to the respondent while the respondent is subject to an Extreme Risk Protection Order.
6. An acknowledgment that the Firearm, if sold or transferred, will be sold or transferred in compliance with 18 Pa. C.S. Ch. 61 (relating to Firearms and other dangerous articles), and that no Firearm will be returned to a respondent or any third party until the Dealer has independently confirmed that the person requesting return of the Firearm is legally eligible to possess Firearms under Federal and State law.

§ 1107.13 RETURN OF FIREARMS

A. Subject to § 1107.13(C), if, following a hearing, a Court vacates an interim Extreme Risk Protection Order, the Court shall order the immediate return of all relinquished Firearms and licenses to the respondent. Upon termination or expiration of an Extreme Risk Protection Order, the respondent may request that the sheriff or Firearms Dealer in possession of a relinquished Firearm or license return the Firearm or license. Subject to § 1107.13(C), the sheriff or Dealer shall return the Firearm or license to the respondent as soon as possible but

not later than the end of the next business day after the day on which the respondent makes the request.

B. A third party may request the return of a relinquished Firearm at any time by providing proof of ownership and a sworn affidavit. Proof of ownership may consist of a statement in the affidavit. The affidavit shall affirm the following:

1. The third party will not intentionally or knowingly return a Firearm to a person subject to an Extreme Risk Protection Order nor intentionally or knowingly allow a person subject to an Extreme Risk Protection Order to have access to a Firearm.
2. The third party understands that intentionally or knowingly allowing a person subject to an Extreme Risk Protection Order to have access to a Firearm constitutes a violation of § 1107.16(C) of this Chapter, resulting in a fine of up to \$1,000 and costs for each offense.
3. If the third party is a member of the household of a person who is subject to an Extreme Risk Protection Order, that any Firearm returned to the third party will be stored either in a gun safe to which the person does not have and will not be permitted to access, or in a location outside the home to which the person does not have access.

C. Prior to returning a Firearm to any person, the sheriff or Firearms Dealer in possession of the Firearm shall independently confirm that the person requesting return of the Firearm is legally eligible to possess Firearms under Federal and State law. The sheriff or Dealer receiving a request under § 1107.13(A) shall conduct the required background check as soon as possible, but not later than the end of the next business day after the day on which the respondent makes the request.

§ 1107.14 ABUSE OF PROCESS

A. A person who files a petition for an Extreme Risk Protection Order knowing the information in the petition to be materially false, or with the intent to harass another, shall be fined \$1,000 and costs for each offense.

B. A person determined to have violated § 1107.14(A) or determined by the Court to have acted in bad faith for the purpose of harassing the respondent shall be ordered to pay full restitution to the respondent. For purposes of this § 1107.14(B), restitution shall include, but not be limited to, reasonable attorney fees, costs of storage and other expenses incurred by the respondent as a result of the false reporting or false swearing.

§ 1107.15 MENTAL HEALTH AND CHEMICAL DEPENDENCY SERVICES

A. During any proceeding under this Chapter 1107, the Court shall consider whether a mental health or chemical dependency evaluation is necessary, and may order such an evaluation as it deems necessary.

§ 1107.16 PENALTIES FOR VIOLATIONS

A. A person who is the subject of an Extreme Risk Protection Order issued pursuant to § 1107.05 (relating to interim Extreme Risk Protection Order) or § 1107.09 (relating to order after hearing), if he intentionally or knowingly fails to relinquish a Firearm or Firearms license as required by the order, shall be fined up to \$1,000

and costs for each offense.

B. A person who intentionally or knowingly accepts possession of a Firearm from a person he knows is the subject of an Extreme Risk Protection Order issued pursuant to § 1107.05 (relating to interim Extreme Risk Protection Order) or § 1107.09 (relating to order after hearing) shall be fined up to \$1,000 and costs for each offense.

1. § 1107.16(B) shall not apply to a Firearms Dealer or subsequent purchaser from a Firearms Dealer who accepts possession of a Firearm pursuant to this Chapter 1107.

2. It shall be an affirmative defense to any prosecution under § 1107.16(B) that the person accepting possession of a Firearm in violation of § 1107.16(B):

a. Notified the sheriff or Law Enforcement Officer as soon as practicable that he has taken possession; and

b. Relinquished possession of any Firearm in violation of § 1107.16(B) as directed by the sheriff or Law Enforcement Officer.

C. A person who has accepted possession of a Firearm or Firearms license pursuant to this Chapter 1107, if he intentionally or knowingly returns a Firearm or Firearms license to a respondent or intentionally or knowingly allows a respondent to have access to the Firearm or Firearms license prior to the expiration of an Extreme Risk Protection Order or the issuance of a Court order that vacates or terminates an Extreme Risk Protection Order under this Chapter 1107, shall be fined up to \$1,000 and costs for each offense.

§ 1107.17 EFFECTIVE DATE

A. This Chapter shall take effect 180 days after its enactment.

§ 1107.18 INTERPRETATION CONSISTENT WITH STATE LAW

A. This Chapter 1107 shall be interpreted to be consistent with any legislation enacted by the Pennsylvania General Assembly addressing the same subject matter.

§ 1107.19 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1107.20 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. Gun violence and gun suicides present a public health and public safety crisis in the United States; and
3. From 2013 to 2017, the Centers for Disease Control and Prevention reported that the average number of Firearm deaths for all ages was 36,383 per year, and the average number of Firearm deaths for persons under 18 years old was 1,499 per year; and
4. From 2013 to 2017, 7,517 Pennsylvania residents died from a Firearm injury, including 301 children under the age of 18; and
5. From 2013 to 2017, a child or teen under the age of 18 was killed by gunfire in Pennsylvania every 6 days, on average; and
6. Law enforcement agencies in Pittsburgh and Allegheny County have partnered with the National Shooting Sports Foundation to distribute free gun locks to Pittsburgh residents through Project ChildSafe; and
7. A February 2018 Politico/Morning Consult poll found that 76 percent of registered voters across America supported requiring that all gun owners store their guns in a safe storage unit; and
8. Every year in the United States, on average, more than 250 children under 18 gain access to a gun and unintentionally shoot themselves or someone else, and nearly 600 more die by suicide performed with a gun; and
9. Storing household guns locked, unloaded, or separate from the Ammunition is associated with reductions in the risk of self-inflicted shootings among, and unintentional shootings by, children and teenagers; and
10. An estimated 4.6 million American children and teens under 18 still live in homes with at least one gun that is loaded and unlocked despite the lifesaving effect that responsible gun storage can have; and
11. Available evidence, as compiled by the RAND Corporation, indicates that child access prevention laws or safe storage laws reduce self-inflicted fatal or nonfatal Firearm injuries among youth and reduce unintentional Firearm injuries or unintentional Firearm deaths among children; and
12. Over 22,000 Americans every year, including over 1,000 children and teens, die by Firearm suicide; and
13. A meta-analysis of 14 different scientific studies concluded that access to a Firearm triples the risk of death by suicide of anyone in the household; and
14. Among commonly used methods of self-harm, Firearms are by far the most lethal, with a fatality rate of approximately 85 percent, compared to less than five percent with other methods, such that while Firearms are used in less than six percent of suicide attempts, over half of suicide deaths result from suicide attempts performed with Firearms; and

15. Extreme Risk Protection Order laws have been shown to help prevent Firearm suicides, as shown by the empirical evidence of reduced suicide rates under Connecticut's and Indiana's laws; and
16. Extreme Risk Protection Order laws can also prevent gun crimes, as an analysis of mass shootings from 2009 to 2017 revealed that in 51 percent of incidents the shooter exhibited warning signs that he posed a danger to himself or others before the shooting; and
17. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components; and
18. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer, or transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components unless and until governing law allows it to become effective; and
19. Senate Bill No. 90, a proposed statewide Extreme Risk Protection Order law dated February 14, 2019, was introduced to the General Assembly of Pennsylvania in the Session of 2019 by a bipartisan group of legislators; and
20. The City Council calls upon the Pennsylvania General Assembly to protect all Pennsylvanians by enacting Senate Bill No. 90; and
21. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution; and
22. The City Council has authority to legislate regarding the use of Firearms, as distinguished from their ownership, possession, transfer, or transportation, in order to protect members of the public.

CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

I certify pursuant to Pa.R.App.P. 2135(a)(1), that this Brief contains no more than 13,990 words, including footnotes, which is less than the allowable 14,000 words.

/s Kelly Iverson
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

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CERTIFICATE OF SERVICE

I certify that on April 30, 2020, I caused a true and correct copy of Appellant's Opening Brief to be served upon the following counsel by electronic service:

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