

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-01211-MSK-MEH

JON C. CALDARA, an individual;
BOULDER RIFLE CLUB, INC., a Colorado nonprofit corporation;
GENERAL COMMERCE, LLC, d/b/a Bison Tactical, a Wyoming limited liability company;
TYLER FAYE, an individual; and
MARK RINGER, an individual,

Plaintiffs,

v.

CITY OF BOULDER, a Colorado home rule municipality;
JANE S. BRAUTIGAM, City Manager of the City of Boulder, in her official capacity;
GREGORY TESTA, Chief of Police of the City of Boulder, in his official capacity; and
J. DOES 1-10,

Defendants.

DEFENDANTS' BRIEF IN SUPPORT OF *PULLMAN* ABSTENTION

Defendants the City of Boulder, Jane S. Brautigam, and Gregory Testa (“Defendants,” or collectively, the “City of Boulder”), by and through their attorneys, submit the following brief in support of abstention under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), pursuant to the Court’s August 15, 2018 Order (Dkt. No. 45).

INTRODUCTION

Whether Colorado’s home-rule municipalities are preempted from enacting reasonable ordinances regulating certain aspects of firearms is a query that should be addressed by a Colorado state court. The *Pullman* abstention doctrine is the mechanism by which this Court can ensure such a query occurs here.

Pullman abstention is both appropriate and necessary in this case because a lawsuit already pending in Boulder County District Court presents the precise issue before this Court; namely, whether Boulder’s Ordinance 8245, as modified by Ordinance 8259 (together, the “Ordinance”) is preempted by state law. That Boulder trial court will determine whether the City of Boulder can regulate firearms according to the Ordinance. Its judgment can then be appealed to the Colorado Supreme Court, which has no binding precedent on the issue. And if the Ordinance is ultimately invalidated by the Colorado Supreme Court, all of Plaintiffs’ thirty-nine claims here—most of which arise under the U.S. Constitution—will be rendered moot. Or if the Ordinance is not invalidated, this Court can take up the issues, if necessary, without threat that a decision would be an improper advisory opinion. Accordingly, this Court should abstain under *Pullman*.

BACKGROUND

The City of Boulder is a home-rule municipality under Article XX of the Colorado Constitution. Acting pursuant to its municipal powers, on May 15, 2018, the Boulder City Council passed and adopted Ordinance 8245. *See* Dkt. No. 41 ¶ 1. Citing local characteristics that make Boulder uniquely vulnerable to mass shootings and other gun violence, *see* Ord., Findings A-C, L-M, the Ordinance amends Title 5 of the Boulder Revised Code to impose several new firearm-related regulations. *See* Ex. A to Defs.’ Mot. to Dismiss. Relevant here, the Ordinance, with certain exceptions, restricts the possession, sale, or transfer of “Assault weapons” and “Large-capacity magazines,” and raises the minimum age for possessing a firearm from eighteen to twenty-one. *See generally* Ord.

Plaintiffs filed this lawsuit on May 16, 2018. *See* Dkt. No. 1. Among Plaintiffs’ original twenty-eight causes of action, Plaintiffs asserted that the Ordinance is preempted by sections 29-11.7-102 and -103, C.R.S. *See* Dkt. No. 1, ¶¶ 413-34. In response to Plaintiffs’ Motion for Preliminary Injunction, filed a month after the Complaint (*see* Dkt. No. 14), Defendants raised the issue of *Pullman* abstention. *See* Dkt. No. 28 at 29-30. Plaintiffs filed an Amended Complaint on August 6, 2018 and re-asserted their preemption claims. *See* Dkt. No. 41 ¶¶ 614-38.

Shortly after this lawsuit was filed, a different group of plaintiffs filed suit against the City of Boulder in Boulder County District Court in *Chambers et al. v. City of Boulder*, Case No. 2018CV30581. *See* Ex. A (*Chambers* Am. Compl.).¹ The *Chambers* plaintiffs assert five claims, all founded on a theory of state-law preemption. Count I asserts that the Ordinance’s provisions regulating assault weapons and providing for certification of assault weapons are preempted by sections 29-11.7-102 and -103, C.R.S. *Id.* ¶¶ 39-46. Count II asserts that the Ordinance’s regulation of “Large-capacity magazines” as magazines that hold more than ten rounds is preempted by section 18-12-301, C.R.S. *Id.* ¶¶ 47-52. Count III and Count IV assert that the Ordinance’s amendments prohibiting, in the absence of parental or legal guardian consent, the possession of firearms by, and the sale of firearms to, persons between eighteen and twenty years old is preempted by sections 18-12-101, -108.5, and -108.7, C.R.S. *Id.* ¶¶ 53-61. Lastly, Count V asserts that the section of the Boulder Revised Code regulating the manner of carrying rifles and shotguns in public is preempted by section 29-11.7-104, C.R.S. *Id.* ¶¶ 62-66.

¹ The plaintiffs in the *Chambers* action filed an Amended Complaint on July 19, 2018, which is now the operative pleading.

ARGUMENT

Pullman abstention is appropriate because the validity of the Ordinance under Colorado’s preemption principles—raised in Counts Thirty-Eight and Thirty-Nine of the Amended Complaint—is a preliminary question that underlies every one of Plaintiffs’ federal claims, and one that the Colorado Supreme Court has not resolved. This Court should permit Colorado’s state courts to resolve this issue through the pending *Chambers* lawsuit.

A. The *Pullman* Abstention Doctrine.

Abstention under *Pullman* is appropriate in a federal action where the state law at issue is unclear and “susceptible of a construction by the state judiciary that would avoid or modify the necessity of reaching a federal constitutional question.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 306 (1979). In such a case, federal courts should not be “forced to interpret state law without the benefit of state-court consideration . . . under circumstances where a constitutional determination is predicated on a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court decision advisory and the litigation underlying it meaningless.” *Moore v. Sims*, 442 U.S. 415, 428 (1979). Abstention avoids unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication. *Babbitt*, 442 U.S. at 306.

Under the law of the Tenth Circuit, “a district court should abstain [under *Pullman*] if three conditions are satisfied: (1) an uncertain issue of state law underlies the federal constitutional claim; (2) the state issues are amenable to interpretation and such an interpretation obviates the need for or substantially narrows the scope of the constitutional claim; and (3) an

incorrect decision of state law by the district court would hinder important state law policies.”

Lehman v. City of Louisville, 967 F.2d 1474, 1478 (10th Cir. 1992). Abstention is particularly appropriate where, as here, a state court action is already pending that is likely to resolve the state questions without the delay of having to commence proceedings in state court. 17A Fed. Prac. & Proc. Juris. § 4242 (3d ed.).

B. The Preliminary Issue of State-Law Preemption Requires Abstention Under *Pullman*.

Each of the three *Lehman* factors is met in this case, supporting abstention under *Pullman*.

1. Uncertain issues regarding state preemption of local law underlie Plaintiffs’ federal constitutional claims.

The Colorado Supreme Court has not addressed the scope of home-rule cities’ power to regulate firearms, a threshold issue that underlies all of Plaintiffs’ federal claims. In *State of Colorado v. City and County of Denver*, the issue before the Colorado Supreme Court was whether Colorado state statutes preempted certain Denver regulations regarding firearms. 139 P.3d 635 (Colo. 2006). The Denver District Court had determined that several of the ordinances, including those prohibiting assault weapons, were either matters of local concern or did not conflict with state law, and were therefore valid. *City & County of Denver v. State of Colorado*, No. 03-CV-3809, 2004 WL 5212983 (Colo. Dist. Ct. Nov. 5, 2004). The State appealed the judgment directly to the Colorado Supreme Court under section 13-4-102, C.R.S., which divests Colorado’s intermediate court of appeals of jurisdiction in cases “in which a statute, a municipal charter provision, or an ordinance has been declared unconstitutional.”

The *en banc* court was equally divided on the issue, resulting in affirmance of the trial court's determination. *State of Colorado*, 139 P.3d at 636. The affirmation was not based on the merits. *Id.* There are no other Colorado Supreme Court cases concerning state preemption of local law in the area of firearms regulation. Because the issue of state preemption of local regulations regarding firearms is uncertain in Colorado, this case meets the first *Lehman* factor. *See* 967 F.2d at 1478

In their Reply to Defendants' Response in Opposition to the Motion for Preliminary Injunction, Plaintiffs argued that *Pullman* does not apply because the "state law questions in this case arise out of a common nucleus of operative fact, but do not 'underly' the federal questions." Dkt. No. 36 at 7. Plaintiffs are incorrect. Corollary to the foundational principle that federal courts should avoid unnecessary decision of constitutional issues is the principle that "unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Univ. of Utah v. Shurtleff*, 252 F. Supp. 2d 1264, 1284 (D. Utah 2003).

In *University of Utah*, the plaintiff sought a determination that "the University of Utah has the autonomy to adopt and enforce its own firearms policies, even if those policies are contrary to the laws enacted by the Utah Legislature." *Id.* at 1281. The University argued that it had the prerogative to do so under the Utah Constitution and the First and Fourteenth Amendments to the U.S. Constitution, and also that the two state laws at issue could be construed as permitting the University's policies. *See id.* at 1266-67. The district court chose to abstain under *Pullman*, finding that "uncertain issues of state law underlie the federal constitutional claim" because "[i]f the state court ruled favorably on Plaintiffs' statutory

construction claim or their state constitutional claim, there would be no need for a federal court ruling on Plaintiffs’ First and Fourteenth Amendment Claims.” *Id.* at 1285.

The posture of this case is materially identical, in that this Court must first construe sections 29-11.7-102 and -103 and their preemptive effect before considering the dozens of Plaintiffs’ constitutional claims. *See id.* These unsettled issues accordingly underlie Plaintiffs’ federal claims, satisfying the first *Lehman* factor.

2. The state-law preemption issue is amenable to an interpretation that would moot Plaintiffs’ federal claims.

All of Plaintiffs’ claims challenge the Ordinance. *See generally* Dkt. No. 41. Plaintiffs further alleged an interpretation of sections 29-11.7-102 and -103 that would preempt the Ordinance. *See* Am. Compl. ¶¶ 614-38. The issue of preemption therefore has the potential to render the federal claims moot. Indeed, as Plaintiffs have acknowledged, if the state court in *Chambers* finds that the Ordinance was not a valid exercise of the City of Boulder’s municipal powers, then Plaintiffs will have nothing left to challenge. *See, e.g., Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 264 (2011) (courts should abstain where “state-law issue . . . may be dispositive”); *Cedar Shake & Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 622-23, 626 (9th Cir. 1993) (holding abstention warranted where “[i]f a state court were to determine that the local ordinance is preempted, the ordinance would be preempted and a federal court would not have to decide [plaintiffs’] equal protection claim”); *Autotek Inc. v. County of Sacramento*, No. 216CV01093KJMCKD, 2017 WL 3149923, at *6 (E.D. Cal. July 25, 2017) (finding abstention appropriate where state cases could moot, limit or alter plaintiffs’ federal questions).

The second *Lehman* factor thus weighs in favor of abstention.

3. An incorrect decision would hinder important state-law policies.

The issue of state-law preemption of local firearms regulations implicates significant state-law policies that should be addressed in the first instance by Colorado courts. In *City of Chicago v. Fieldcrest Dairies*, 316 U.S. 168, 171 (1942), the Supreme Court held that the district court should have abstained under *Pullman* from ruling on the validity of a Chicago ordinance regulating milk containers. A Michigan corporation challenged the ordinance as preempted by the Illinois Milk Pasteurization Plan Law, and while the federal action was pending, the plaintiff's parent company raised the same challenge in Illinois state court. *Id.* at 170-71. The district court proceeded to rule that the state statute preempted the Chicago ordinance, and the city appealed. *Id.*

The Supreme Court “granted the petition for certiorari because of the doubtful propriety of the District Court and of the Circuit Court of Appeals in undertaking to decide such an important question of Illinois law instead of remitting the parties to the state courts for litigation of the state questions involved in the case.” *Id.* at 171 (citing *Pullman*, 312 U.S. 496) (internal citation omitted). The Court held that *Pullman* abstention was appropriate in part because the dispute “involves a question as to whether a city has trespassed on the domain of a State.” *Id.* “The delicacy of that issue and an appropriate regard for the rightful independence of state governments” necessitated abstention. *Id.* (internal quotation omitted); see also *Univ. of Utah*, 252 F. Supp. 2d at 1284; *Cedar Shake & Shingle Bureau*, 997 F.2d at 622. This case, which similarly raises the delicate issue of the balance of power between the City of Boulder and the State of Colorado, also requires abstention under *Pullman*.

CONCLUSION

For the foregoing reasons, *Pullman* abstention in favor of the *Chambers* court is both appropriate and necessary.

DATED: August 22, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of August, the foregoing **DEFENDANTS' BRIEF IN SUPPORT OF *PULLMAN* ABSTENTION** was filed with the Clerk of the Court using the CM-ECF system, which will send notification of such filing to:

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EXHIBIT A

DATE FILED: July 19, 2018 11:38 AM
FILING ID: 2113FE0C594FD
CASE NUMBER: 2018CV30581

Plaintiffs: ROBERT LYNN CHAMBERS, JAMES
MICHAEL JONES, GUNSPORT OF COLORADO, and
COLORADO STATE SHOOTING ASSOCIATION.

v.

Defendant: THE CITY OF BOULDER

▲ COURT USE ONLY ▲

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Case Number: 2018CV30581

Division: 2

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Robert Lynn Chambers, James Michael Jones, Gunsport of Colorado, and Colorado State Shooting Association (collectively, “Plaintiffs”), by and through counsel, file their complaint against The City of Boulder (“Defendant”) and state the following.

INTRODUCTION

1. The City of Boulder recently enacted Boulder Ordinance 8245 (“the Ordinance”), which regulates the possession of certain firearms and ammunition magazines. Additionally, the Ordinance raises the age of majority to twenty-one years and specifies a means by which certain firearms must be carried. In all respects, the Ordinance is preempted by state law. Years ago, the Colorado General Assembly declared the regulation of possession and ownership of firearms to be a matter of statewide concern. Thus, local governments are expressly prohibited from regulating the sale, purchase, or possession of firearms. This Court should enter declaratory judgment that the Ordinance is preempted and enjoin Defendant from its enforcement.

PARTIES

2. Plaintiff Robert Lynn Chambers is a resident of Boulder, Colorado, and a citizen of the United States. Plaintiff Chambers currently owns firearms defined as “assault weapons” and magazines defined as “large-capacity magazines” under the Ordinance, all of which he acquired before the Ordinance was passed. As a result of this ownership, Plaintiff Chambers is now subject to the Ordinance’s certification requirement—a process he wishes to avoid.

3. Plaintiff James Michael Jones is a resident of Boulder, Colorado, and a citizen of the United States. Plaintiff Jones currently owns firearms defined as “assault weapons” and magazines defined as “large-capacity magazines” under the Ordinance, all of which he acquired before the Ordinance was passed. As a result of this ownership, Plaintiff Jones is now subject to the Ordinance’s certification requirement—a process he wishes to avoid.

4. Each individual Plaintiff is otherwise eligible under the laws of the United States and the State of Colorado to receive and possess firearms and magazines, including firearms defined by the Ordinance as “assault weapons” and magazines defined by the Ordinance as “large-capacity magazines.” Each individual Plaintiff currently owns and, but for the credible threat of prosecution under the Ordinance, would purchase additional so-called “assault weapons” and “large-capacity magazines” after the deadlines prescribed in the Ordinance.

5. Plaintiff Gunsport of Colorado (“Gunsport”) is a Colorado entity with a principal place of business in Boulder, Colorado. Plaintiff Gunsport possesses a valid federal firearms license, which permits it to buy, sell, import, and manufacture firearms, magazines and ammunition within Colorado. Plaintiff Gunsport will suffer a significant loss of income as a result of the Ordinance, which raises the age of majority to 21. Indeed, a marked percentage of Plaintiff Gunsport’s customers are people between the ages of eighteen and twenty who wish to purchase firearms now proscribed for people within their age bracket. The Ordinance thus forces Plaintiff Gunsport to refrain from engaging in transactions that are otherwise legal under Colorado law.

6. Plaintiff Gunsport can and does represent the interests of its customers and potential customers in the purchase and sale of previously lawful firearms.

7. Plaintiff Colorado State Shooting Association (“CSSA”) is an organization dedicated to promoting safe and responsible firearms ownership and marksmanship competition throughout Colorado. Through its efforts, CSSA sanctions state and regional firearms matches and maintains information banks on clubs, ranges, matches, gun shows, laws, regulations, and legislation. CSSA also engages in lobbying efforts to promote the passage of favorable legislation for Colorado shooters. CSSA’s members domiciled in the City of Boulder wish to own firearms defined by the Ordinance as “assault weapons” and ammunition magazines defined by the Ordinance as “large-capacity magazines.”

8. CSSA brings suit on its own behalf and on behalf of its members.

9. Defendant City of Boulder is a home rule municipality in the State of Colorado.

JURISDICTION

10. Jurisdiction is founded on Colorado Rule of Civil Procedure 57, which provides that “[d]istrict . . . courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” COLO. R. CIV. P. 57(a). “Any person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” COLO. R. CIV. P. 57(b).

FACTS

Home Rule Law in Colorado

11. Colorado Constitution Article XX, Section 6 grants “home rule” to municipalities opting to operate under its provisions.

12. The City of Boulder is a home rule municipality.

13. To determine the respective authority of the state legislature and home rule municipalities, the Colorado Supreme Court recognizes “three broad categories of regulatory matters: (1) matters of local concern; (2) matters of statewide concern; and (3) matters of mixed state and local concern.” *City and County of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990) (collecting cases).

14. In matters of statewide concern, “the General Assembly may adopt legislation and home rule municipalities are without power to act unless authorized by the constitution or by state statute.” *Id.* In matters of mixed concern, state and local laws may coexist to the extent there is no conflict, “but in the event of conflict the state statute supersedes the conflicting provision of the charter or ordinance.” *Id.* In matters of local concern, both the state and the municipality may legislate. *Id.* But, “when a home rule ordinance or charter provision and a state statute conflict with respect to a local matter, the home rule provision supersedes the conflicting state provision.” *Id.*

Regulation of Firearms is a Matter of Statewide Concern

15. The Colorado General Assembly has declared the regulation of possession and ownership of firearms as a matter of statewide concern. Section 29-11.7-101 of the Colorado Revised Statutes states in its entirety:

(1) The general assembly hereby finds that:

(a) Section 3 of article II of the state constitution, the article referred to as the state bill of rights, declares that all persons have certain inalienable rights, which include the right to defend their lives and liberties;

(b) Section 13 of article II of the state constitution protects the fundamental right of a person to keep and bear arms and implements section 3 of article II of the state constitution;

(c) The general assembly recognizes a duty to protect and defend the fundamental civil rights set forth in paragraphs (a) and (b) of this subsection (1);

(d) There exists a widespread inconsistency among jurisdictions within the state with regard to firearms regulations;

(e) This inconsistency among local government laws regulating lawful firearm possession and ownership has extraterritorial impact on state citizens and the general public by subjecting them to criminal and civil penalties in some jurisdictions for conduct wholly lawful in other jurisdictions;

(f) Inconsistency among local governments of laws regulating the possession and ownership of firearms results in persons being treated differently under the law solely on the basis of where they reside, and a person's residence in a particular county or city or city and county is not a rational classification when it is the basis for denial of equal treatment under the law;

(g) This inconsistency places citizens in the position of not knowing when they may be violating the local laws and therefore being unable to avoid violating the law and becoming subject to criminal and other penalties.

(2) Based on the findings specified in subsection (1) of this section, the general assembly concludes that:

(a) The regulation of firearms is a matter of statewide concern;

(b) It is necessary to provide statewide laws concerning the possession and ownership of a firearm to ensure that law-abiding persons are not unfairly placed in the position of unknowingly committing crimes involving firearms.

C.R.S. § 29-11.7-101.

16. Under Colorado state law, “[f]irearms database[s]” are “prohibited.” C.R.S. § 29-11.7-101.

17. Under Colorado state law, local governments are expressly prohibited from regulating the sale, purchase, or possession of firearms:

A local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law. Any such ordinance, regulation, or other law enacted by a local government prior to March 18, 2003, is void and unenforceable.

C.R.S. § 29-11.7-103.

18. The need for uniform, statewide legislation underpins the constitutional rights to keep and bear arms in defense of life and liberty. *Id.* § 101(1)(a)–(b). Thus, home rule municipalities are without power to regulate the purchase, possession, or transfer of firearms without explicit constitutional or statutory authority. To the extent that municipal ordinances conflict with state law, the municipal ordinance is invalid and may not be enforced.

19. The Colorado Criminal Code defining offenses relating to firearms and other weapons permits ownership of “assault weapons.” Colorado state law merely prohibits “dangerous weapons” (including firearm silencers, machine guns, short shotguns, short rifles, and ballistic knives) and “illegal weapons” (including blackjacks, gas guns, and metallic knuckles). C.R.S. § 18-12-102.

20. Under Colorado law, subject to certain exceptions, a person may not sell, transfer, or possess a “large-capacity magazine” unless he or she owned the magazine on July 1, 2013, and maintains continuous possession of it. *Id.* § 18-12-302(1)–(2). A “large-capacity magazine” is defined under Colorado state law as one designed to hold or converted to accept “more than fifteen rounds of ammunition.” *Id.* § 18-12-301(2)(a)(I).

21. Under Colorado state law, an adult is “any person eighteen years of age or older,” and a juvenile is “any person under the age of eighteen years.” *Id.* § 18-12-101(a), (e.7). Furthermore, “it is unlawful for any person who has not attained the age of eighteen years knowingly to have any handgun in such a person’s possession.” *Id.* § 18-12-108.5(1)(a). And “[a]ny person who intentionally, knowingly, or recklessly provides a handgun with or without remuneration to any person under the age of eighteen years . . . commits the crime of unlawfully providing a handgun to a juvenile or permitting a juvenile to possess a handgun.” *Id.* § 18-12-108.7(1)(a). With regard to firearms other than handguns, “no person shall sell, rent, or transfer ownership or allow unsupervised possession of a firearm with or without remuneration to any juvenile without the consent of the juvenile’s parent or legal guardian.” *Id.* § 18-12-108.7(3).

22. Finally, Colorado state law defines the offense of carrying a concealed firearm as a class 2 misdemeanor but makes no mention of the manner through which a firearm must be transported. *See id.* § 18-12-105(1)(b).

The Boulder Ordinance and Its Violation of State Law

23. The Ordinance prohibits the purchase, possession, use, sale, and transfer of so-called “assault weapons” by law-abiding citizens unless they undergo a certification process, through which municipal authorities will catalog and approve such ownership. Specifically, the Ordinance provides: “Any person seeking to certify an assault weapon that he or she legally possessed prior to June 15, 2018 must comply with the following requirements: (1) Submit to a background check conducted by the appropriate law enforcement agency to confirm that he or she is not prohibited to possess a firearm pursuant to 18 U.S.C. § 922 or C.R.S. § 18-12-108; (2) Unless the person is currently prohibited by law from possessing a firearm, prior to December 31, 2018 apply for a certificate for the assault weapon from the Boulder Police Department; (3) Safely and securely store the assault weapon pursuant to the regulations adopted

by the appropriate law enforcement agency; (4) Possess the assault weapon only on property owned or immediately controlled by the person, or while on the premises of a licensed gunsmith for the purpose of lawful repair, or while engaged in the legal use of the assault weapon at a duly licensed firing range, or while traveling to or from these locations, provided that the assault weapon is stored unloaded in a locked container during transport. The term ‘locked container’ does not include the utility compartment, glove compartment, or trunk of a motor vehicle; and (5) Report the loss or theft of a certified assault weapon to the appropriate law enforcement agency within 48 hours of the time the discovery was made or should have been made.” The Ordinance further provides: “The owner of a certified assault weapon may not possess in the City of Boulder any assault weapons purchased after June 15, 2018.”

24. On June 19, 2018, the Boulder City Council considered five proposed amendments to the Ordinance, one of which would authorize Licensed Firearms Dealers, in addition to the Boulder Police Department, to issue certificates for the possession of so-called “assault weapons.” The amendment did not pass, so the Ordinance does not allow Boulder’s two gun stores to issue certificates of ownership. *See* Ex. A (City of Boulder, City Council Agenda Item (June 19, 2018)).

25. The Ordinance also prohibits “large-capacity magazines” that hold more than 10 rounds.

26. During its June 19, 2018, meeting, the Boulder City Council considered and adopted an amendment that removes an exemption from the Ordinance for handgun magazines that are legal under state law. The Ordinance, as amended, no longer exempts any person “[f]rom possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law.” Ex. B (Boulder Ordinance 8259). This amendment prohibits citizens of Boulder from possessing magazines that are legal under Colorado state law.

27. Further, the Ordinance raises the age of majority to 21 years, thereby depriving people between the ages of eighteen and twenty of their right to possess otherwise lawful firearms.

28. Finally, the Ordinance prohibits the transport of rifles and shotguns unless carried in a case reasonably recognizable as (or labeled as) a case in which a firearm is being carried. Specifically, the Ordinance provides: “Any person carrying a firearm off of the person’s property or outside of the person’s business or vehicle shall carry the firearm in a carrying case. The carrying case must be recognizable as a gun carrying case by a reasonable person. A plain-shaped case must be clearly marked to be deemed recognizable under this standard. A holster satisfies the requirement of a carrying case for a pistol. The carrying case must be openly carried and must not be concealed on or about the person. This section shall not apply to individuals who have a permit to carry a concealed weapon issued pursuant to state law, unless the weapon being carried is an assault weapon.”

29. The General Assembly has declared the regulation of possession and ownership of firearms to be a matter of statewide concern. The Ordinance’s provisions directly conflict with Colorado state law. Neither the Colorado Constitution nor any controlling statutory provisions

authorize the City of Boulder to pass such conflicting regulation of possession and ownership of firearms. Thus, the Ordinance is preempted by Colorado state law and may not be enforced.

30. The Ordinance indeed conflicts with controlling Colorado law on key points, which creates great detriment to the citizens of the City of Boulder.

31. Because of the Ordinance, citizens of the City of Boulder (including Plaintiffs Chambers and Jones) must now endure an intrusive and unnecessary certification process to possess so-called “assault weapons” that are otherwise legal and not subject to statewide regulation. Indeed, Plaintiffs Chambers and Jones wish to continue possessing regulated firearms past the arbitrary December 31, 2018, deadline without rendering the firearms inoperable or submitting to the lengthy certification process.

32. Likewise, many citizens of the City of Boulder may have purchased a so-called “assault weapon” and possessed the weapon within the City of Boulder before the June 15, 2018, deadline. Because of the Ordinance, such citizens must also succumb to a certification process not authorized by Colorado state law.

33. The Ordinance injures Plaintiff Gunsport by not allowing it to issue certificates of ownership. When considering whether to authorize Licensed Firearms Dealers to certify the ownership of so-called “assault weapons,” the Boulder City Council acknowledged that “[t]ax revenue from [Boulder’s two gun stores] will likely decrease” as a result of the Ordinance. *See* City of Boulder, City Council Agenda Item (June 19, 2018). Defendant has acknowledged Plaintiff Gunsport will experience a decline in revenue.

34. Further, the Ordinance strips citizens of the City of Boulder between the ages of eighteen and twenty years old of their right to acquire, possess, and transfer otherwise lawful firearms. If these citizens traveled to another city, they would be able to acquire the same weapons Boulder arbitrarily prohibits.

35. Likewise, the Ordinance erroneously impairs the ability of licensed firearms dealers and distributors, like Plaintiff Gunsport, from selling or otherwise transferring legal firearms to people between the ages of eighteen and twenty years old. The Ordinance thus imposes great detriment on firearm dealers and distributors by forcing potential customers to leave the City of Boulder and travel to a different municipality to purchase firearms that are otherwise legal under Colorado state law.

36. Finally, many citizens of the City of Boulder may wish to transport firearms in cases or through other means that would run afoul of the Ordinance’s strict carrying-case requirement. While Colorado state law regulates the concealed carry of firearms, it does not prescribe particular methods of carry. The Ordinance thus imposes obligations beyond those outlined in controlling Colorado state law.

37. The Ordinance creates precisely the situation the General Assembly sought to avoid when it identified the regulation of possession and ownership of firearms as a matter of statewide concern. Namely, because of the Ordinance, citizens of the City of Boulder now run

the risk of prosecution for conduct that is otherwise legal under Colorado state law. City Council member Mirabai Nagle declared, “[W]e just turned a bunch more people into criminals.” *Boulder Council: Gun Stores Can’t Issue Certificates to Assault Weapons Owners*, DAILY CAMERA, available at http://www.dailycamera.com/ci_31956179/boulder-council-assault-weapons-ban-ownership-certificates (last accessed June 22, 2019).

38. Plaintiffs respectfully request that this Court (i) enter a declaratory judgment that Boulder Ordinance 8245 regulates issues of possession and ownership of firearms that are matters of state concern, and is thus preempted in its entirety by conflicting Colorado constitutional and statutory authority; (ii) enjoin Defendant and its official officers, agents, and employees from administration and enforcement of Boulder Ordinance 8245.

CAUSES OF ACTION

Count I

(The Boulder Ordinance Requiring Certification of Assault Weapons is Preempted by Colorado State Law.)

39. The preceding paragraphs are re-alleged and incorporated by reference.

40. The Ordinance prohibits the purchase, possession, use, sale, and transfer of so-called “assault weapons” by law-abiding citizens unless they undergo a detailed certification process, through which municipal authorities will catalog and approve such ownership.

41. In contrast, Colorado Constitution Article II, Section 13 provides: “The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called into question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.”

42. Under Colorado state law, “[a] local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law.” C.R.S. § 29-11.7-103.

43. Under Colorado state law, “[a] local government, including a law enforcement agency, shall not maintain a list or other form of record or database of: (a) Persons who purchase or exchange firearms or who leave firearms for repair or sale on consignment; (b) Persons who transfer firearms, unless the persons are federally licensed firearms dealers; (c) The descriptions, including serial numbers, of firearms purchased, transferred, exchanged, or left for repair or sale on consignment.” C.R.S. § 29-11.7-102.

44. The Ordinance directly violates Colorado state law prohibiting the maintenance of a list or other form of record or database of persons who purchase or exchange firearms and details about the firearms themselves. The Ordinance also violates the Colorado state law prohibiting municipalities from regulating the sale, purchase, or possession of firearms legal under state and federal law.

45. Under Colorado state law, possession of so-called “assault weapons” banned by the Ordinance is legal. Instead, the Colorado Criminal Code merely prohibits “dangerous weapons” (firearm silencers, machine guns, short shotguns, short rifles, and ballistic knives) and “illegal weapons” (blackjacks, gas guns, and metallic knuckles). C.R.S. § 18-12-102. “Under the rule of [statutory] interpretation *expressio unius exclusio alterius*, the inclusion of certain items implies the exclusion of others.” *Beeghly v. Mack*, 20 P.3d 610, 614 (Colo. 2001) (en banc). The General Assembly chose to regulate the enumerated weapons while specifically exempting from regulation the so-called “assault weapons” regulated by the Ordinance. Thus, Colorado state law speaks to this issue, actively foregoing a certification requirement like the one present in the Ordinance.

46. Because Colorado state law does not contemplate a certification requirement at all, the City Council’s decision to require certification by the Boulder Police Department, with or without allowing certification by Boulder’s two gun stores, is directly preempted by state law.

Count II

(The Boulder Ordinance Banning “Large-Capacity Magazines” as Those Which Hold More Than 10 Rounds is Preempted by Colorado State Law.)

47. The preceding paragraphs are re-alleged and incorporated by reference.

48. The Ordinance defines “large-capacity magazines” as “magazines capable of holding more than 10 rounds.”

49. Under the Colorado Criminal Code, a “large-capacity magazine” is defined, in pertinent part, as “[a] fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than *fifteen rounds* of ammunition.” C.R.S. § 18-12-301 (emphasis added).

50. During the Second Reading of what was then House Bill 13-1224, the General Assembly debated whether to define “large-capacity magazines” as those which hold ten rounds or those which hold fifteen. Based on testimony from concerned citizens, the General Assembly ultimately concluded that a “large-capacity magazine” should be defined as one capable of holding in excess of fifteen rounds, thereby preempting any attempt by the municipalities to legislate otherwise. *See House Second Reading, AN ACT CONCERNING PROHIBITING LARGE-CAPACITY AMMUNITION MAGAZINES*, H.B. 13-1224 (Feb. 15, 2013), at pp. 4:13–19 (Statement of Representative Rhonda Fields); 12:11–14:23 (Statement of Representative Joseph A. Salazar).

51. The definition of “large-capacity magazine” contained within the Ordinance directly conflicts with Colorado state law and is thus invalid.

52. Further, following the June 19, 2018, amendment, the Ordinance no longer exempts handgun magazines otherwise legal under Colorado state law. The City Council deliberately deleted language from the Ordinance that would permit citizens of Boulder to possess handgun magazines compliant with state law. In this way, the City Council deliberately sanctioned legislation preempted by Colorado state law.

Count III

(The Boulder Ordinance Prohibiting Possession of Firearms by Persons Between Eighteen and Twenty Years Old is Preempted by Colorado State Law.)

53. The preceding paragraphs are re-alleged and incorporated by reference.

54. The Ordinance defines a minor as “a person under twenty-one years of age.” It also provides that “[n]o minor shall knowingly possess a firearm,” subject to certain discrete exceptions.

55. The Colorado Criminal Code defines an adult as “any person eighteen years of age or older” and a juvenile as “any person under the age of eighteen years.” C.R.S. § 18-12-101(a), (e.7). Colorado state law prohibits minors (*i.e.*, people under the age of eighteen) from possessing handguns. C.R.S. § 18-12-108.5.

56. The Ordinance deprives people between the ages of eighteen and twenty of their lawful right to purchase and possess firearms, which directly conflicts with Colorado state law and is thus preempted.

Count IV

(The Boulder Ordinance Prohibiting the Sale of Firearms to Persons Between Eighteen and Twenty Years Old is Preempted by Colorado State Law.)

57. The preceding paragraphs are re-alleged and incorporated by reference.

58. The Ordinance defines a minor as “a person under twenty-one years of age,” while Colorado state law defines a minor as “any person under the age of eighteen years.” C.R.S. § 18-12-101(e.7).

59. The Ordinance prohibits any person from providing a rifle or a shotgun to a minor under circumstances that would cause the minor to otherwise violate the terms of the Ordinance.

60. Under Colorado state law, no person may sell or otherwise provide a handgun to a minor. C.R.S. § 18-12-108.7. With regard to firearms other than handguns, no person shall sell or otherwise provide a firearm to a minor without the consent of his or her parents or legal guardians. *Id.*

61. The Ordinance deprives dealers of the right to sell firearms to people between the ages of eighteen and twenty in direct conflict with Colorado state law. This part of the Ordinance is preempted by state law.

Count V
(The Boulder Ordinance Prohibiting the Open Carry of Rifles and Shotguns is Preempted by Colorado State Law.)

62. The preceding paragraphs are re-alleged and incorporated by reference.

63. The Ordinance prohibits the transport of rifles and shotguns unless carried in a case reasonably recognizable as (or labeled as) a case in which a firearm is being carried.

64. Under Colorado state law, “[a] local government may enact an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area within the local government’s jurisdiction.” C.R.S. § 29-11.7-104. Further, “[a] person commits a class 2 misdemeanor if such person knowingly and unlawfully . . . [c]arries a firearm concealed on or about his or her person.” C.R.S. § 18-12-105.

65. Under Colorado state law, persons are free to open carry in any manner they choose outside of a building or specific area under the City of Boulder’s jurisdiction.

66. Despite statutory provisions prohibiting concealed carry, no constitutional or statutory provisions authorize the City of Boulder to mandate that firearms must be transported in cases reasonably recognizable as (or labeled as) cases in which a firearm is being carried. This provision is likewise preempted by state law.

PRAYER FOR RELIEF

Plaintiffs respectfully pray that this Honorable Court:

- A. Enter a declaratory judgment that Boulder Ordinance 8245 regulates issues of state concern and is thus preempted in its entirety by controlling Colorado constitutional and statutory authority;
- B. Enjoin Defendant and its official officers, agents, and employees from administration and enforcement of Boulder Ordinance 8245;
- C. Award Plaintiffs costs and attorneys’ fees;
- D. Grant other such relief as the Court deems proper.

Dated this 19th day of July, 2018.

Respectfully Submitted,

HALE WESTFALL, LLP

/s/ Richard A. Westfall

Richard A. Westfall, No. 15295

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2018, a true and correct copy of the foregoing pleadings was served on the following via email, and a hard copy sent via U.S. mail:

Thomas A. Carr
City Attorney
Boulder City Attorney's Office
1777 Broadway
Boulder, CO 80302
CarrT@bouldercolorado.gov

s/Ingrid Hall
Ingrid Hall



DATE FILED: July 20, 2018 10:59 AM
FILING ID: 114F58EAC34B5
CASE NUMBER: 2018CV30581

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: June 19, 2018

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance 8259, 8260, 8261, or 8262 making amendments to the code provisions affected by the firearms ordinance adopted by council on May 15, 2018 and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney

EXECUTIVE SUMMARY

On May 15, 2018, the city council adopted Ordinance 8245, relating to firearm regulation in Boulder including banning certain weapons, magazines and other devices. Prior to the meeting, Council Member Bob Yates suggested five minor changes to the ordinance. Council discussed but did not decide to adopt the suggested changes. Council asked that the changes be brought back quickly to allow for council consideration of those proposed amendments, without affecting the adoption of the principal ordinance. The city attorney has prepared draft ordinances incorporating the proposed amendments into alternative versions. In addition, in reviewing the ordinances, there were some minor non-substantive changes that have been included in all four versions. Staff recommends that council pass all of these ordinances on first reading to allow for some limited discussion and decision on second reading at the June 19, 2018 council meeting.

This memorandum describes the proposed amendments.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt on second reading Ordinance 8259 making minor amendments to the code provisions affected by the firearms ordinance adopted by council on May 15, 2018 and setting forth related details.

or in the alternative

Motion to adopt on second reading Ordinance 8260 making minor amendments to the code provisions affected by the firearms ordinance adopted by council on May 15, 2018 and setting forth related details.

or in the alternative

Motion to adopt on second reading Ordinance 8261 making minor amendments to the code provisions affected by the firearms ordinance adopted by council on May 15, 2018 and setting forth related details.

or in the alternative

Motion to adopt on second reading Ordinance 8262 making minor amendments to the code provisions affected by the firearms ordinance adopted by council on May 15, 2018 and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – There are two businesses in Boulder that sell the products that the council banned in Ordinance 8245. Tax revenue from these businesses will likely decrease, although one study suggests that the true cost of gun violence far exceeds the economic impact of gun sales and manufacture.¹
- Environmental – None identified.
- Social – Public safety is among the city’s highest priorities. Any reduction or prevention of gun violence will have a positive social impact.

¹ <https://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america/>

OTHER IMPACTS

- Fiscal – All work for drafting will be performed within existing department budgets. The final ordinance may require additional funding to implement.
- Staff time – All work for drafting will be performed with existing staff. The final ordinance may require additional staff to implement.

BOARD AND COMMISSION FEEDBACK

Not Applicable.

PUBLIC FEEDBACK

Council held a five and one-half hour public hearing at which over 100 persons spoke. Council also has received several hundred emails regarding the issue.

The background for Ordinance 8245 was provided in detail in the [agenda packet](#) for the April 5, 2018 public hearing, in the [agenda packet](#) for the May 1, 2018 second reading and in the [agenda packet](#) for the May 15, 2018 third reading.

1. Language Excluding Handgun Magazines that are in Compliance with State Law.

Council Member Yates questioned whether council intended to exclude from regulation handgun magazines that comply with state law. The relevant language in section 5-8-10(c)(3) is as follows:

(c) Nothing in this section shall be construed to forbid any person:

...

- (3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law;

...

Council directed the city attorney to bring back an amendment deleting subsection 5-8-10(c)(3).

2. Exemption for Individuals Traveling Through Boulder

Colorado state law provides as follows:

Notwithstanding any other provision of law, no municipality, county, or city and county shall have the authority to enact or enforce any ordinance or resolution that would restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting or for lawful protection of a person's or another's person or property while traveling into,

through, or within, a municipal, county, or city and county jurisdiction, regardless of the number of times the person stops in a jurisdiction.

C.R.S. § 18-12-105.6. Accordingly, the city attorney recommended the following provision in Ordinance 8245, section 5-8-10(e):

Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting or for lawful protection of a person's or another's person or property while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Council Member Yates proposed a simpler version of the exception. The city attorney emphasized the importance of limiting the differentiation from state law. Accordingly, council directed the city attorney to propose an amendment exempting individuals carrying a weapon for the purpose of shooting competitively while traveling into, through or within Boulder.

3. Reorganization of Section 5-8-28(c) and Clarifying Prohibition on Certification for Individuals Prohibited from Possessing Firearms.

Council Member Yates recommended non-substantive changes to section 5-8-28(c).

There appeared to be a consensus of council members regarding these changes. The first three proposed amendments are in Ordinance 8259, which is attachment A.

4. Question Regarding Exemptions

Council Member Yates questioned whether council intended to include exemptions for those holding a concealed weapons permit under the Federal Law Enforcement Officers Safety Act (section 5-8-25(b)) and those possessing a weapon with a stamp or permit under the National Firearms Act (section 5-8-10(c)(2)). The relevant language is as follows:

Section 5-8-25:

The following individuals are exempt from the provisions of this Chapter:

(a) Any officer of the United States, including but not limited to federal agents and United States Marshals, any sheriffs, constables and their deputies; any regular or ex-officio police officer; any other peace officers; or members of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or

(b) Any person authorized to carry a concealed weapon under the Federal Law Enforcement Officers Safety Act.

Section 5-8-10(c)(2):

(c) Nothing in this section shall be construed to forbid any person:

...

- (2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;

Council discussed these changes and acknowledged that the language is as council intended. Council Members Yates and Grano asked that an amendment be brought forward for council to discuss this issue.

To facilitate discussion, Ordinance 8260, in attachment B, includes the changes proposed in Ordinance 8259 and the elimination of the exemptions discussed above.

5. Certification by Gun Stores

Council Member Yates recommended that council allow gun store owners to issue certifications. Council directed the city attorney to bring forward a potential amendment. The proposed amendment would add the phrase “or from a Licensed Firearms Dealer on a form approved by the Boulder Police Department” to section 5-8-22(c)(2) and the phrase “or by a Licensed Firearms Dealer on a form approved by the Boulder Police Department” to section 5-8-22(f)(2). After council passed Ordinance 8245, staff learned that the Colorado Bureau of Investigation will not allow the use of the InstaCheck system to facilitate the certification of gun owners. InstaCheck is a system that is programed with firearms restrictions to allow firearms dealers to ascertain whether a potential purchaser is permitted to own a firearm. There is a public system that can be used to find a record of criminal convictions, but it would not provide information about domestic violence restraining orders. The police have a separate system that will provide that information. Firearms dealers do not have access to such a system. If council wishes to allow firearms dealers to issues certificates, there will be no way that such dealers can determine whether a gun owner has a domestic violence restraining order.

All of the proposed amendments are in Ordinance 8261, which is attachment C. The first three amendments plus the amendments allowing certification by gun stores are in Ordinance 8262 in attachment D.

6. Non-substantive Changes

Staff recommends several non-substantive changes. In section 5-8-28(a) there was a typographical error. The word “or” was omitted between “assault weapons” and “high-capacity magazines”. In section 5-8-25, staff recommends that the section be re-formatted to add individually delineate each category of exemption in place of the

extended serial list. This should help to avoid confusion. Neither change is intended to affect the substance. These non-substantive changes are in all of the proposed ordinances.

Decision Matrix

- If council wishes to add only the first three proposed amendments council should pass Ordinance 8259.
- If council wishes to add the first three proposed amendments and the fourth category, council should pass Ordinance 8260.
- If council wishes to add all five proposed amendments council should pass Ordinance 8261.
- If council wishes to add the first three proposed amendments and the certification by gun stores, but not the fourth category eliminating certain exemptions, council should pass Ordinance 8262.

ATTACHMENTS

Attachment A – Proposed Ordinance 8259

Attachment B – Proposed Ordinance 8260

Attachment C – Proposed Ordinance 8261

Attachment D – Proposed Ordinance 8262

ORDINANCE 8259

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO DELETE A PROVISION EXEMPTING CERTAIN HANDGUN MAGAZINES AND TO CLARIFY THE CERTIFICATION PROCESS FOR ASSAULT WEAPONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-8-10, "Possession and Sale of Illegal Weapons," B.R.C. 1981, is amended to read as follows:

5-8-10. – Possession and Sale of Illegal Weapons.

- (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.
- (b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.
- (c) Nothing in this section shall be construed to forbid any person:
 - (1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;
 - (2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;
 - ~~(3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law; or~~
 - (34) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions from this Chapter," B.R.C. 1981.
- (d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.
- (e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting, ~~or~~ for lawful protection of a person's or another's person or property or for competition, while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 2. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

5-8-25. – Exemptions from Chapter.

~~The following individuals are exempt from the provisions of this Chapter:~~

- (a) ~~Nothing in this chapter shall be construed to forbid the following persons from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties: Any officer of the United States, including but not limited to federal agents and~~

~~(1) United States Marshals, any sheriffs, constables and their deputies;~~

~~(2) any regular or ex-officio police officer;~~

~~(3) any other peace officers; or~~

~~(4) members of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps, from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or~~

- ~~(b) Any person authorized to carry a concealed weapon under the Federal Law Enforcement Officers Safety Act.~~

Section 3. Section 5-8-28, “Assault Weapons,” B.R.C. 1981, is amended to read as follows:

5-8-28. – Assault Weapons.

- (a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon or large capacity magazine shall have until December 31, 2018 to do any of the following without being subject to prosecution:

(1) Remove the assault weapon or large capacity magazine from the City of Boulder;

(2) Render the assault weapon permanently inoperable;

(3) Surrender the assault weapon or large capacity magazine to the Boulder Police Department for destruction; or

(4) If eligible, obtain a certificate for the assault weapon as provided in subsection (c).

- (b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger activator shall have until July 15, 2018 to do any of the following without being subject to prosecution:

(1) Remove the multi-burst trigger activator from the City of Boulder; or

(2) Surrender the multi-burst trigger activator to the Boulder Police Department for destruction.

Attachment A - Proposed Ordinance 8259

1 (c) Any person seeking to certify an assault weapon that he or she legally possessed prior
2 to June 15, 2018 must comply with the following requirements:

3 (1) Submit to a background check conducted by the appropriate law enforcement
4 agency to confirm that he or she is not prohibited to possess a firearm pursuant
5 to 18 U.S.C. § 922 or C.R.S § 18-12-108;

6 (2) ~~Unless the person is currently prohibited by law from possessing a firearm,~~
7 ~~p~~Prior to December 31, 2018 apply for a certificate for the assault weapon from
8 the Boulder Police Department;

9 (3) No person prohibited by state or federal law from possessing a firearm shall be
10 issued a certificate.

11 (d) Any person issued a certificate shall:

12 (31) Safely and securely store the assault weapon pursuant to the regulations adopted
13 by the appropriate law enforcement agency;

14 (42) Possess the assault weapon only on property owned or immediately controlled
15 by the person, or while on the premises of a licensed gunsmith for the purpose
16 of lawful repair, or while engaged in the legal use of the assault weapon at a
17 duly licensed firing range, or while traveling to or from these locations,
18 provided that the assault weapon is stored unloaded in a locked container during
19 transport. The term "locked container" does not include the utility
20 compartment, glove compartment, or trunk of a motor vehicle; and

21 (53) Report the loss or theft of a certified assault weapon to the appropriate law
22 enforcement agency within 48 hours of the time the discovery was made or
23 should have been made.

24 (de) If a certified assault weapon is used in the commission of a crime, the owner shall be
25 civilly liable for any damages resulting from that crime. The liability imposed by this
subsection shall not apply if the assault weapon was stolen and the certified owner
reported the theft of the firearm to law enforcement within 48 hours of the time the
discovery was made or should have been made.

(ef) Certified assault weapons may not be purchased, sold or transferred in the City of
Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or
transfer to the appropriate law enforcement agency for the purpose of surrendering the
assault weapon for destruction.

(fg) Persons acquiring an assault weapon by inheritance, bequest, or succession shall,
within 90 days of acquiring title, do one of the following:

(1) Modify the assault weapon to render it permanently inoperable;

(2) Surrender the assault weapon to the Boulder Police Department for destruction;

(3) Transfer the assault weapon to a firearms dealer who is properly licensed under
federal, state and local laws; or

(4) Permanently remove the assault weapon from the City of Boulder.

1 (g) The owner of a certified assault weapon may not possess in the City of Boulder any
2 assault weapons purchased after June 15, 2018.

3 (h) The city manager shall charge a fee for each certificate sufficient to cover the costs of
4 administering the certificate program.

5 (i) The city manager shall issue to qualified applicants two original copies of each
6 certificate issued. The City of Boulder shall not maintain any records of certificates
7 issued. The person receiving the certificate shall keep one copy with the weapon
8 certified and the second copy in a secure place to replace the certificate maintained with
9 the weapon.

10 Section 4. This ordinance is necessary to protect the public health, safety, and welfare of
11 the residents of the city, and covers matters of local concern.

12 Section 5. The city council deems it appropriate that this ordinance be published by title
13 only and orders that copies of this ordinance be made available in the office of the city clerk for
14 public inspection and acquisition.

15
16 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
17 TITLE ONLY this 5th day of June 2018.

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Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk

1 READ ON SECOND READING, PASSED AND ADOPTED this 19th day of June 2018.

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4 Suzanne Jones
Mayor

5 Attest:

6 Lynnette Beck
7 City Clerk
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ORDINANCE 8260

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO DELETE A PROVISION EXEMPTING CERTAIN HANDGUN MAGAZINES, TO DELETE EXEMPTIONS FOR WEAPONS AUTHORIZED BY A FEDERAL STAMP OR PERMIT, TO DELETE AN EXEMPTION FOR INDIVIDUALS PERMITTED NATIONWIDE CONCEALED CARRY UNDER THE FEDERAL LAW ENFORCEMENT OFFICERS SAFETY ACT AND TO CLARIFY THE CERTIFICATION PROCESS FOR ASSAULT WEAPONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-8-10, "Possession and Sale of Illegal Weapons," B.R.C. 1981, is amended to read as follows:

5-8-10. – Possession and Sale of Illegal Weapons.

- (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.
- (b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.
- (c) Nothing in this section shall be construed to forbid any person:
 - (1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;
 - ~~(2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;~~
 - ~~(3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law; or~~
 - (24) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions from this Chapter," B.R.C. 1981.
- (d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.
- (e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting, ~~or~~ for lawful protection of a person's or another's person or property or for competition, while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 2. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

5-8-25. – Exemptions from Chapter.

~~The following individuals are exempt from the provisions of this Chapter:~~

- (a) Nothing in this chapter shall be construed to forbid the following persons from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties: Any officer of the United States, including but not limited to federal agents and

(1) United States Marshals, any sheriffs, constables and their deputies;

(2) any regular or ex-officio police officer;

(3) any other peace officers; or

(4) members of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps, from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or

- ~~(b) Any person authorized to carry a concealed weapon under the Federal Law Enforcement Officers Safety Act.~~

Section 3. Section 5-8-28, "Assault Weapons," B.R.C. 1981, is amended to read as follows:

5-8-28. – Assault Weapons.

- (a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon or large capacity magazine shall have until December 31, 2018 to do any of the following without being subject to prosecution:

(1) Remove the assault weapon or large capacity magazine from the City of Boulder;

(2) Render the assault weapon permanently inoperable;

(3) Surrender the assault weapon or large capacity magazine to the Boulder Police Department for destruction; or

(4) If eligible, obtain a certificate for the assault weapon as provided in subsection (c).

- (b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger activator shall have until July 15, 2018 to do any of the following without being subject to prosecution:

(1) Remove the multi-burst trigger activator from the City of Boulder; or

Attachment B - Proposed Ordinance 8260

- 1 (2) Surrender the multi-burst trigger activator to the Boulder Police Department for
2 destruction.
- 3 (c) Any person seeking to certify an assault weapon that he or she legally possessed prior
4 to June 15, 2018 must comply with the following requirements:
- 5 (1) Submit to a background check conducted by the appropriate law enforcement
6 agency to confirm that he or she is not prohibited to possess a firearm pursuant
7 to 18 U.S.C. § 922 or C.R.S § 18-12-108;
- 8 (2) ~~Unless the person is currently prohibited by law from possessing a firearm,~~
9 ~~p~~ Prior to December 31, 2018 apply for a certificate for the assault weapon from
10 the Boulder Police Department;
- 11 (3) No person prohibited by state or federal law from possessing a firearm shall be
12 issued a certificate.
- 13 (d) Any person issued a certificate shall:
- 14 (31) Safely and securely store the assault weapon pursuant to the regulations adopted
15 by the appropriate law enforcement agency;
- 16 (42) Possess the assault weapon only on property owned or immediately controlled
17 by the person, or while on the premises of a licensed gunsmith for the purpose
18 of lawful repair, or while engaged in the legal use of the assault weapon at a
19 duly licensed firing range, or while traveling to or from these locations,
20 provided that the assault weapon is stored unloaded in a locked container during
21 transport. The term “locked container” does not include the utility
22 compartment, glove compartment, or trunk of a motor vehicle; and
- 23 (53) Report the loss or theft of a certified assault weapon to the appropriate law
24 enforcement agency within 48 hours of the time the discovery was made or
25 should have been made.
- (de) If a certified assault weapon is used in the commission of a crime, the owner shall be
civilly liable for any damages resulting from that crime. The liability imposed by this
subsection shall not apply if the assault weapon was stolen and the certified owner
reported the theft of the firearm to law enforcement within 48 hours of the time the
discovery was made or should have been made.
- (ef) Certified assault weapons may not be purchased, sold or transferred in the City of
Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or
transfer to the appropriate law enforcement agency for the purpose of surrendering the
assault weapon for destruction.
- (fg) Persons acquiring an assault weapon by inheritance, bequest, or succession shall,
within 90 days of acquiring title, do one of the following:
- (1) Modify the assault weapon to render it permanently inoperable;
- (2) Surrender the assault weapon to the Boulder Police Department for destruction;
- (3) Transfer the assault weapon to a firearms dealer who is properly licensed under
federal, state and local laws; or

Attachment B - Proposed Ordinance 8260

1 (4) Permanently remove the assault weapon from the City of Boulder.

2 (~~gh~~) The owner of a certified assault weapon may not possess in the City of Boulder any
assault weapons purchased after June 15, 2018.

3 (~~hi~~) The city manager shall charge a fee for each certificate sufficient to cover the costs of
administering the certificate program.

4 (~~ij~~) The city manager shall issue to qualified applicants two original copies of each
5 certificate issued. The City of Boulder shall not maintain any records of certificates
6 issued. The person receiving the certificate shall keep one copy with the weapon
certified and the second copy in a secure place to replace the certificate maintained with
7 the weapon.

8 Section 4. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

9 Section 5. The city council deems it appropriate that this ordinance be published by title
10 only and orders that copies of this ordinance be made available in the office of the city clerk for
11 public inspection and acquisition.
12

13 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
14 TITLE ONLY this 5th day of June 2018.
15

16 _____
17 Suzanne Jones
Mayor

18 Attest:

19 _____
20 Lynnette Beck
City Clerk
21
22
23
24
25

1 READ ON SECOND READING, PASSED AND ADOPTED this 19th day of June 2018.

3 _____
Suzanne Jones
4 Mayor

4 Attest:

5 _____
6 Lynnette Beck
City Clerk

ORDINANCE 8261

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO DELETE A PROVISION EXEMPTING CERTAIN HANDGUN MAGAZINES, TO DELETE EXEMPTIONS FOR WEAPONS AUTHORIZED BY A FEDERAL STAMP OR PERMIT, TO DELETE AN EXEMPTION FOR INDIVIDUALS PERMITTED NATIONWIDE CONCEALED CARRY UNDER THE FEDERAL LAW ENFORCEMENT OFFICERS SAFETY ACT, TO CLARIFY THE CERTIFICATION PROCESS FOR ASSAULT WEAPONS AND TO ADD A PROVISION FOR LICENSED FIREARMS DEALERS TO ISSUE A CERTIFICATE FOR ASSAULT WEAPONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-8-10, "Possession and Sale of Illegal Weapons," B.R.C. 1981, is amended to read as follows:

5-8-10. – Possession and Sale of Illegal Weapons.

- (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.
- (b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.
- (c) Nothing in this section shall be construed to forbid any person:
 - (1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;
 - ~~(2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;~~
 - ~~(3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law; or~~
 - (4~~2~~) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions from this Chapter," B.R.C. 1981.
- (d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.
- (e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting, ~~or~~ for lawful protection of a person's or another's person or property or for competition.

while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 2. Section 5-8-22, "Defenses," B.R.C. 1981, is amended to read as follows:

5-8-22. – Defenses.

- (a) It is an affirmative defense to a charge of violating sections 5-8-3, "Discharge of Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," 5-8-5, "Negligently Shooting Bow or Slingshot," 5-8-6, "Aiming Weapon at Another," 5-8-7, "Flourishing Deadly Weapon in Alarming Manner," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the defendant was:
 - (1) Reasonably engaged in lawful self-defense under the statutes of the State of Colorado; or
 - (2) Reasonably exercising the right to keep and bear arms in defense of the defendant's or another's home, person and property or in aid of the civil power when legally thereto summoned.
- (b) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the events occurred in an area designated as a target range by the city manager under section 5-8-26, "City Manager May Designate Target Ranges," B.R.C. 1981, for the type of weapon involved. It is a specific defense to a charge of violating section 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," B.R.C. 1981, by possession that the defendant was going directly to or returning directly from such a target range.
- (c) It is an affirmative defense to a charge of violating sections 5-8-8, "Possession of Loaded Firearms," 5-8-9, "Carrying a Concealed Weapon," and 5-8-11, "Possessing Firearm While Intoxicated," B.R.C. 1981, that the defendant was:
 - (1) In the defendant's own dwelling or place of business or on property owned or under the defendant's control at the time; or
 - (2) In a private automobile or other private means of conveyance at the time and was carrying the weapon for lawful protection of the defendant's or another's person or property while traveling; or
 - (3) Charged with carrying a knife that was a hunting or fishing knife carried by the defendant for sport use.
- (d) It is a specific defense to a charge of violating sections 5-8-8, "Possession of Loaded Firearms," and 5-8-9, "Carrying a Concealed Weapon," B.R.C. 1981, that the defendant was carrying the weapon pursuant to a concealed weapons permit valid under the statutes of the State of Colorado.
- (e) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the loaded gas or mechanically operated gun was possessed or discharged in a building with the permission of the property owner and the projectile did not leave the building.

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- (f) It is a specific defense to a charge of violating section 5-8-10, "Possession of Illegal Weapons," B.R.C. 1981:
- (1) That the person had a valid permit for such weapon pursuant to federal law at the time of the offense; or
 - (2) That the illegal weapon was an assault weapon accompanied by a certificate issued by the Boulder Police Department or by a Licensed Firearms Dealer on a form approved by the Boulder Police Department.
- (g) It is a specific defense to a charge of violating section 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," B.R.C. 1981, that the firearm, gas or mechanically operated gun, bow, slingshot or crossbow possessed by the person was being transported in a motor vehicle. This defense does not apply to a charge of violation involving discharge of a missile.

Section 3. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

5-8-25. – Exemptions from Chapter.

~~The following individuals are exempt from the provisions of this Chapter:~~

- (a) Nothing in this chapter shall be construed to forbid the following persons from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties: Any officer of the United States, including but not limited to federal agents and
- (1) United States Marshals, any sheriffs, constables and their deputies;
 - (2) any regular or ex-officio police officer;
 - (3) any other peace officers; or
 - (4) members of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps, from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or
- (b) ~~Any person authorized to carry a concealed weapon under the Federal Law Enforcement Officers Safety Act.~~

Section 4. Section 5-8-28, "Assault Weapons," B.R.C. 1981, is amended to read as follows:

5-8-28. – Assault Weapons.

Attachment C - Proposed Ordinance 8261

- 1 (a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon
2 or large capacity magazine shall have until December 31, 2018 to do any of the
3 following without being subject to prosecution:
- 4 (1) Remove the assault weapon or large capacity magazine from the City of
5 Boulder;
 - 6 (2) Render the assault weapon permanently inoperable;
 - 7 (3) Surrender the assault weapon or large capacity magazine to the Boulder Police
8 Department for destruction; or
 - 9 (4) If eligible, obtain a certificate for the assault weapon as provided in subsection
10 (c).
- 11 (b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger
12 activator shall have until July 15, 2018 to do any of the following without being subject
13 to prosecution:
- 14 (1) Remove the multi-burst trigger activator from the City of Boulder; or
 - 15 (2) Surrender the multi-burst trigger activator to the Boulder Police Department for
16 destruction.
- 17 (c) Any person seeking to certify an assault weapon that he or she legally possessed prior
18 to June 15, 2018 must comply with the following requirements:
- 19 (1) Submit to a background check conducted by the appropriate law enforcement
20 agency to confirm that he or she is not prohibited to possess a firearm pursuant
21 to 18 U.S.C. § 922 or C.R.S § 18-12-108;
 - 22 (2) ~~Unless the person is currently prohibited by law from possessing a firearm,~~
23 ~~p~~Prior to December 31, 2018 apply for a certificate for the assault weapon from
24 the Boulder Police Department or from a Licensed Firearms Dealer on a form
25 approved by the Boulder Police Department;
 - 26 (3) No person prohibited by state or federal law from possessing a firearm shall be
27 issued a certificate.
- 28 (d) Any person issued a certificate shall:
- 29 (31) Safely and securely store the assault weapon pursuant to the regulations adopted
30 by the appropriate law enforcement agency;
 - 31 (42) Possess the assault weapon only on property owned or immediately controlled
32 by the person, or while on the premises of a licensed gunsmith for the purpose
33 of lawful repair, or while engaged in the legal use of the assault weapon at a
34 duly licensed firing range, or while traveling to or from these locations,
35 provided that the assault weapon is stored unloaded in a locked container during
36 transport. The term “locked container” does not include the utility
37 compartment, glove compartment, or trunk of a motor vehicle; and
 - 38 (53) Report the loss or theft of a certified assault weapon to the appropriate law
39 enforcement agency within 48 hours of the time the discovery was made or
40 should have been made.

Attachment C - Proposed Ordinance 8261

- (~~de~~) If a certified assault weapon is used in the commission of a crime, the owner shall be civilly liable for any damages resulting from that crime. The liability imposed by this subsection shall not apply if the assault weapon was stolen and the certified owner reported the theft of the firearm to law enforcement within 48 hours of the time the discovery was made or should have been made.
- (~~ef~~) Certified assault weapons may not be purchased, sold or transferred in the City of Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or transfer to the appropriate law enforcement agency for the purpose of surrendering the assault weapon for destruction.
- (~~fg~~) Persons acquiring an assault weapon by inheritance, bequest, or succession shall, within 90 days of acquiring title, do one of the following:
- (1) Modify the assault weapon to render it permanently inoperable;
 - (2) Surrender the assault weapon to the Boulder Police Department for destruction;
 - (3) Transfer the assault weapon to a firearms dealer who is properly licensed under federal, state and local laws; or
 - (4) Permanently remove the assault weapon from the City of Boulder.
- (~~gh~~) The owner of a certified assault weapon may not possess in the City of Boulder any assault weapons purchased after June 15, 2018.
- (~~hi~~) The city manager shall charge a fee for each certificate sufficient to cover the costs of administering the certificate program.
- (~~ij~~) The city manager shall issue to qualified applicants two original copies of each certificate issued. The City of Boulder shall not maintain any records of certificates issued. The person receiving the certificate shall keep one copy with the weapon certified and the second copy in a secure place to replace the certificate maintained with the weapon.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 6. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 5th day of June 2018.

3
4
5 _____
Suzanne Jones
Mayor

6 Attest:

7
8 _____
Lynnette Beck
City Clerk

9 READ ON SECOND READING, PASSED AND ADOPTED this 19th day of June 2018.

10
11
12 _____
Suzanne Jones
Mayor

13 Attest:

14
15 _____
Lynnette Beck
City Clerk

ORDINANCE 8262

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO DELETE A PROVISION EXEMPTING CERTAIN HANDGUN MAGAZINES, TO CLARIFY THE CERTIFICATION PROCESS FOR ASSAULT WEAPONS AND TO ADD A PROVISION FOR LICENSED FIREARMS DEALERS TO ISSUE A CERTIFICATE FOR ASSAULT WEAPONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-8-10, "Possession and Sale of Illegal Weapons," B.R.C. 1981, is amended to read as follows:

5-8-10. – Possession and Sale of Illegal Weapons.

- (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.
- (b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.
- (c) Nothing in this section shall be construed to forbid any person:
 - (1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;
 - (2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;
 - ~~(3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law; or~~
 - (43) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions from this Chapter," B.R.C. 1981.
- (d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.
- (e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting, ~~or~~ for lawful protection of a person's or another's person or property or for competition, while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 2. Section 5-8-22, "Defenses," B.R.C. 1981, is amended to read as follows:

5-8-22. – Defenses.

- (a) It is an affirmative defense to a charge of violating sections 5-8-3, "Discharge of Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," 5-8-5, "Negligently Shooting Bow or Slingshot," 5-8-6, "Aiming Weapon at Another," 5-8-7, "Flourishing Deadly Weapon in Alarming Manner," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the defendant was:
- (1) Reasonably engaged in lawful self-defense under the statutes of the State of Colorado; or
 - (2) Reasonably exercising the right to keep and bear arms in defense of the defendant's or another's home, person and property or in aid of the civil power when legally thereto summoned.
- (b) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the events occurred in an area designated as a target range by the city manager under section 5-8-26, "City Manager May Designate Target Ranges," B.R.C. 1981, for the type of weapon involved. It is a specific defense to a charge of violating section 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," B.R.C. 1981, by possession that the defendant was going directly to or returning directly from such a target range.
- (c) It is an affirmative defense to a charge of violating sections 5-8-8, "Possession of Loaded Firearms," 5-8-9, "Carrying a Concealed Weapon," and 5-8-11, "Possessing Firearm While Intoxicated," B.R.C. 1981, that the defendant was:
- (1) In the defendant's own dwelling or place of business or on property owned or under the defendant's control at the time; or
 - (2) In a private automobile or other private means of conveyance at the time and was carrying the weapon for lawful protection of the defendant's or another's person or property while traveling; or
 - (3) Charged with carrying a knife that was a hunting or fishing knife carried by the defendant for sport use.
- (d) It is a specific defense to a charge of violating sections 5-8-8, "Possession of Loaded Firearms," and 5-8-9, "Carrying a Concealed Weapon," B.R.C. 1981, that the defendant was carrying the weapon pursuant to a concealed weapons permit valid under the statutes of the State of Colorado.
- (e) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the loaded gas or mechanically operated gun was possessed or discharged in a building with the permission of the property owner and the projectile did not leave the building.
- (f) It is a specific defense to a charge of violating section 5-8-10, "Possession of Illegal Weapons," B.R.C. 1981:
- (1) That the person had a valid permit for such weapon pursuant to federal law at the time of the offense; or

(2) That the illegal weapon was an assault weapon accompanied by a certificate issued by the Boulder Police Department or by a Licensed Firearms Dealer on a form approved by the Boulder Police Department.

- (g) It is a specific defense to a charge of violating section 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," B.R.C. 1981, that the firearm, gas or mechanically operated gun, bow, slingshot or crossbow possessed by the person was being transported in a motor vehicle. This defense does not apply to a charge of violation involving discharge of a missile.

Section 3. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

5-8-25. – Exemptions from Chapter.

~~The following individuals are exempt from the provisions of this Chapter:~~

- (a) Nothing in this chapter shall be construed to forbid the following persons from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties: Any officer of the United States, including but not limited to federal agents and

(1) United States Marshals, any sheriffs, constables and their deputies;

(2) any regular or ex-officio police officer;

(3) any other peace officers; or

(4) members of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps, from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or

- ~~(b) Any person authorized to carry a concealed weapon under the Federal Law Enforcement Officers Safety Act.~~

Section 4. Section 5-8-28, "Assault Weapons," B.R.C. 1981, is amended to read as follows:

5-8-28. – Assault Weapons.

- (a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon or large capacity magazine shall have until December 31, 2018 to do any of the following without being subject to prosecution:

(1) Remove the assault weapon or large capacity magazine from the City of Boulder;

(2) Render the assault weapon permanently inoperable;

Attachment D - Proposed Ordinance 8262

- (3) Surrender the assault weapon or large capacity magazine to the Boulder Police Department for destruction; or
- (4) If eligible, obtain a certificate for the assault weapon as provided in subsection (c).
- (b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger activator shall have until July 15, 2018 to do any of the following without being subject to prosecution:
- (1) Remove the multi-burst trigger activator from the City of Boulder; or
- (2) Surrender the multi-burst trigger activator to the Boulder Police Department for destruction.
- (c) Any person seeking to certify an assault weapon that he or she legally possessed prior to June 15, 2018 must comply with the following requirements:
- (1) Submit to a background check conducted by the appropriate law enforcement agency to confirm that he or she is not prohibited to possess a firearm pursuant to 18 U.S.C. § 922 or C.R.S § 18-12-108;
- (2) ~~Unless the person is currently prohibited by law from possessing a firearm,~~ Prior to December 31, 2018 apply for a certificate for the assault weapon from the Boulder Police Department or from a Licensed Firearms Dealer on a form approved by the Boulder Police Department;
- (3) No person prohibited by state or federal law from possessing a firearm shall be issued a certificate.
- (d) Any person issued a certificate shall:
- (~~3~~1) Safely and securely store the assault weapon pursuant to the regulations adopted by the appropriate law enforcement agency;
- (~~4~~2) Possess the assault weapon only on property owned or immediately controlled by the person, or while on the premises of a licensed gunsmith for the purpose of lawful repair, or while engaged in the legal use of the assault weapon at a duly licensed firing range, or while traveling to or from these locations, provided that the assault weapon is stored unloaded in a locked container during transport. The term “locked container” does not include the utility compartment, glove compartment, or trunk of a motor vehicle; and
- (~~5~~3) Report the loss or theft of a certified assault weapon to the appropriate law enforcement agency within 48 hours of the time the discovery was made or should have been made.
- (~~d~~e) If a certified assault weapon is used in the commission of a crime, the owner shall be civilly liable for any damages resulting from that crime. The liability imposed by this subsection shall not apply if the assault weapon was stolen and the certified owner reported the theft of the firearm to law enforcement within 48 hours of the time the discovery was made or should have been made.

Attachment D - Proposed Ordinance 8262

1 (ef) Certified assault weapons may not be purchased, sold or transferred in the City of
2 Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or
3 transfer to the appropriate law enforcement agency for the purpose of surrendering the
4 assault weapon for destruction.

(fg) Persons acquiring an assault weapon by inheritance, bequest, or succession shall,
within 90 days of acquiring title, do one of the following:

(1) Modify the assault weapon to render it permanently inoperable;

(2) Surrender the assault weapon to the Boulder Police Department for destruction;

(3) Transfer the assault weapon to a firearms dealer who is properly licensed under
federal, state and local laws; or

(4) Permanently remove the assault weapon from the City of Boulder.

(gh) The owner of a certified assault weapon may not possess in the City of Boulder any
assault weapons purchased after June 15, 2018.

(hi) The city manager shall charge a fee for each certificate sufficient to cover the costs of
administering the certificate program.

(ij) The city manager shall issue to qualified applicants two original copies of each
certificate issued. The City of Boulder shall not maintain any records of certificates
issued. The person receiving the certificate shall keep one copy with the weapon
certified and the second copy in a secure place to replace the certificate maintained with
the weapon.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

Section 6. The city council deems it appropriate that this ordinance be published by title
only and orders that copies of this ordinance be made available in the office of the city clerk for
public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 5th day of June 2018.

3
4
5 _____
Suzanne Jones
Mayor

6 Attest:

7
8 _____
Lynnette Beck
City Clerk

9
10 READ ON SECOND READING, PASSED AND ADOPTED this 19th day of June 2018.

11
12
13 _____
Suzanne Jones
Mayor

14 Attest:

15 _____
Lynnette Beck
City Clerk

ORDINANCE 8259

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO DELETE A PROVISION EXEMPTING CERTAIN HANDGUN MAGAZINES AND TO CLARIFY THE CERTIFICATION PROCESS FOR ASSAULT WEAPONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-8-10, "Possession and Sale of Illegal Weapons," B.R.C. 1981, is amended to read as follows:

5-8-10. – Possession and Sale of Illegal Weapons.

- (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.
- (b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.
- (c) Nothing in this section shall be construed to forbid any person:
 - (1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;
 - (2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;
 - (3) ~~From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law; or~~
 - (34) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions from this Chapter," B.R.C. 1981.
- (d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.
- (e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting, ~~or~~ for lawful protection of a person's or another's person or property or for competition, while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 2. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

1 **5-8-25. – Exemptions from Chapter.**

2 The following individuals are exempt from the provisions of this Chapter:

3 (a) Nothing in this chapter shall be construed to forbid the following persons from having
4 in their possession, displaying, concealing or discharging such weapons as are
5 necessary in the authorized and proper performance of their official duties: Any
6 officer of the United States, including but not limited to federal agents and

7 (1) United States Marshals, any sheriffs, constables and their deputies;

8 (2) any regular or ex-officio police officer;

9 (3) any other peace officers; or

10 (4) members of the United States Armed Forces, Colorado National Guard or
11 Reserve Officer Training Corps, from having in their possession, displaying,
12 concealing or discharging such weapons as are necessary in the authorized
13 and proper performance of their official duties; or

14 (b) ~~Any person authorized to carry a concealed weapon under the Federal Law~~
15 ~~Enforcement Officers Safety Act.~~

16 Section 3. Section 5-8-28, “Assault Weapons,” B.R.C. 1981, is amended to read as
17 follows:

18 **5-8-28. – Assault Weapons.**

19 (a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon
20 or large capacity magazine shall have until December 31, 2018 to do any of the
21 following without being subject to prosecution:

22 (1) Remove the assault weapon or large capacity magazine from the City of
23 Boulder;

24 (2) Render the assault weapon permanently inoperable;

25 (3) Surrender the assault weapon or large capacity magazine to the Boulder Police
Department for destruction; or

(4) If eligible, obtain a certificate for the assault weapon as provided in subsection
(c).

(b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger
activator shall have until July 15, 2018 to do any of the following without being subject
to prosecution:

(1) Remove the multi-burst trigger activator from the City of Boulder; or

(2) Surrender the multi-burst trigger activator to the Boulder Police Department for
destruction.

1 (c) Any person seeking to certify an assault weapon that he or she legally possessed prior
2 to June 15, 2018 must comply with the following requirements:

3 (1) Submit to a background check conducted by the appropriate law enforcement
4 agency to confirm that he or she is not prohibited to possess a firearm pursuant
5 to 18 U.S.C. § 922 or C.R.S § 18-12-108;

6 (2) ~~Unless the person is currently prohibited by law from possessing a firearm,~~
7 ~~p~~Prior to December 31, 2018 apply for a certificate for the assault weapon from
8 the Boulder Police Department;

9 (3) No person prohibited by state or federal law from possessing a firearm shall be
10 issued a certificate.

11 (d) Any person issued a certificate shall:

12 (31) Safely and securely store the assault weapon pursuant to the regulations adopted
13 by the appropriate law enforcement agency;

14 (42) Possess the assault weapon only on property owned or immediately controlled
15 by the person, or while on the premises of a licensed gunsmith for the purpose
16 of lawful repair, or while engaged in the legal use of the assault weapon at a
17 duly licensed firing range, or while traveling to or from these locations,
18 provided that the assault weapon is stored unloaded in a locked container during
19 transport. The term "locked container" does not include the utility
20 compartment, glove compartment, or trunk of a motor vehicle; and

21 (53) Report the loss or theft of a certified assault weapon to the appropriate law
22 enforcement agency within 48 hours of the time the discovery was made or
23 should have been made.

24 (de) If a certified assault weapon is used in the commission of a crime, the owner shall be
25 civilly liable for any damages resulting from that crime. The liability imposed by this
subsection shall not apply if the assault weapon was stolen and the certified owner
reported the theft of the firearm to law enforcement within 48 hours of the time the
discovery was made or should have been made.

(ef) Certified assault weapons may not be purchased, sold or transferred in the City of
Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or
transfer to the appropriate law enforcement agency for the purpose of surrendering the
assault weapon for destruction.

(fg) Persons acquiring an assault weapon by inheritance, bequest, or succession shall,
within 90 days of acquiring title, do one of the following:

(1) Modify the assault weapon to render it permanently inoperable;

(2) Surrender the assault weapon to the Boulder Police Department for destruction;

(3) Transfer the assault weapon to a firearms dealer who is properly licensed under
federal, state and local laws; or

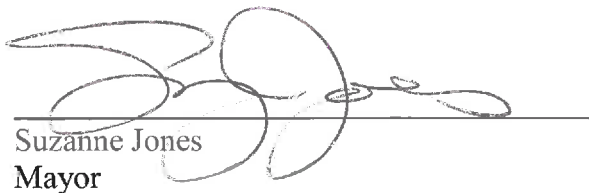
(4) Permanently remove the assault weapon from the City of Boulder.

- 1 (g~~h~~) The owner of a certified assault weapon may not possess in the City of Boulder any
2 assault weapons purchased after June 15, 2018.
- 3 (h~~i~~) The city manager shall charge a fee for each certificate sufficient to cover the costs of
4 administering the certificate program.
- 5 (i~~j~~) The city manager shall issue to qualified applicants two original copies of each
6 certificate issued. The City of Boulder shall not maintain any records of certificates
7 issued. The person receiving the certificate shall keep one copy with the weapon
8 certified and the second copy in a secure place to replace the certificate maintained with
9 the weapon.

10 Section 4. This ordinance is necessary to protect the public health, safety, and welfare of
11 the residents of the city, and covers matters of local concern.

12 Section 5. The city council deems it appropriate that this ordinance be published by title
13 only and orders that copies of this ordinance be made available in the office of the city clerk for
14 public inspection and acquisition.

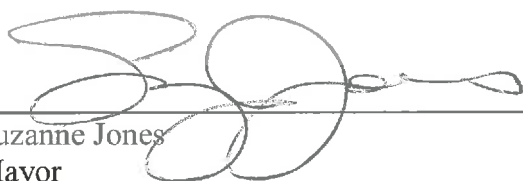
15 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
16 TITLE ONLY this 5th day of June 2018.

17 
Suzanne Jones
Mayor

18 Attest:

19 
20 Lynnette Beck
City Clerk

1 READ ON SECOND READING, PASSED AND ADOPTED this 19th day of June 2018.

2
3
4 
Suzanne Jones
Mayor

5 Attest:

6 
Lynnette Beck
7 City Clerk