

7/15/2013

ORDINANCE NO. 2013-33

AN ORDINANCE BANNING ASSAULT WEAPONS

WHEREAS, the Village of Buffalo Grove is a Home Rule Unit pursuant to the Illinois Constitution of 1970; and

WHEREAS, the Constitution of the United States of America and the Constitution of the State of Illinois afford certain protections related to the ownership of firearms; and

WHEREAS, in *District of Columbia v. Heller*, 554 U.S. 570, the United States Supreme Court recognized that the Constitutional protections related to firearm ownership is not unlimited, and can be subject to certain types of governmental regulations; and

WHEREAS, in its *Heller* decision, the United States Supreme Court specifically acknowledged that the protections afforded by the Second Amendment to the Constitution of the United States does not extend to all types of firearms and further explicitly recognized a historical and long-standing tradition of firearms regulations prohibiting a category of “dangerous and unusual weapons” that are “not typically possessed by law-abiding citizens for lawful purposes”; and

WHEREAS, many courts throughout the nation have upheld local regulations restricting or prohibiting the ownership or possession of assault weapons, including, without limitation, the State of Illinois Appellate Court, the United States District Court for the District of Columbia, and the Court of Appeals for the State of California; and

WHEREAS, several United States Courts of Appeals have addressed “dangerous and unusual” weapons including: *United States v. Henry*, 688 F. 3d 637 (9th Cir. 2012) (machine guns are highly “dangerous and unusual weapons” that are not “typically possessed by law-abiding citizens for lawful purposes” and therefore the Second Amendment does not apply to machine guns); *United States v. McCartney*, 357 Fed. Appx. 73 (9th Cir. 2009) (Second Amendment did not protect the right to possess machine guns, silencers, grenades and directional mines); *United States v. Fincher*, 538 F. 3d 868, 870 (8th Cir.2008) (machine gun and sawed-off shotgun not protected by the Second Amendment because they were not in common use by law abiding citizens for lawful purposes); and *United States v. Dempsey*, 957 F. 2d 831, 834 (11th Cir. 1992) (pipe bombs had no legitimate purpose and, therefore, were not protected by the Second Amendment); and

WHEREAS, recent incidents in Aurora, Colorado; Newtown, Connecticut; Tucson, Arizona; and Santa Monica, California demonstrate that gun violence is not limited to urban settings, but is also, tragically, a reality in many suburban and small town locations as well; and

WHEREAS, the Village Board has determined that assault weapons are not traditionally used for self-defense in the Village of Buffalo Grove, and that such weapons pose an undue threat to public safety to residents, property owners, and visitors within the Village of Buffalo Grove; and

WHEREAS, the Village encourages the Governor and the Illinois General Assembly to enact statewide legislation regarding the sale and possession of assault weapons; and

WHEREAS, to date, the State has failed to enact a statewide ban on the sale or possession of assault weapons; and

WHEREAS, on May 31, 2013, the Illinois General Assembly approved House Bill 183, as amended, which Bill contains a provision that would preempt the home rule authority of the Village to regulate the possession or ownership of assault weapons, unless the Village enacts an ordinance on, before, or within 10 days after the effective date of House Bill 183 being signed into law; and

WHEREAS, pursuant to the home rule powers of the Village, and in order to protect both the home rule authority of the Village and the public safety and welfare of its residents, the President and Board of Trustees desire to amend the Buffalo Grove Municipal Code to prohibit the manufacture, sale, ownership, acquisition, or possession of assault weapons within the Village; and

WHEREAS, the President and Board of Trustees have determined that it will serve and be in the best interest of the Village and its residents to amend the Buffalo Grove Municipal Code pursuant to this Ordinance;

WHEREAS, the President and Board of Trustees of the Village of Buffalo Grove further find that the County of Cook already prohibits the manufacturing, sale, offering or displaying for sale, giving, lending, transferring ownership of, acquiring or possessing any assault weapon within its jurisdiction; and

WHEREAS, the Village of Buffalo Grove is located in both the County of Cook and the County of Lake.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BUFFALO GROVE, COOK AND LAKE COUNTIES, ILLINOIS, PURSUANT TO ITS HOME RULE AUTHORITY, as follows:

SECTION 1: The foregoing Whereas clauses are hereby incorporated herein and made a part of this Ordinance as the findings of the President and Board of Trustees.

SECTION 2: Chapter 9.92 is added to the Buffalo Grove Municipal Code, to read as follows:

Chapter 9.92

ASSAULT WEAPON BAN

Sections:

- 9.92.010** **Definitions.**
- 9.92.020** **Assault weapons; sale prohibited; exceptions.**
- 9.92.030** **Destruction of weapons confiscated.**

9.92.010 **Definitions.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. "Assault weapon" means a machinegun which is defined as any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.
- B. "Assault weapon" does not include any firearm that has been made permanently inoperable.

9.92.020 **Assault weapons; sale prohibited; exceptions.**

- A. No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon. This subsection shall not apply to:
 - (1) The sale or transfer to, or possession by any officer, agent, or employee of the Village of Buffalo Grove or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and does so while acting within the scope of his or her duties;
 - (2) Transportation of assault weapons if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.
- B. Any assault weapon possessed, sold or transferred in violation of Subsection A of this Section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 9.92.030.

- C. Any person found in violation of this Section shall be fined not less than \$500.00 and not more than \$1,000.00 for each violation.
- D. Any person who, prior to the effective date of the Ordinance codified in this Section, was legally in possession of an assault weapon prohibited by this Section shall have 90 days from the effective date of the Ordinance to do any of the following without being subject to prosecution hereunder:
 - (1) To remove the assault weapon from within the limits of the Village of Buffalo Grove; or
 - (2) To modify the assault weapon either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon; or
 - (3) To surrender the assault weapon to the Village Chief of Police or his designee for disposal as provided below.

Section 9.92.030 Destruction of weapons confiscated.

- A. Whenever any assault weapon is surrendered or confiscated pursuant to the terms of this Chapter, the Village Chief of Police shall ascertain whether such assault weapon is needed as evidence in any matter.
- B. If such assault weapon is not required for evidence it shall be destroyed at the direction of the Village Chief of Police. A record of the date and method of destruction and inventory of the assault weapon so destroyed shall be maintained.

SECTION 3: To the extent that the Cook County Ordinance would be deemed to be in effect at this time, this Ordinance is not intended to supersede or supplant the County of Cook regulations on assault weapons within the Village's jurisdiction. To the extent that this Ordinance does create a conflict with said County of Cook regulations then the Cook County Ordinance will control in the Cook County portion of the Village. To the extent that the Cook County Ordinance would not be deemed to be in effect this Ordinance is not intended to, and shall not cause, the Cook County Ordinance to come into effect.

SECTION 4: Should any Section or provision of this Ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared to be invalid.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval and publication. This Ordinance may be published in pamphlet form.

AYES: 4 - Sussman, Stein, Ottenheimer, Braiman

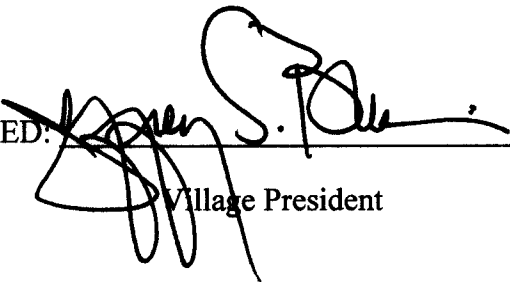
NAYES: 3 - Berman, Trilling, Terson

ABSENT: 0 - None

PASSED: July 15, 2013.

APPROVED: July 15, 2013.

PUBLISHED: July 16, 2013.

APPROVED: 
Village President

ATTEST: 
Village Clerk

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