



Legislation Details (With Text)

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File created: 8/9/2022 **In control:** City Council
On agenda: 8/16/2022 **Final action:** 8/16/2022
Title: Pass the ordinance amending Title 3 of the Naperville Municipal Code to prohibit the local commercial sale of assault rifles

Sponsors:

Indexes:

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Attachments: 1. Assault Rifle Ordinance

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|-------------------|--------|
| 8/16/2022 | 1 | City Council | passed | Fail |
| 8/16/2022 | 1 | City Council | passed as amended | Fail |
| 8/16/2022 | 1 | City Council | passed | Pass |

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Pass the ordinance amending Title 3 of the Naperville Municipal Code to prohibit the local commercial sale of assault rifles

DEPARTMENT: Legal Department

SUBMITTED BY: Michael DiSanto, City Attorney

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

There have been dozens of mass shootings in the United States during the last decade, including the following three:

1. July 4, 2022 - Highland Park, IL
Seven people were murdered, and 46 others were injured during a mass shooting that took place during an Independence Day parade. The shooter used an AR-15-style semi-automatic rifle with three 30-round magazines to fire 83 shots into the parade crowd from the rooftop of a local store. A 22-year-old suspect has been arrested and charged.
2. May 24, 2022 - Uvalde, Texas
21 people were murdered (19 children and 2 staff members), and 18 others were injured during a mass shooting that took place at Robb Elementary School. The 18-year-old shooter used an AR-15-style semi-automatic rifle.

3. May 14, 2022 - Buffalo, New York

Ten people were murdered, and 3 others were injured during a mass shooting that took place in a grocery store. The shooter used an AR-15-style semi-automatic rifle. An 18-year-old suspect has been arrested and charged.

Commonplace in mass shootings are the use of lawfully purchased assault rifles. The U.S. Department of Justice describes assault weapons as "semiautomatic firearms with a large magazine of ammunition that were designed and configured for rapid fire and combat use."

Like many of the municipalities that have encountered mass shootings involving assault rifles, Naperville has a vibrant commercial area, public parks, restaurants, movie theaters, music venues, parades, elementary, middle and high schools both public and private, colleges and universities, houses of worship of many denominations, and other places where members of the public gather with an expectation of safety.

The Second Amendment to the United States Constitution provides that, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." However, no fundamental right is set forth in the United States Constitution for persons or entities to engage in the commercial sale of assault rifles.

In 1994, the U.S. Congress passed the Federal Assault Weapons Ban ("AWB"), a United States federal law which prohibited the possession and sale of assault weapons and large-capacity magazines (limiting magazines to ten rounds). Several constitutional challenges were filed against provisions of the ban, but all were rejected by the courts. In accordance with its sunset provision, the AWB expired in 2004, and attempts to renew or replace the AWB have been unsuccessful.

Currently, seven states and Washington, D.C. prohibit assault weapons. Federal appellate courts have decided four cases concerning the Second Amendment and assault weapons, each time reaching the same conclusion that assault weapon bans are constitutional (the D.C. Circuit upheld the District of Columbia's ban in 2011, the Second Circuit upheld New York and Connecticut laws in 2015, the Seventh Circuit upheld Highland Park's local ordinance in 2015, and the Fourth Circuit upheld Maryland's ban in 2017).

The Illinois legislature has limited the ability of public bodies to enact laws to protect the public from assault weapons that are used in mass shootings that have devastated many communities and countless individuals.

In 2013, the Illinois General Assembly enacted legislation amending the Firearm Owners Identification Card Act ("FOID Act"). As part of the 2013 amendment of the FOID Act, the state legislature granted municipalities ten calendar days to enact local ordinances regulating the possession or ownership of assault weapons. If a municipality could not, or did not, pass a local ordinance within the ten-day window, the legislature provided that a municipality could not thereafter pass an ordinance pertaining to the possession or ownership of assault weapons. The City of Naperville did not pass an assault weapon ordinance regulating the possession or ownership of assault weapons within the ten days allotted by the state legislature.

The City of Naperville is a home rule unit of local government under the laws and Constitution of the State of Illinois. Under the Constitution of the State of Illinois, home rule units of government have

broad authority to pass ordinances and promulgate rules and regulations that protect the public health, safety, and welfare of their residents unless the state legislature specifically states that state legislation preempts home rule authority.

The 2013 FOID Act preempts home rule municipalities relative to regulation of the possession or ownership of assault weapons in a manner that is inconsistent with that Act. However, the FOID Act does not preempt home rule municipalities from regulating the commercial sale of assault rifles within their jurisdiction. Therefore, the City retains its broad home rule authority to legislate with respect to commercial sales.

DISCUSSION:

On July 19, 2022, the City Council held a first reading of an ordinance regulating the local commercial sale of assault weapons. Based on Council’s direction, the initial proposed ordinance has been revised to incorporate two significant changes.

1. Regulation of Assault RIFLES, not Assault WEAPONS or Large-Capacity Magazines

During its discussion on July 19, Council heard public comments concerning how the proposed regulation of handguns and large-capacity magazines would have a significant negative impact on commercial sales of the most common semi-automatic handguns. Council deliberated and reached consensus on focusing regulations on the assault rifles (e.g., AR-15s) and directed staff to bring back a revised ordinance that did not regulate handguns.

The initial proposed ordinance was modeled off the 1994 federal assault weapons ban, and the Highland Park and Deerfield ordinances. It sought to prohibit the local commercial sale of all assault weapons, which included certain rifles, shotguns, and handguns. As staff worked to remove the handgun regulations from the revised ordinance it became clear that focusing the revised ordinance on prohibiting the sale of assault rifles only best addressed Council’s concerns. References to large-capacity magazines have been removed since that regulation was intended for handguns and because the remaining prohibition on the sale of assault rifles will encompass rifles with large-capacity magazines.

2. Exception for Active Law Enforcement Officers & for Law Enforcement / Military Agencies

During its discussion on July 19, Council heard public comments from one of the City’s gun stores, Law Weapons, about how a significant amount of its sales are to active law enforcement officers and agencies. Council deliberated and reached consensus and directed staff to bring back an ordinance that includes an exception for law enforcement officers and agencies. The exception incorporated into the revised ordinance is for (1) active local, state, or federal sworn law enforcement officers and (2) local, state, or federal law enforcement agencies or U.S. military agencies.

The attached revised ordinance has several key aspects, including:

1. Prohibiting the local commercial sale of assault rifles with an exception for sales to active local, state, or federal sworn law enforcement officers and local, state, or federal law enforcement agencies or U.S. military agencies.
2. Prohibiting all sales by licensed gun sellers of assault rifles. That means both the two local gun stores and other local licensed sellers will be impacted (e.g., pawn shops and other persons

and entities licensed to engage in the business of selling firearms). Private transfers and private sales by non-licensed persons and entities will not be impacted.

3. Offenses are punishable by a fine of \$1,000 for a first offense within a 12-month period, and a fine of \$2,500 for a second or subsequent offense within a 12-month period. Each day that a violation continues shall be considered a separate and distinct offense and a fine shall be assessed for each day there is a violation. Continued violations are subject to an injunction to enforce compliance.
4. Becoming effective as of January 1, 2023. This gives impacted sellers time to adjust their businesses to comply with the new regulations.

FISCAL IMPACT:

Decrease in sales tax revenues corresponding to loss of local assault rifle sales.