



# SHAKER HEIGHTS

## Memorandum

To: Mayor Earl. M. Leiken  
Jeri E. Chaikin, Chief Administrative Officer  
Members of City Council

From: William M. Ondrey Gruber, Director of Law

Subject: **Amendments to Chapter 749 – Weapons and Explosives; and  
Chapter 753 – Firearms and Handguns of the Codified Ordinances**

Date: June 20, 2014

---

### **Summary:**

The attached proposed amendments to the City's gun laws are made necessary by the Ohio General Assembly's passage of a law in 2006 that prohibits local governments from regulating or prohibiting the ownership, possession, purchase, sale, transfer, transport, storage, or keeping of any firearm or part of a firearm, or the components and ammunition of any firearm. That law was upheld by the Ohio Supreme Court in 2010, in a lawsuit in which the City of Shaker Heights participated on the side of the City of Cleveland, defending the Home Rule power of cities under the Ohio Constitution to enact reasonable regulations of firearms in areas where the State had no such regulations.

In addition, the General Assembly gave citizens and groups the right to challenge any such ordinance (whether it is enforced or not) and to force the local government to pay the costs and attorney's fees of the party challenging the ordinances if they prevail.

Thus, the proposed legislation amends or repeals the portions of the ordinances that the City may no longer enforce and that could conceivably be challenged through a citizen lawsuit. The amendments have been reviewed by the Police Chief, and were approved by the Safety and Public Works Committee at its meeting on June 13, 2014.

### **Discussion:**

City Council has enacted a number of regulations of guns and other weapons in Chapters 749 and 753 of the Codified Ordinances. Some of the current ordinances date to 1956 and 1967, while many of the current ordinances were most recently enacted or amended in the early 1990s. In 2006, Council enacted a prohibition on assault weapons, and on the sale of firearms in the City. A number of sections mirror State law, and are amended annually to the extent the Ohio General Assembly has amended the State's version of the ordinances.

In 2006, the Ohio General Assembly enacted Sub. H.B. 347, which became effective on March 14, 2007. That legislation enacted Section 9.68 in “Chapter 9 – Miscellaneous” of the Ohio Revised Code. It states in subsection (A) that “Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.” It was intended by the General Assembly as a way to override and prevent local regulations of guns, despite the Home Rule authority of local governments whose citizens had enacted their own charters to govern their cities.

Section 9.68 R.C. also states, in subsection (B): “In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.” This highly unusual provision meant that any person or group in the State can challenge any local ordinance in court on the basis that it conflicts with State law, and be awarded costs and attorney’s fees if they win.

Section 9.68 R.C. was challenged by the City of Cleveland, as well as other communities. The City of Shaker Heights joined with other communities in submitting amicus briefs to support Cleveland’s position that the statute was unconstitutional under the Ohio Constitution’s Home Rule provision.

The Ohio Supreme Court, in the case *Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, issued on December 29, 2010, in a majority opinion by Justices Lundberg Stratton, O’Connor, O’Donnell, Lanzinger, and Cupp, found that Section 9.68 Revised Code is a “general law that displaces municipal firearm ordinances.” Justices Brown and Pfeifer dissented from that opinion.

The Court’s decision upholding the law meant that all local ordinances regulating firearms are not enforceable or permitted unless they mirrored existing State law. So this meant that certain of the City’s ordinances in Chapters 749 and 753 may not be enforced, and should be repealed in order to avoid a costly lawsuit by a citizen taking advantage of the provisions of the law allowing the award of costs and attorney fees in a challenge to a local ordinance.

Thus, I am recommending that City Council enact certain amendments to the City’s ordinances to bring them into compliance with State law. Specifically, the following is recommended as to Chapters 749 and 753:

### **Chapter 749 – Weapons and Explosives**

Ordinances that may be kept as-is without amendment or repeal:

- Concealed Weapons – follows State law (749.02)
- Using weapons while intoxicated (749.03)
- Improperly handling firearms in a motor vehicle (749.04)
- Failure to secure dangerous ordnance (749.05)
- Unlawful transactions in weapons (749.06)
- Underage purchase of firearm (749.07)
- Discharging weapons – except in defense, by a police officer (749.08)
- Metal tipped arrows (749.09)
- Stench bombs and flammable, explosive or combustible material or device (749.10)
- Brandishing replica firearms (749.12)

Ordinances that should be amended:

- Definitions (749.01)
- Possession of certain weapons in a public place (749.11)
- Defacing ID marks on a firearm (749.14)

Ordinance that should be repealed:

- Prohibition of assault weapons (749.13)

## **Chapter 753 – Firearms and Handguns**

Ordinances that should be amended:

- Situations when firearms may be confiscated (753.10)
- Carrying weapons prohibited (753.11)
- Stole or lost firearms (753.12)

Ordinances that should be repealed:

- Definitions (753.01)
- Prohibitions of the sale, purchase, ownership, possession, transfer, giving, delivering, receiving or having on or about one's person, or use of any handgun which does not contain an engraved serial number (753.02)
- Handguns confiscated if the owner is found in violation of the ordinances (753.03)
- Handgun owner ID card required, but not issued to certain persons (753.04)
- Handgun registration required (753.05)
- Exemptions from handgun registration (753.06)
- Prohibition in the City of any business that sells or trades guns (753.07)
- Gun control Appeals Board (753.14)
- Possession of firearms by minors prohibited (753.13)

### **Recommendation:**

I recommend that City Council adopt the attached legislation amending Chapters 749 and 753 of the Codified Ordinances. The amendments were approved by the Safety and Public Works Committee at its meeting on June 13, 2014.

attachment

wog14/councilmemos/0609guns-firearms-COUNCIL

ORDINANCE NO.

BY:

Amending Sections 749.01, 749.11, and 749.14, amending Sections 753.10, 753.11, and 753.12 by adding them to Chapter 749 as amended, and renumbering them, and repealing Sections 749.13, 753.01, 753.02, 753.03, 753.04, 753.05, 753.06, 753.07, 753.13, 753.14, and 753.15 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights concerning "Weapons and Explosives" and "Firearms and Handgun Control."

WHEREAS, Sections 753.02, 753.03, 753.04, 753.05, 753.06, 753.10, 753.11, 753.12, 753.13, and 753.14 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights were most recently enacted in part or in their entirety by Ordinance No. 91-91, on July 22, 1991; and

WHEREAS, Sections 753.02, 753.05, and 753.15 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights were most recently enacted in part or in their entirety by Ordinance No. 92-161, on November 23, 1992; and

WHEREAS, Section 753.04 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights was most recently enacted in part by Ordinance No. 97-162, on January 26, 1998; and

WHEREAS, Sections 749.01, 749.11, 749.13, 753.01, and 753.07 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights were most recently enacted, and Sections 753.071, 753.08, and 753.09 were repealed, by Ordinance No. 05-131, on January 23, 2006; and

WHEREAS, Section 749.14 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights was added by Ordinance No. 07-57, on May 29, 2007; and

WHEREAS, the Ohio General Assembly enacted Sub. H.B. 347 in 2006, effective March 14, 2007, which legislation enacted Section 9.68 in "Chapter 9 - Miscellaneous" of the Ohio Revised Code, and that Section states in subsection (A) that "Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition;" and

WHEREAS, Section 9.68 Revised Code also states in subsection (B): "In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section;" and

WHEREAS, the Ohio Supreme Court, in the case *Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, issued on December 29, 2010, in a majority opinion by Justices Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, found that Section 9.68 Revised Code is a "general law that displaces

municipal firearm ordinances," which opinion was dissented upon by Justices Brown and Pfeifer; and

WHEREAS, as a result of the miscellaneous law enacted by the General Assembly in Section 9.68 Revised Code, and the decision of the Ohio Supreme Court upholding the law, certain of the City's ordinances in Chapters 749 and 753 may not be enforced, and should be repealed in order to avoid a costly lawsuit by a citizen taking advantage of the provisions of the law allowing the award of costs and attorney fees in a challenge to a local ordinance; and

WHEREAS, this Council has determined that it is in the best interests of the City and its citizens to repeal or amend certain sections of Chapters 749 and 753 of the Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. Sections 749.01, 749.11, 749.13, and 749.14 of Chapter 749, and Sections 753.01, 753.02, 753.03, 753.04, 753.05, 753.06, 753.07, 753.10, 753.11, 753.12, 753.13, 753.14, and 753.15 of Chapter 753 of the General Offenses Code of the Codified Ordinances of the City of Shaker Heights as presently in effect are hereby repealed.

Section 2. Sections 749.01, 749.11, 749.13, 749.14, 749.15, and 749.16 are hereby enacted as amended, to read, respectively, as follows:

CHAPTER 749  
Weapons and Explosives

749.01 DEFINITIONS.

As used in this chapter:

- (a) "Deadly weapon" means any instrument, device or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.
- (b) (1) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.  
(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.
- (c) "Handgun" means any of the following:
  - (1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand;
  - (2) Any combination of parts from which a firearm of a type described in subsection (c)(1) of this section can be assembled.

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

- (de) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than a firearm chambering only .22 caliber short, long or long-rifle cartridges.
- (ef) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall.
- (fg) "Zip-gun" means any of the following:
- (1) Any firearm of crude and extemporized manufacture;
  - (2) Any device, including without limitation a starter's pistol, that is not designed as a firearm, but that is specially adapted for use as a firearm;
  - (3) Any industrial tool, signaling device or safety device, that is not designed as a firearm, but that as designed is capable of use as such, when possessed, carried or used as a firearm.
- (gh) "Explosive device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.
- (hi) "Incendiary device" means any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agency and a means to ignite it.
- (ij) "Ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.
- (jk) "Dangerous ordnance" means any of the following, except as provided in subsection (l) hereof:
- (1) Any automatic or sawed-off firearm, zip-gun or ballistic knife;
  - (2) Any explosive device or incendiary device;
  - (3) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating or demolitions;
  - (4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;
  - (5) Any firearm muffler or silencer;
  - (6) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

- (k±) "Dangerous ordnance" does not include any of the following:
- (1) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder;
  - (2) Any pistol, rifle or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon unless the firearm is an automatic or sawed-off firearm;
  - (3) Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;
  - (4) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a type defined in subsection (k±)(3) hereof during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;
  - (5) Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio or museum piece.
  - (6) Any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C.921(a)(4), as amended, and regulations issued under that Act.

(lm) "Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include "fireworks", as defined in Ohio R.C. 3743.01, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored or used in any activity described in Ohio R.C. 3743.80, provided the activity is conducted in accordance with all applicable laws, rules and regulations, including, but not limited to, the provisions of Ohio R.C. 3743.80, and the rules of the Fire Marshal adopted pursuant to Ohio R.C. 3737.82. (ORC 2923.11)

~~(n) "Assault weapon" means any:~~

- ~~(1) Semiautomatic rifle that has the capacity to accept a detachable magazine and has one or more of the following:~~
- ~~A. A pistol grip or thumbhole stock;~~
  - ~~B. Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;~~
  - ~~C. A folding or telescoping stock;~~
  - ~~D. A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to~~

~~hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;~~

~~(2) Semi-automatic pistol, or any semi-automatic, centerfire rifle with a fixed magazine, that has the capacity to accept more than 10 rounds of ammunition;~~

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

~~A. Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;~~

~~B. A folding, telescoping or thumbhole stock;~~

~~C. A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;~~

~~D. The capacity to accept a detachable magazine at any location outside of the pistol grip;~~

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

~~A. A pistol grip or thumbhole stock;~~

~~B. Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;~~

~~C. A folding or telescoping stock;~~

~~D. A fixed magazine capacity in excess of 5 rounds in the smallest dimension the magazine can accept; or~~

~~E. An ability to accept a detachable magazine;~~

~~(5) Shotgun with a revolving cylinder;~~

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

~~(7) Assault weapon does not include any of the following:~~

~~A. Any firearm that uses .22 caliber rimfire ammunition with a detachable magazine with a capacity of 30 rounds or less; or~~

~~B. Any assault weapon which has been modified to either render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon.~~

(m) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(n) "Shotgun" means a firearm, whether or not it is intended to be fired from the shoulder, that is designed or redesigned, made or remade, to fire a fixed shotgun shell.

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

~~(r) "Large capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:~~

~~(1) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.~~

~~(2) A 22-caliber tube ammunition feeding device.~~

~~(3) A tubular magazine that is contained in a lever-action firearm.~~



- (ps) (1) "Concealed handgun license" or "license to carry a concealed handgun" means, subject to subsection (ps)(2) of this section, a license or temporary emergency license to carry a concealed handgun issued under Ohio R.C. 2923.125 or 2923.1213 or a license to carry a concealed handgun issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. 109.69.
- (2) A reference in any provision of the Ohio Revised Code to a concealed handgun license issued under Ohio R.C. 2923.125 or a license to carry a concealed handgun issued under Ohio R.C. 2923.125 means only a license of the type that is specified in that section. A reference in any provision of the Ohio Revised Code to a concealed handgun license issued under Ohio R.C. 2923.1213, a ~~license~~ license to carry a concealed handgun issued under Ohio R.C. 2923.1213, or a license to carry a concealed handgun on a temporary emergency basis means only a license of the type that is specified in Ohio R.C. 2923.1213. A reference in any provision of the Ohio Revised Code to a concealed handgun license issued by another state or a license to carry a concealed handgun issued by another state means only a license issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. 109.69.
- (qt) "Valid concealed handgun license" or "valid license to carry a concealed handgun" means a concealed handgun license that is currently valid, that is not under a suspension under division (A)(1) of Ohio R.C. 2923.128, under Ohio R.C. 2923.1213, or under a suspension provision of the state other than this State in which the license was issued, and that has not been revoked under division (B)(1) of Ohio R.C. 2923.128, under Ohio R.C. 2923.1213 or under a revocation provision of the state other than this State in which the license was issued.  
(ORC 2923.11)

#### 749.11 POSSESSING CERTAIN WEAPONS AT OR ABOUT PUBLIC PLACES.

(a) No person shall knowingly carry, have in his or her possession or ready at hand any ~~firearm, handgun,~~ dangerous ordnance, ~~shotgun, rifle,~~ karate sticks, brass knuckles, blackjacks, billyclubs, switchblade knives or knives having a blade over two and one-half (2½) inches in length, or any device or instrument manufactured, fashioned or designed as a deadly weapon, ~~except as may be expressly permitted or prohibited by the Ohio Revised Code,~~ while at or about a public place.

(b) As used in this section, "public place" means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and any grounds, areas or parks where persons would congregate.

(c) A weapon described in subsection (a) hereof, found in the possession or ready at hand of any person in a public place in violation of this section, may be seized by the police and may be returned or disposed of by the Chief of Police in accordance with the ordinances of the City of Shaker Heights and the laws of the State of Ohio.

(d) This section does not apply to officers, agents or employees of this or any other state or the United States, or to law enforcement officers or certified private security personnel authorized to carry

weapons or dangerous ordnance and acting within the scope of their duties.

(e) This section shall not apply if any weapon in subsection (a) hereof was part of a public weapon display, show or exhibition, or was in the possession of a person participating in an organized match, competition or practice session.

(f) This section does not apply to any person who knowingly carries, has in his or her possession or ready at hand a knife having a blade over two and one-half inches in length when such knife is:

- (1) Being used for or transported immediately to or from a place where it is used for hunting, fishing, or camping;
- (2) Carried unconcealed pursuant to any employment, trade or occupation, customarily requiring the use of such a knife; or
- (3) Carried in a secure wrapper or toolbox.

(g) Any affirmative defense available under Section 749.02(d), shall constitute an affirmative defense to a charge under this section, provided that the actor is not otherwise prohibited by law from having such weapon.

~~749.13 — PROHIBITION OF ASSAULT WEAPONS.~~

~~(a) No person shall knowingly manufacture, import, purchase, sell, offer or display for sale, give, lend or transfer ownership of, acquire or possess any assault weapon or large capacity magazine.~~

~~(b) This section shall not apply to:~~

~~(1) Any officer, agent, or employee of this or any other state or the United States, members of the armed forces of the United States or the organized militia of this or any other state, and law enforcement officers, to the extent that any such person is authorized to acquire or possess an assault weapon or large capacity magazine and is acting within the scope of his or her duties. Further, this section shall not apply to the transportation of firearms through the City of Shaker Heights in accordance with federal law.~~

~~(2) The manufacture, sale or transfer of an assault weapon or large capacity ammunition feeding device by a firearms manufacturer or dealer that is properly licensed under federal, state and local laws to any branch of the armed forces of the United States, or to a law enforcement agency in this City or State for use by that agency or its employees for law enforcement purposes.~~

~~(c) Any assault weapon is hereby declared to be contraband and shall be seized and disposed of in accordance with Ohio R.C. 2933.43, except as otherwise allowed in this Section.~~

~~(d) Any person who prior to the effective date of this section was legally in possession of an assault weapon or large capacity magazine, and any person who acquires an assault weapon by inheritance, bequest, or succession, shall have 90 days from the effective date of this section, or 90 days after the date of acquisition if acquired involuntarily after the effective date of this section, to do any of the following without being subject to prosecution:~~

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

~~(2) Render the assault weapon permanently inoperable;~~

~~(3) Surrender the assault weapon or large capacity magazine to a law enforcement agency for destruction; or~~

~~(4) If eligible, register the assault weapon as provided in subsection (e).~~

~~(e) Any person eligible to register an assault weapon under subsection (d) of this Section shall register the weapon within ninety (90) days after the effective date of this ordinance, or after acquiring the weapon involuntarily, in the same manner as handguns are registered under~~

~~Section 753.05 of the Codified Ordinances, after submitting to a background check conducted by the City to confirm that he or she is not a prohibited purchaser under federal, state, or City law;~~

~~(f) Any assault weapon registered as permitted in this Section shall:~~

~~(1) Be safely and securely stored; the City's Police Department is authorized to inspect the storage of assault weapons to ensure compliance with this subsection;~~

~~(2) Be kept 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.~~

~~(3) Be reported if lost or stolen within 48 hours of the time the discovery was made;~~

~~(4) Not be purchased, sold or transferred, except for transfer to a licensed gunsmith for the purpose of lawful repair, or transfer to an appropriate law enforcement agency for the purpose of surrendering the assault weapon for destruction.~~

749.143 DEFACING IDENTIFICATION MARKS OF A FIREARM;  
POSSESSING A DEFACED FIREARM.

(a) No person shall do either of the following:

- (1) Change, alter, remove, or obliterate the name of the manufacturer, model, manufacturer's serial number, or other mark or identification on a firearm.
- (2) Possess a firearm knowing or having reasonable cause to believe that the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on the firearm has been changed, altered, removed, or obliterated.

(b) (1) Whoever violates subsection (a)(1) of this section is guilty of defacing identification marks of a firearm. Except as otherwise provided in this subsection, defacing identification marks of a firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of subsection (a)(1) of this section, defacing identification marks of a firearm is a felony and shall be prosecuted under appropriate State law.

(2) Whoever violates subsection (a)(2) of this section is guilty of possessing a defaced firearm. Except as otherwise provided in this subsection, possessing a defaced firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of subsection (a)(2) of this section, possessing a defaced firearm is a felony and shall be prosecuted under appropriate State law. (ORC 2923.201)

~~CHAPTER 753~~

~~Firearm and Handgun Control~~

~~753.01 DEFINITIONS.~~

~~As used in this chapter:~~

~~(a) "Firearm" means any deadly weapon capable of expelling or~~

~~propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm which is inoperable but which can readily be rendered operable.~~

~~(b) "Handgun" means any pistol, revolver or other firearm, having a barrel not exceeding twelve (12) inches in length, measured by the insertion of a rod with the receiver or slide closed, or the barrel, receiver or any part of the firing mechanism of such weapon, which is designed to eject or propel a projectile by the action of an explosive or combustible propellant but does not include inoperable handguns which cannot be rendered operable, curios, relics or antique handguns as presently or hereafter defined in Title 26, Part 178 of the Code of Federal Regulations, Commerce in Firearms.~~

~~(c) "Resident" means any person who has a place of residence within the limits of the City.~~

~~(d) "Nonresident" means any person who does not have a place of residence within the limits of the City.~~

~~(e) "Minor" means any person under the age of twenty-one (21) years.~~

~~(f) "Identification card" means a handgun owner's identification card issued pursuant to Section 753.04.~~

~~(g) "Registration card" means a handgun registration card issued pursuant to Section 753.05.~~

~~(h) "Fugitive from justice" means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty of extradition in effect.~~

~~(i) "Encased" means enclosed in a case, container or receptacle, designed and constructed specifically for the purpose of enclosing a firearm, but shall not include a holster for a pistol or revolver.~~

#### ~~753.02 PROHIBITIONS.~~

~~(a) No person shall sell, purchase, own, possess, transfer, give, deliver, receive or have on or about his person, or use any handgun which does not contain an engraved serial number or other numerical identification, or which has had the serial number or other numerical identification obliterated; provided, however, that this prohibition shall not apply to any person who is in possession of such a handgun on the effective date of this section, and who within a period of thirty (30) days thereafter presents such handgun to the Police Department which shall inscribe thereon a serial number according to a numbering system established by the Chief of Police.~~

~~(b) No person shall receive or possess any handgun unless such person has an identification card issued to him and in effect and a registration card for each such handgun, except to the extent that he is exempt pursuant to Section 753.06 from such requirement.~~

~~(c) No person shall have on or about his person any handgun unless such person has an identification card issued to him and in effect and a registration card for each such handgun, except to the extent that he is exempt pursuant to Section 753.06 from such requirement.~~

~~(d) No person shall deliver, transfer or furnish any handgun to any person unless the transferee exhibits at the time of transfer an identification card valid on its face and issued to the transferee, and a registration card for each such handgun, except to the extent that he is~~

~~exempt pursuant to Section 753.06 from such requirement.~~

~~(c) No person shall use or attempt to use his identification card to obtain any handgun for any person who does not have an identification card issued to him and in effect pursuant to this section, and no person shall knowingly permit his identification card to be used by another to purchase, own, possess, receive, have on or about the person, or use any handgun or handgun ammunition.~~

~~(f) No person shall possess any handgun or firearm without the handgun or firearm being secured by a trigger lock, except when the handgun or firearm is in use for lawful purposes. Penalty for the first violation may be suspended upon condition that the violator attends a firearm safety program approved by the Chief of Police.~~

#### ~~753.03 HANDGUNS CONFISCATED.~~

~~Any handgun which any person shall own or possess in violation of any of the provisions of this chapter shall, upon conviction of such person, be confiscated and destroyed by the Chief of Police, except that any such handgun which has been reported stolen pursuant to Section 753.13 shall be returned to the owner thereof unless possession thereof by the owner would constitute a violation of any provision contained in this chapter.~~

#### ~~753.04 HANDGUN OWNER'S IDENTIFICATION CARD.~~

~~(a) Application for an identification card shall be made in writing under oath, and shall be accompanied by an application fee of three dollars (\$3.00) which shall be paid into the treasury of the City, and credited to a special account created and maintained for the sole purpose of defraying the cost of administration and the enforcement of this chapter. If it appears upon investigation that the applicant is not prohibited by this section from being issued an identification card, the Chief of Police shall issue an identification card to the applicant within not less than seven (7) days nor more than sixty (60) days from the date of application. For purposes of procuring an identification card, any and all forms and applications herein required shall be available, may be filled out, and oaths administered at the police station.~~

~~(b) All identification cards issued pursuant to this section shall be entitled "City of Shaker Heights, Ohio Handgun Owner's Identification Card", shall be serially numbered according to a system devised by the Chief of Police, shall bear the date of issue, the date of expiration, the name of the Chief, the applicant's name, home address, birth date, physical description, and Social Security number, and shall be signed by the holder. A copy of each identification card shall be retained by the Chief, together with a copy of the application, which documents shall be maintained on permanent file by the Chief.~~

~~(c) An identification card shall expire three (3) years after the applicant's birthday next succeeding the date of issuance.~~

~~(d) An identification card shall not be issued to:~~

~~(1) A person now or hereafter prohibited by Ohio R.C. 2923.13 from purchasing, owning, possessing, receiving, having on or about his person, or using any firearm or ammunition;~~

~~(2) A minor;~~

~~(3) A person who has been adjudicated for mental incompetency or a person who has been committed to a mental institution or has received hospital treatment for any mental disorder, alcoholism or narcotic addiction within the previous ten (10) years, unless a physician indicates in writing that such person is completely recovered and of sufficient mental capacity to own or possess a handgun;~~

~~(4) A person convicted of an illegal use or possession of~~

~~narcotics;~~

- ~~(5) A person with more than one conviction of being drunk and disorderly or driving a motor vehicle while intoxicated either of which occur within one year of the date of application;~~
- ~~(6) A person who is under indictment for, or who has been convicted of, or who has been adjudged a juvenile delinquent for commission of, any felony or a violation of subsection (c) hereof;~~
- ~~(7) Any person with more than one conviction of a misdemeanor involving the use of force and violence or the threat of the use of force and violence against the person of another within three (3) years prior to his application for such Identification Card.~~
- ~~(8) A person under indictment for, or convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;~~
- ~~(9) A person who is an alien who is illegally or unlawfully in the United States;~~
- ~~(10) A person who has been discharged from the Armed Forces under dishonorable conditions;~~
- ~~(11) A person who, having been a citizen of the United States, has renounced such citizenship;~~
- ~~(12) A person who has been convicted in any court of a misdemeanor crime of domestic violence.~~

~~(c) No person shall knowingly give any false information in making application for an identification card, and no person shall use or attempt to use an identification card to purchase, own, possess, receive, have on or about his person or use any handgun, knowing such identification card belongs to another, or knowing it was obtained by means of false information, or when it is void by reason of the holder becoming a member of the class of persons prohibited by subsection (d) hereof, from being issued an identification card.~~

~~(f) A possessor of an identification card shall become ineligible to possess such card if he becomes one of that class of persons set forth in subsection (d) hereof, and he shall thereupon immediately forfeit such card and return the same to the Chief, and any and all handguns owned by him or in his possession shall be forthwith confiscated and disposed of by the Police Department as provided in Section 753.03.~~

#### ~~753.05 REGISTRATION OF HANDGUNS.~~

~~(a) Application for a registration card shall be made in writing at the Police Department. Each applicant shall provide proof that the applicant owns a trigger lock for each handgun as mandated by Section 753.02(f). Such application shall be accompanied by an application fee of one dollar (\$1.00) for each handgun to be registered, but not to exceed five dollars (\$5.00) per applicant, which shall be paid into the treasury of the City, and credited to a special account created and maintained for the sole purpose of defraying the cost of the administration and enforcement of this chapter. Upon being satisfied that the applicant holds a valid identification card, owns a trigger lock for each handgun to be registered, and is not in that class of persons prohibited from holding the same, a registration card shall be issued to the applicant within not less than three (3) days and not more than fourteen (14) days from the date of application.~~

~~(b) All registration cards issued pursuant to this section shall be entitled "City of Shaker Heights, Ohio Handgun Registration Card", shall be serially numbered according to a system devised by the Chief of Police,~~

~~shall bear date of issue, the name of the Chief, the applicant's name, home address, Identification Card number, the signature of the applicant, and the name, type caliber, and serial number of the handgun. A copy of each registration card shall be retained by the Chief, together with a copy of the application, which documents shall be maintained on permanent file by the Chief.~~

~~(c) Any person who sells or otherwise transfers possession of a registered handgun shall, within five (5) days of the date of transfer of possession thereof surrender the registration card for such handgun, with the name, address, Social Security number and identification card number of the buyer endorsed thereon, to the Police Department, and obtain a receipt therefor, and the Chief shall immediately cancel such registration card.~~

~~753.06 EXEMPTIONS.~~

~~(a) The following shall be exempt from the provisions of this chapter except Section 753.02(a).~~

- ~~(1) Any state of the United States, the United States or any political subdivision, department, or agency of either;~~
- ~~(2) An officer or agent of any state or the United States, or any political subdivision, department, or agency of either, a member of the organized militia of any state or the armed forces of the United States, or a law enforcement officer of any political subdivision, but only to the extent that his official duties require him to purchase, own, possess, receive, carry, or use handguns and not for the personal use of such individuals.~~

~~(b) The requirement of an identification card and registration card contained in Sections 753.04 and 753.05 shall not apply:~~

- ~~(1) To a holder of a dealer's license issued pursuant to Section 753.07.~~
- ~~(2) To a nonresident of the City who holds and exhibits upon request a valid authorization or identification issued by the Chief of Police or the Sheriff of his place of residence to purchase, own, possess, receive or use any handgun; and provided further, that handguns in the possession of or under the control of nonresidents shall at all times be unloaded and encased, except while on a suitable firing range, or while being used for lawful hunting, or while unloaded at a public firing range, or while being used for lawful hunting, or while unloaded at a public firearms display, show or exhibition.~~
- ~~(3) To a nonresident of the City, moving to this City for the purpose of establishing residence herein, during a period not exceeding thirty (30) days from the date of his entry into this City for such purpose; provided that such person shall possess and exhibit upon request such valid authorization or identification as may be required by the laws of his former domicile to own, possess or receive any handgun, or proof of residence in a jurisdiction which does not require the same.~~
- ~~(4) To an executor, administrator, guardian, receiver, trustee in bankruptcy or other fiduciary duly qualified and appointed by a court of competent jurisdiction, when acting in his fiduciary capacity, and an attorney for such a person, when such handgun constitutes property of the estate or trust, but not for the personal use by such individual.~~
- ~~(5) To the next of kin or legatee of a decedent acquiring a~~

~~handgun through distribution of an estate, during a period not exceeding thirty (30) days from the date of his coming into possession thereof, but in any event not more than fifteen (15) days after the appointment of an executor, administrator or other fiduciary.~~

~~(6) To carriers, warehousemen and others engaged in the business of transportation and/or storage and their employees to the extent that the possession, receipt or having on or about the person of any handgun by such persons is in the ordinary course of business and in conformity with the laws of this State or the United States, but not for the personal use of any such person.~~

~~(7) During a period not exceeding ninety (90) days from the effective date of this chapter, to the ownership or possession of any handgun by any person who on the effective date of these sections owned or possessed same.~~

~~(8) To a federally licensed manufacturer of handguns.~~

~~753.07 DEALERS PROHIBITED.~~

~~No person, firm or corporation shall engage in the business of selling or trading firearms, including but not limited to air guns, handguns, assault weapons, rifles, or shotguns, or firearm ammunition, at wholesale or retail within the limits of the City, whether as the principal business of such person, firm or corporation, or in addition thereto.~~

~~753.071 DEALER RESPONSIBILITIES; WARNING SIGNS TO BE POSTED.~~

~~(EDITOR'S NOTE: Section 753.071, was repealed by Ordinance 05-131, enacted January 23, 2006.)~~

~~753.08 REVOCATION OF DEALER'S LICENSE.~~

~~(EDITOR'S NOTE: Section 753.08, was repealed by Ordinance 05-131, enacted January 23, 2006.)~~

~~753.09 RECORDS.~~

~~(EDITOR'S NOTE: Section 753.09, was repealed by Ordinance 05-131, enacted January 23, 2006.)~~

~~749.1453.10 FIREARMS HELD IN CUSTODY OR CONFISCATED.~~

(a) In any situation where a firearm is present and a person has been drinking or disturbing the peace, or threatening bodily harm, or causing or threatening a disturbance or violence, and there is reasonable cause for the investigating police officer to believe that such firearm may be used to cause bodily harm, such firearm may be seized by the police and kept in the custody of the Chief of Police for a period of seventy-two (72) hours or until released by an order of a court of competent jurisdiction. However, such firearm shall not be released by the Chief or such court if its owner has, subsequent to its seizure, been charged with a violation of the provisions of this chapter, or any felony or misdemeanor involving the use of a firearm, or the threat of the use of force or violence against the person of another.

(b) Any firearm seized by a police officer upon the arrest of any person, firm or corporation charged with a violation of any of the provisions of this chapter, or any felony or misdemeanor involving the use of a firearm or the use of force or violence, or the threat of the use of force or violence against the person of another, shall upon conviction of such person, firm, or corporation, be ordered confiscated by the Shaker Heights Municipal Court, and such firearm shall be turned over to the



Police Department for disposal, except that any firearm seized which has been reported stolen shall be returned to the lawful owner thereof.

(c) When any firearm is seized by the police, all identification cards or licenses ~~issued pursuant to this chapter or by any other political subdivision to such person,~~ shall also be seized and kept in the custody of the Chief until released as in subsection (a) hereof, ~~except that identification cards or licenses issued by another political subdivision shall be returned to the Chief of Police or Sheriff of such political subdivision for disposition in accordance with its laws.~~

#### 749.1553.11 CARRYING WEAPONS.

No person shall carry on or about his person any ~~firearm,~~ bowie knife, dirk, machete, blackjack, billy club or brass knuckles, whether concealed or not, ~~provided that a firearm may be carried as permitted or exempted by any provision of State law and in strict compliance with all of the provisions of this chapter.~~

#### 749.1653.12 STOLEN OR LOST FIREARMS; REPORT REQUIRED.

~~(a)~~ Whenever any firearm is stolen or lost, the person losing possession thereof shall immediately, upon discovery of such theft or loss, make a report thereof to the Chief of Police, showing the following:

- ~~(a1)~~ Name and address of the person owning or having possession of such firearm.
- ~~(b2)~~ Kind of firearm.
- ~~(c3)~~ Serial number.
- ~~(d4)~~ Model.
- ~~(e5)~~ Caliber.
- ~~(f6)~~ Manufacturer of firearm.
- ~~(g7)~~ Handgun registration number, if any.
- ~~(h8)~~ Date and place of theft or loss.
- ~~(i9)~~ A complete statement of the facts and circumstances surrounding such a theft or loss.

#### ~~753.13 VALIDITY OF PREVIOUSLY ISSUED IDENTIFICATION CARDS, AND LICENSES.~~

~~All identification cards and licenses issued prior to the enactment of this section shall be considered valid until the date of expiration as set forth on such card or license.  
(Ord. 91-91. Enacted 7-22-91.)~~

#### ~~753.14 GUN CONTROL APPEALS BOARD.~~

~~(a) The Gun Control Appeals Board is hereby created and shall consist of three (3) members, to wit: the Mayor or his designee; the Director of Law or an Assistant Director of Law designated by the Director; and the Chairman of the Council Police and Fire Committee or a member of that Committee designated by the Chairman.~~

~~(b) The members of the Board shall elect one of their number to serve as Chairman for a period of one year or until a new Chairman is elected. The Mayor shall furnish a secretary to record the proceedings of each meeting. The meetings shall be held at the Shaker Heights City Hall.~~

~~(c) Any person, firm or corporation may appeal a decision of the Chief of Police to the Board, as specifically authorized in this chapter, by filing a written notice of appeal in the office of the Mayor within ten (10) days from the date of the decision appealed from. A hearing shall be held by the Board on such appeal within twenty (20) days after receipt of the notice of appeal. The Board may affirm, reverse or modify the decision appealed from. The Board shall act only by concurring vote of at least two (2) members thereof.~~

~~753.15 POSSESSION OF FIREARMS BY MINORS.~~

~~(a) Except as provided in subsection (b) hereof, no person, including but not limited to a parent or guardian, shall store or leave a loaded or unloaded firearm where the person knows, or should know based on the totality of the circumstances, that a minor is able to gain access to it.~~

~~(b) Subsection (a) hereof shall not apply when:~~

~~(1) A minor's access to a firearm is under the supervision or control of a responsible adult for purposes of lawful hunting, or instruction in firearms safety, care, handling or marksmanship;~~

~~(2) A minor's access to a firearm is a result of an unlawful entry into the place where the firearm was located;~~

~~(3) A minor obtains a firearm in a lawful act of self defense or defense of another person or persons within the domicile;~~

~~(4) A minor who, without permission of the lawful possessor of a firearm, obtains the firearm from the possessor's body.~~

~~(c) Whoever violates this provision shall be guilty of a misdemeanor of the first degree.~~

Section 3. This ordinance shall take effect from and after the earliest time allowed by law.

Enacted \_\_\_\_\_, 2014.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
EARL M. LEIKEN, Mayor

Attest:

\_\_\_\_\_  
JERI E. CHAIKIN  
Clerk of Council

coun14/0609firearms-guns-749-753CODORDAMND