



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: May 1, 2018

AGENDA TITLE: Second Reading and consideration of a motion to amend or adopt Ordinance 8245 adding additional firearm regulations to the Boulder Revised Code.

PRESENTERS

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

EXECUTIVE SUMMARY

On April 5, 2018, the city council considered first reading of ordinance 8245, relating to firearm regulation in Boulder including banning certain weapons, magazines and other devices. Council heard testimony from over 100 individuals over five and one-half hours. Because of the lateness of the hour when the public hearing concluded, council did not have any opportunity to discuss the proposed ordinance. At second reading, council will have the opportunity to consider potential amendments considering the public testimony that council members heard. This memorandum discusses some potential amendments to the proposed ordinance, including a clearer legislative history, refined definitions, expanded exclusions and an option to refer the matter to the November 2018 ballot.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt (or amend) on second reading Ordinance 8245 imposing additional firearm restrictions in the City of Boulder and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – There are two businesses in Boulder that sell the products that the council is considering for a ban. 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.

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.

BACKGROUND

The background for the ordinance was provided in detail in the [agenda packet](#) for the April 5, 2018 public hearing.

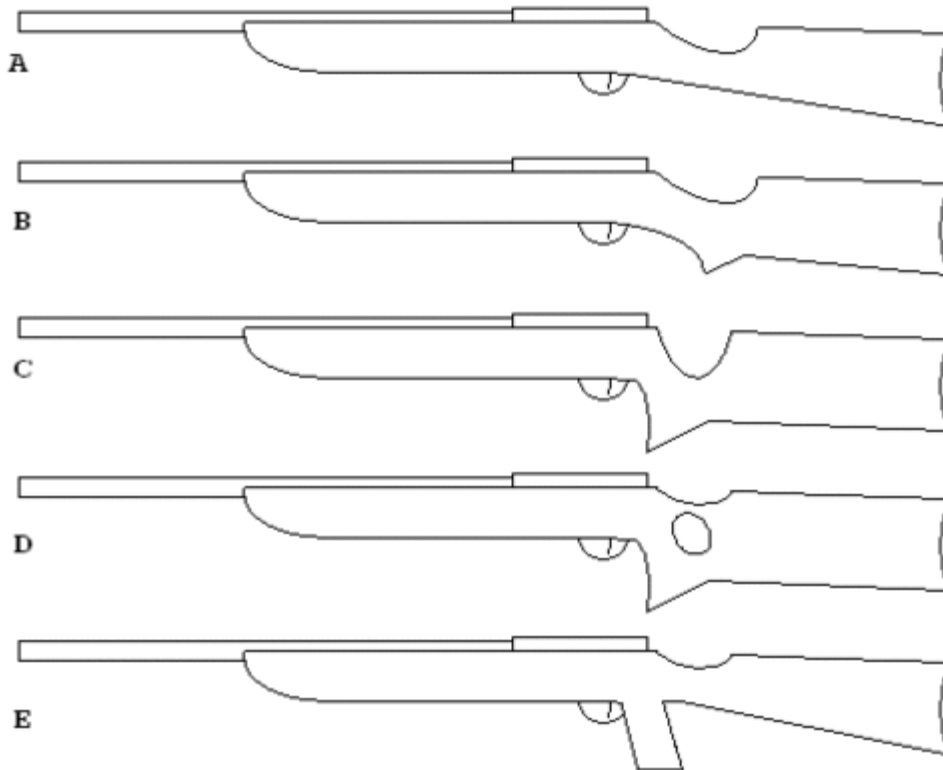
¹ <https://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america/>

Legislative History

Staff recommends that council consider including a more extensive purpose statement in the ordinance. Many who commented both in person and via email asked why the council is considering this ordinance. Including a clear legislative statement in the proposed ordinance would help to answer this question. If there is litigation, it will give a court guidance about what council is trying to accomplish. Staff believes that the ordinance arose out of concern about the nature and extent of dangerous weapons available to deranged individuals willing to commit mass murder. Council intends to take a step to make it more difficult for such individuals to obtain weapons designed for mass killing, without impairing the constitutionally-guaranteed right to bear arms. Attachment B includes a proposed amendment that would add more detail to the recitations that precede the operative language in the ordinance.

Definition

At the April 1, 2018 public hearing, Council Member Weaver asked about the scope of the prohibition on .22 caliber weapons. Under the proposed ordinance, one of the elements that is in the definition of “assault weapon” is “pistol grip.” The term “pistol grip” is not defined. The following exhibits various structures that could be considered pistol grips. Staff’s intent is that only examples D, which has a thumbhole grip, and E, which has a physically separate grip, would be included in the definition of assault weapon.



Council Member Weaver posted a message on the council hotline that includes a definition that would clarify the meaning of pistol grip. This definition is included in attachment C.

Exemptions

Council received much input regarding exemptions. One goal of the proposed ordinance was to avoid imposing restrictions on individuals who do not present a significant public safety risk. Exempted from the scope of the as passed on first reading ordinance were holders of federal firearms licenses, law enforcement, military, federal officers and competitive shooters. Council may also wish to consider expanding the exemptions to include other classes of people who present similarly low safety risks. The following discussion addresses several such categories that the community has identified. In addition, if council chooses to expand the class of exempted individuals, council may wish to consider eliminating the exemption for competitive shooters. The expanded categories would reach many, if not most competitive shooters, and would avoid the difficulty of accurately defining competitive shooters.

Concealed Carry Permit Holders

Some commentators suggested that council consider exempting individuals with a valid Colorado concealed carry permit. Concealed carry permits are governed by C.R.S. § 18-12-201-216. Permits are issued by the elected sheriff for county residents. Among other requirements, an applicant must pass a nationwide criminal background check. In addition to objective criteria, the sheriff has discretion to deny a permit “if the sheriff has a reasonable belief that documented previous behavior by the applicant makes it likely the applicant will present a danger to self or others if the applicant receives a permit to carry a concealed handgun.” C.R.S. § 18-12-203(2). As of December 31, 2017, there were 8,304 active concealed carry permit holders in Boulder County.

A person cannot be issued a concealed carry permit, if that person is subject to a domestic violence restraining order or has been convicted of a misdemeanor involving domestic violence. C.R.S § 18-12-108(6)(c). This is defined by reference to federal law. 18 U.S.C. § 921(33)(A). The definition covers only offenses committed “by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” This language does not include domestic violence convictions involving unmarried individuals who do not have a child and are not “similarly situated to a spouse.” Council may not wish to exempt concealed carry permit holders in light of this fact.

Federal Firearm Permit or Stamp Holders

The ordinance passed on first reading exempts individuals who hold a Federal Firearms License. An FFL holder is a dealer. As passed, the proposed ordinance would also

exempt weapons covered by a Federal Firearm Stamp or Permit, but not the individual. These weapons include sawed off shotguns and machine guns. To obtain such a permit or stamp, an individual must undergo an extensive background check. Council may wish to consider extending the exemption to individuals who have undergone this process.

Individuals Permitted Nationwide Concealed Carry

Under the Law Enforcement Officers Safety Act, passed by congress in 2004, certain law enforcement officers and retired law enforcement officers are permitted to carry a concealed weapon anywhere in the country. 18 U.S.C. § 926b. To qualify a law enforcement officer must meet the following criteria:

- (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);
- (2) is authorized by the agency to carry a firearm;
- (3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- (4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (6) is not prohibited by Federal law from receiving a firearm.

18 U.S.C. § 926b(c)

In addition, retired law enforcement officers have the same privileges, if they meet the following criteria:

- (1) separated from service in good standing from service with a public agency as a law enforcement officer;
- (2) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;

(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

18 U.S.C. § 926C(c).

Elimination of the Competitive Shooter Exemption

As passed on first reading the ordinance would exempt competitive shooters. Competitive Shooter is defined as “a person who actively competes in competitive shooting events as evidenced by membership in a group organized for the purpose of conducting or competing in such event.” Council may wish to consider whether to eliminate this exemption to encourage competitive shooters to go through the concealed carry permitting process.

Attachment D includes a proposed amendment adding additional exemptions and deleting the competitive shooter exemption.

Retired Military

The proposed ordinance would exempt current members of the military from the ordinance. Council Member Nagle asked that the council consider including retired members of the military. Retired military members are not covered by the Law Enforcement Officers Safety Act, except those who were law enforcement officers in the military. There is no organization that provides any certification. There have been efforts to include veterans under the provisions of the Law Enforcement Officers Safety Act, but, to date, they have not been included. Draft language is included in Attachment E.

Ballot Measure Alternative

On April 14, 2018, Council Member Weaver suggested that council consider placing the proposed ordinance before the voters in November. A version of the first reading ordinance redrafted as a ballot measure is Attachment F. On April 22, 2018, Council Member Weaver withdrew his request for a ballot measure. Staff has included this version in the event that another council member is interested.

Severability

At the April 5, 2018 meeting, Council Member Brockett asked if some provisions of the ordinance would survive if a court found that a particular provision was unconstitutional or pre-empted. Section 1-1-4 of the Boulder Revised Code provides as follows:

The city council intends that the sections, paragraphs, sentences, clauses and phrases of this code be severable. If any phrase, clause, sentence, paragraph or section of this code is declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity does not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code, unless it appears to the court that the valid provisions of the section or ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the council would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. If provision of an exception invalidates a prohibition, but the prohibition without the exception would be valid, then it is council's intent in such cases that the exception be severed and the prohibition upheld.

Section 1-1-4, "Severability of Parts of Code," B.R.C. 1981

ATTACHMENTS

Attachment A – Ordinance 8245 as Passed on First Reading

Attachment B – Potential Amendment Adding Additional Recitals

Attachment C – Definition of “Pistol Grip”

Attachment D – Amendments Relating to Exemptions

Attachment E – Exemption for Retired Members of the Armed Forces

Attachment F – Ballot Measure Alternative

ORDINANCE 8245

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO BAN THE SALE AND POSSESSION OF ASSAULT WEAPONS, LARGE-CAPACITY MAGAZINES AND MULTI-BURST TRIGGER ACTIVATORS, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, FINDS AND RECITES THE FOLLOWING:

A. The City of Boulder is an urban, densely populated city, with a population density similar to that of Denver, Colorado. With a population of 682,545 in 155 square miles, Denver has a density of 4,213 residents per square mile. Boulder's population of 108,707 resides in 25.8 square miles with a population density of 4,031 residents per square mile.

B. There has been a significant increase in mass shootings over the last two decades. Mass shootings occur most often at schools and involve assault weapons.

C. Boulder is home to the main campus of the University of Colorado and the campus of Naropa University. In addition, Boulder is home to several elementary, middle and high schools. The presence of a large number of students in the city of Boulder creates a higher than normal level of risk for the community.

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

Section 1. Section 5-1-1, "Definitions," B.R.C. 1981, is amended to delete the definition of "Illegal weapon."

...

~~Illegal weapon means a blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.~~

...

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

5-8-2. – Definitions.

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

About the person means sufficiently close to the person to be readily accessible for immediate use.

Assault weapon means:

(a) All semi-automatic firearms—rifles that have the capacity to accept a detachable magazine and that have with any of the following characteristics:

____(1a) A pistol grip or thumbhole stock~~ll semiautomatic action rifles with a detachable magazine with a capacity of twenty one or more rounds.~~

____(2b) All semiautomatic shotguns with a folding or telescoping stock or a magazine capacity of more than six rounds or both.

____(3e) Any protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.~~All semiautomatic pistols that are modifications of rifles having the same make, caliber, and action design but a short barrel or modifications of automatic weapons originally designed to accept magazines with a capacity of twenty one or more rounds.~~

(b) All semi-automatic center-fire pistols that have any of the following characteristics:

____(1) Have the capacity to accept a magazine other than in the pistol grip; or

____(2) Have a protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.

(c~~d~~) Any firearm which has been modified to be operable as an assault weapon as defined herein.

(d~~e~~) Any part or combination of parts designed or intended to convert a firearm into an assault weapon, including ~~a detachable magazine with a capacity of twenty one or more rounds, or any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.~~

Competitive Shooter means a person who actively competes in competitive shooting events as evidenced by membership in a group organized for the purpose of conducting or competing in such event.

Constructive knowledge means knowledge of facts or circumstances sufficient to cause a reasonable person to be aware of the fact in question.

Attachment A - Ordinance as Passed on First Reading

1 Illegal weapon means an assault weapon, large-capacity magazine, multi-burst trigger
2 activator, blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.

3 Large-capacity magazine means any ammunition feeding device with the capacity to accept
4 more than 10 rounds, but shall not be construed to include any of the following:

5 (a) A feeding device that has been permanently altered so that it cannot accommodate
6 more than 10 rounds.

7 (b) A 22 caliber tube ammunition feeding device.

8 (c) A tubular magazine that is contained in a lever-action firearm.

9 Locked container means a secure container which is enclosed on all sides and locked by a
10 padlock, key lock, combination lock, or similar device.

11 Minor means a person under eighteen years of age.

12 Multi-Burst Trigger Activator means:

13 (a) A device that attaches to a firearm to allow the firearm to discharge two or more shots
14 in a burst when the device is activated; or

15 (b) A manual or power-driven trigger-activating device that, when attached to a firearm
16 increases the rate of fire of that firearm.

17 Provide means to give, lend, sell, or otherwise place in an unsecured location where a minor
18 or other unauthorized or incompetent person could foreseeably gain access to a firearm.

19 Semi-automatic means a firearm that fires a single round for each pull of the trigger and
20 automatically chambers a new round immediately after a round is fired.

21 Section 3. Section 5-8-10, "Possession of Illegal Weapons," B.R.C. 1981, is amended to
22 read as follows:

23 **5-8-10. – Possession and Sale of Illegal Weapons.**

24 (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.

25 (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) Who is a competitive shooter from possessing a weapon necessary to compete, provided that the weapon is registered with the Boulder Police Department pursuant to Section 5-8-28, "Assault Weapons," B.R.C. 1981;

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

(5) 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 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 4. 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:

Attachment A - Ordinance as Passed on First Reading

- (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 that was registered with 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 5. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

5-8-25. – Exemptions from Chapter.

Nothing in this chapter shall be construed to forbid 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 purchasing, having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties.

1 Section 6. A new Section 5-8-28, "Assault Weapons," B.R.C. 1981, is added to read as
2 follows, and remaining sections in Chapter 5-8 are renumbered:

3 **5-8-28. – Assault Weapons.**

- 4 (a) Any person who, prior to April 1, 2018, was legally in possession of an assault weapon
5 large capacity magazine or multi-burst trigger activator shall have until December 31,
6 2018 to do any of the following without being subject to prosecution:
- 7 (1) Remove the assault weapon, large capacity magazine or multi-burst trigger
8 from the City of Boulder;
 - 9 (2) Render the assault weapon permanently inoperable;
 - 10 (3) Surrender the assault weapon, large capacity magazine or multi-burst trigger
11 activator to the Boulder Police Department for destruction; or
 - 12 (4) If eligible, register the assault weapon as provided in subsection (b).
- 13 (b) Any person seeking to register an assault weapon that he or she legally possessed prior
14 to April 1, 2018 must comply with the following requirements:
- 15 (1) Submit to a background check conducted by the appropriate law enforcement
16 agency to confirm that he or she is not prohibited to possess a firearm pursuant
17 to 18 U.S.C. § 922 or C.R.S § 18-12-108;
 - 18 (2) Unless the person is currently prohibited by law from possessing a firearm,
19 immediately register the assault weapon with the Boulder Police Department;
 - 20 (3) Safely and securely store the assault weapon pursuant to the regulations adopted
21 by the appropriate law enforcement agency;
 - 22 (4) Possess the assault weapon only on property owned or immediately controlled
23 by the person, or while on the premises of a licensed gunsmith for the purpose
24 of lawful repair, or while engaged in the legal use of the assault weapon at a
25 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 registered assault weapon to the appropriate law
enforcement agency within 48 hours of the time the discovery was made or
should have been made.
- (c) Any competitive shooter in possession of an assault weapon shall register the weapon
with the Boulder Police Department pursuant to subsection (b) above. Such registration
may be made without regard to when the competitive shooter acquired the weapon.
- (d) If a registered assault weapon is used in the commission of a crime, the registered 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 registered

Attachment A - Ordinance as Passed on First Reading

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.

- (e) Registered 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.
- (f) 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.
- (g) The registered owner of an assault weapon may not possess in the City of Boulder any assault weapons purchased after April 1, 2018.
- (h) The city manager shall charge a fee for each registration sufficient to cover the costs of administering the registration program.
- (i) The information required for the registration and permitting of assault weapons shall be treated as confidential and shall not be made available to members of the general public. The council finds that the release of such information would constitute an unwarranted invasion of personal privacy and could endanger the life or safety of persons at the premises where an assault weapon is located. The information on a permit application shall be used by the city only for law enforcement purposes.

Section 7. 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 8. 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.

Attachment A - Ordinance as Passed on First Reading

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

3
4
5 _____
Suzanne Jones
Mayor

6 Attest:

7
8 _____
Lynnette Beck
9 City Clerk

10 READ ON SECOND READING AND ADOPTED this 1st day of May, 2018.

11
12
13 _____
Suzanne Jones
14 Mayor

15 Attest:

16
17 _____
Lynnette Beck
18 City Clerk

Attachment B - Potential Amendment Adding Additional Recitals

Add the following after Recital “C”

D. Assault weapons are semi-automatic firearms designed with military features to allow rapid spray firing for the quick and efficient killing of humans.

E. Large capacity ammunition magazines (generally defined as magazines capable of holding more than 10 rounds) are feeding devices that and may hold as many as 100 rounds of ammunition.

F. Multi-Burst Trigger activators are devices that effectively increase the rate at which a weapon can be fired.

G. Assault weapons and/or large capacity ammunition magazines have been the tools of choice in many mass shootings of innocent civilians, including those described below:

1. Parkland, Florida, February 14, 2018: a shooter killed 17 and wounded 17 at Marjory Stoneman Douglas High School with an AR-15-style assault rifle.
2. Sutherland Springs, Texas, November 5, 2017: a shooter killed 26 and wounded 20 at the First Baptist Church with a Ruger AR-556 assault rifle.
3. Las Vegas, Nevada, October 1, 2017: a shooter killed 59 and wounded 527 armed with 23 guns, including both AR-15s and AK-47s as well as at least one gun modified with a bump stock. The following weapons were found inside of the killer’s hotel room:
 - a. Colt M4 Carbine AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - b. Noveske N4 AR-15 .223/5.56 with a bump stock, vertical fore grip and 40 round magazine.
 - c. LWRC M61C AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - d. POF USA P-308 AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
 - e. Christensen Arms CA-15 AR-15 .223 Wylde with a bump stock, vertical fore grip and 100 round magazine.
 - f. POF USA P-15 P AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - g. Colt Competition AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - h. Smith & Wesson 342 AirLite .38 caliber revolver with 4 cartridges and 1 expended cartridge case.
 - i. LWRC M61C AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - j. FNH FM15 AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
 - k. Daniel Defense DD5V1 AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
 - l. FNH FN15 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.

Attachment B - Potential Amendment Adding Additional Recitals

- m. POF USA P15 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - n. Colt M4 Carbine AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - o. Daniel Defense M4A1 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - p. LMT Def. 2000 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - q. Daniel Defense DDM4V11 AR-15 .223/5.56 with a bump stock, vertical fore grip. No magazine. EOTech optic.
 - r. Sig Sauer SIG716 AR-10 .308/7.62 with a bipod, red dot optic and 25 round magazine.
 - s. Daniel Defense DD5V1 AR-10 .308/7.62 with a bipod and scope. No magazine.
 - t. FNH FN15 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
 - u. Ruger American .308 caliber bolt action rifle with scope.
 - v. LMT LM308MWS AR-10 .308/7.62 with a bipod and red dot scope. No magazine.
 - w. Ruger SR0762 AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
 - x. LMT LM308MWS AR-10 with a bipod, scope and 25 round magazine.
- 4. Orlando, Florida, June 12, 2016: a shooter killed 49 and wounded 58 at the Pulse Nightclub with an AR-15-style assault rifle and a Glock 17 9mm handgun.
 - 5. San Bernardino, California, December 2, 2015: two shooters killed 14 and wounded 22 using a DPMS AR-15-style assault rifle and a Smith and Wesson M&P 15.
 - 6. Newtown, Connecticut, December 14, 2012: a shooter killed 26 and wounded 2 at Sandy Hook Elementary School with an AR-15-style assault rifle. The killer murdered his mother with a .22 caliber rimfire rifle. He also had a Glock 10mm and a Sig Sauer 9mm.
 - 7. Aurora, Colorado, July 20, 2012: a shooter killed 12 and wounded 58 armed with a Smith & Wesson M&P15 assault rifle and 100-round ammunition magazines and a Remington 870 pump shotgun. He also had a Glock 22 .40 caliber pistol.
 - 8. Carson City, Nevada, September 6, 2011: a shooter killed 4 and wounded 7 armed with a Norinco Mak 90, that had been altered from a semi-automatic assault weapon to a fully-automatic machine gun.
 - 9. Washington D.C. area, October 2002: shooters killed 10 and wounded 3 during a 3-week rampage armed with a Bushmaster XM-15 assault rifle.
 - 10. Columbine, Colorado, April 20, 1999: shooters killed 13 and wounded 21 at Columbine High School armed with a TEC-9 assault pistol and several large capacity ammunition magazines. The killers also had two shotguns.

Attachment B - Potential Amendment Adding Additional Recitals

11. San Francisco, California, July 1, 1993: a shooter killed 8 and wounded 6 armed with TEC-9 assault pistols and 40- and 50-round ammunition magazines. The suspect used a Hell-Fire trigger, which is a type of multi-burst trigger activator.

H. As a densely-populated college town, Boulder is uniquely vulnerable.

I. The City Council intends a narrow ban that respects the constitutionally guaranteed right to bear arms.

J. Americans constitute 4.4 percent of the global population and own 42 percent of the world's guns.

K. Worldwide a country's rate of gun ownership correlated with the occurrence of mass shootings.

L. This ordinance is a reasonable exercise of the city's police powers to restrict access to weapons that are of the type used in mass shootings and that are designed to kill large numbers of people quickly.

M. Because of Boulder's dense population and high concentration of students the council believes that it is necessary for the public safety to adopt this ordinance.

Attachment C - Definition of "Pistol Grip"

Amend Section 5-8-2 "Definitions," B.R.C. 1981, by adding the following:

Pistol Grip means a grip that protrudes conspicuously beneath the action of the weapon and that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.

Attachment D - Amendments Relating to Exemptions

Delete Subsections 5-8-10(c)(1)-(3).

Amend Section 5-8-25 as follows:

5-8-25. – Exemptions from Chapter.

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

(1) ~~Nothing in this chapter shall be construed to forbid~~ Any officer of the United States, including but not limited to federal agents and United States ~~m~~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 purchasing, having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties.;

(2) Any holder of a Federal Firearms License;

(3) Any person who has been issued a Federal Firearms Stamp or Permit;

(4) Any holder of a Colorado Concealed Carry Permit; and

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

Attachment E - Exemption for Retired Members of the Armed Forces

Add a new subsection 5-8-25(a)(6) as follows:

(6) Any person who served in the United States Air Force, Army, Coast Guard, Marines or Navy, who during his or her service was qualified to carry a firearm and who received an honorable discharge.

ORDINANCE 8245

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018, THE QUESTION OF AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO BAN THE SALE AND POSSESSION OF ASSAULT WEAPONS, LARGE-CAPACITY MAGAZINES AND MULTI-BURST TRIGGER ACTIVATORS, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, FINDS AND RECITES THE FOLLOWING:

A. The City of Boulder is an urban, densely populated city, with a population density similar to that of Denver, Colorado. With a population of 682,545 in 155 square miles, Denver has a density of 4,213 residents per square mile. Boulder's population of 108,707 resides in 25.8 square miles with a population density of 4,031 residents per square mile.

B. There has been a significant increase in mass shootings over the last two decades. Mass shootings occur most often at schools and involve assault weapons.

C. Boulder is home to the main campus of the University of Colorado and the campus of Naropa University. In addition, Boulder is home to several elementary, middle and high schools. The presence of a large number of students in the city of Boulder creates a higher than normal level of risk for the community.

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

Section 1. A general municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 6, 2018.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of banning assault weapons, large capacity magazines and multi-burst trigger activators as stated below.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the question:

Ballot Question NO. ____

Firearms Restrictions

Shall the Boulder Revised Code be amended as set forth in Ordinance No. 8245 to ban assault weapons, large capacity magazines and multi-burst trigger activators, require registration of weapons owned prior to the enactment of this measure and adding exemptions for law enforcement, military, federal officers and competitive shooters?

FOR THE MEASURE_____ AGAINST THE MEASURE_____

Section 4. If this ballot issue is approved by the voters, the City Council further amends the Boulder Revised Code, effective on December 1, 2018, amending Chapter 5, “General Offenses,” as follows:

Section 5. Section 5-1-1, “Definitions,” B.R.C. 1981, is amended to delete the definition of “Illegal weapon.”

...

~~*Illegal weapon* means a blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.~~

• • •

Section 6. Section 5-8-2, "Definitions," B.R.C. 1981, is amended to read as follows:

5-8-2. – Definitions.

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

About the person means sufficiently close to the person to be readily accessible for immediate use.

Assault weapon means:

(a) All semi-automatic firearms—rifles that have the capacity to accept a detachable magazine and that have with any of the following characteristics:

___(1a) A pistol grip or thumbhole stock—~~all semiautomatic action rifles with a detachable magazine with a capacity of twenty one or more rounds.~~

___(2b) ~~All semiautomatic shotguns with a folding or telescoping stock or a magazine capacity of more than six rounds or both.~~

___(3e) Any protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.~~All semiautomatic pistols that are modifications of rifles having the same make, caliber, and action design but a short barrel or modifications of automatic weapons originally designed to accept magazines with a capacity of twenty one or more rounds.~~

(b) All semi-automatic center-fire pistols that have any of the following characteristics:

___(1) Have the capacity to accept a magazine other than in the pistol grip; or

___(2) Have a protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.

(c) Any firearm which has been modified to be operable as an assault weapon as defined herein.

(d) Any part or combination of parts designed or intended to convert a firearm into an assault weapon, including ~~a detachable magazine with a capacity of twenty one or more rounds, or~~ any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.

Competitive Shooter means a person who actively competes in competitive shooting events as evidenced by membership in a group organized for the purpose of conducting or competing in such event.

Constructive knowledge means knowledge of facts or circumstances sufficient to cause a reasonable person to be aware of the fact in question.

Illegal weapon means an assault weapon, large-capacity magazine, multi-burst trigger activator, blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.

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:

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

(b) A 22 caliber tube ammunition feeding device.

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

1 *Locked container* means a secure container which is enclosed on all sides and locked by a
2 padlock, key lock, combination lock, or similar device.

3 *Minor* means a person under eighteen years of age.

4 *Multi-Burst Trigger Activator* means:

5 (a) A device that attaches to a firearm to allow the firearm to discharge two or more shots
6 in a burst when the device is activated; or

7 (b) A manual or power-driven trigger-activating device that, when attached to a firearm
8 increases the rate of fire of that firearm.

9 *Provide* means to give, lend, sell, or otherwise place in an unsecured location where a minor
10 or other unauthorized or incompetent person could foreseeably gain access to a firearm.

11 *Semi-automatic* means a firearm that fires a single round for each pull of the trigger and
12 automatically chambers a new round immediately after a round is fired.

13 Section 7. Section 5-8-10, "Possession of Illegal Weapons," B.R.C. 1981, is amended to
14 read as follows:

15 **5-8-10. – Possession and Sale of Illegal Weapons.**

16 (a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.

17 (b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge
18 required for violation of this section.

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

20 (1) Holding a Federal Firearms License issued by the United States Government
21 from possession of any firearm authorized pursuant to such license;

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

24 (3) Who is a competitive shooter from possessing a weapon necessary to compete,
25 provided that the weapon is registered with the Boulder Police Department
26 pursuant to Section 5-8-28, "Assault Weapons," B.R.C. 1981;

27 (4) From possessing a handgun magazine so long as the possession of the handgun
28 and magazine are in compliance with state law; or

29 (5) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions
30 from this Chapter," B.R.C. 1981.

31 (d) Nothing in this section shall be deemed to apply to any firearm that has been modified
32 either to render it permanently inoperable or to permanently make it not an assault
33 weapon.

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

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

7 **5-8-22. – Defenses.**

- 8 (a) It is an affirmative defense to a charge of violating sections 5-8-3, "Discharge of
9 Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space,"
10 5-8-5, "Negligently Shooting Bow or Slingshot," 5-8-6, "Aiming Weapon at Another,"
11 5-8-7, "Flourishing Deadly Weapon in Alarming Manner," and 5-8-8, "Possession of
12 Loaded Firearms," B.R.C. 1981, that the defendant was:
- 13 (1) Reasonably engaged in lawful self-defense under the statutes of the State of
14 Colorado; or
 - 15 (2) Reasonably exercising the right to keep and bear arms in defense of the
16 defendant's or another's home, person and property or in aid of the civil power
17 when legally thereto summoned.
- 18 (b) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms,"
19 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," and 5-8-
20 8, "Possession of Loaded Firearms," B.R.C. 1981, that the events occurred in an area
21 designated as a target range by the city manager under section 5-8-26, "City Manager
22 May Designate Target Ranges," B.R.C. 1981, for the type of weapon involved. It is a
23 specific defense to a charge of violating section 5-8-4, "Possessing and Discharging
24 Firearm or Bow in Park or Open Space," B.R.C. 1981, by possession that the defendant
25 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 that was registered with 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 9. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

5-8-25. – Exemptions from Chapter.

Nothing in this chapter shall be construed to forbid 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 purchasing, having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties.

Section 10. A new Section 5-8-28, "Assault Weapons," B.R.C. 1981, is added to read as follows, and remaining sections in Chapter 5-8 are renumbered:

5-8-28. – Assault Weapons.

- (a) Any person who, prior to April 1, 2018, was legally in possession of an assault weapon large capacity magazine or multi-burst trigger activator shall have until December 31, 2018 to do any of the following without being subject to prosecution:
- (1) Remove the assault weapon, large capacity magazine or multi-burst trigger from the City of Boulder;
 - (2) Render the assault weapon permanently inoperable;
 - (3) Surrender the assault weapon, large capacity magazine or multi-burst trigger activator to the Boulder Police Department for destruction; or

- (4) If eligible, register the assault weapon as provided in subsection (b).
- (b) Any person seeking to register an assault weapon that he or she legally possessed prior to April 1, 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, immediately register the assault weapon with 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 registered assault weapon to the appropriate law enforcement agency within 48 hours of the time the discovery was made or should have been made.
- (c) Any competitive shooter in possession of an assault weapon shall register the weapon with the Boulder Police Department pursuant to subsection (b) above. Such registration may be made without regard to when the competitive shooter acquired the weapon.
- (d) If a registered assault weapon is used in the commission of a crime, the registered 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 registered 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.
- (e) Registered 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.
- (f) 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 registered owner of an assault weapon may not possess in the City of Boulder any
2 assault weapons purchased after April 1, 2018.
- 3 (h) The city manager shall charge a fee for each registration sufficient to cover the costs of
4 administering the registration program.
- 5 (i) The information required for the registration and permitting of assault weapons shall
6 be treated as confidential and shall not be made available to members of the general
7 public. The council finds that the release of such information would constitute an
8 unwarranted invasion of personal privacy and could endanger the life or safety of
9 persons at the premises where an assault weapon is located. The information on a
10 permit application shall be used by the city only for law enforcement purposes.

11 Section 11. If a majority of all the votes cast at the election on the issue submitted shall
12 be for the issue, the issue shall be deemed to have passed and shall be effective on December 1,
13 2018.

14 Section 12. This ordinance is necessary to protect the public health, safety, and welfare of
15 the residents of the city, and covers matters of local concern.

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

19 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
20 TITLE ONLY this 5th day of April, 2018.

21 _____
22 Suzanne Jones
23 Mayor

24 Attest:

25 _____
Lynnette Beck
City Clerk

1 READ ON SECOND READING AND ADOPTED this 1st day of May, 2018.

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3 _____
4 Suzanne Jones
5 Mayor

6 Attest:

7 _____
8 Lynnette Beck
9 City Clerk
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