

**MICHAEL N. FEUER**  
CITY ATTORNEY

REPORT NO. R 1 4 - 0 2 9 2

REPORT RE:

JUN 2 6 2014

**SECOND REVISED DRAFT ORDINANCE BANNING  
POSSESSION OF LARGE-CAPACITY MAGAZINES**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 13-0068

Honorable Members:

This Office previously transmitted a revised draft ordinance to your Honorable Body on May 2, 2013, that would add a new Article 6.7 to Chapter IV of the Los Angeles Municipal Code declaring any large-capacity magazine to be a public nuisance and an immediate threat to the public, health, safety and welfare of the citizens of Los Angeles (City Attorney Report No. R13-0119). This Office has reconsidered the approach taken in the May 2, 2013, draft ordinance and has instead modeled this revised draft ordinance after the San Francisco and Sunnyvale large-capacity magazine bans. Both of those ordinances have withstood Second Amendment challenges in two different Northern California District Courts. The second revised draft ordinance is nearly identical to the San Francisco and Sunnyvale large-capacity magazine ordinances, and would ban possession of large-capacity magazines in the City of Los Angeles.

On May 3, 2013, your Honorable Body requested this Office to prepare a further revised draft ordinance to: (1) make the possession of a large-capacity magazine a misdemeanor one year after the effective date of the ordinance; and (2) provide an operative date 60 days after the effective date of the ordinance to allow persons time to legally surrender their large-capacity magazines. The second revised draft ordinance addresses the Council's request in that it would make it a misdemeanor to possess a large-capacity magazine unless one of the enumerated exceptions applies and would

also provide a 60-day period from the effective date of the ordinance for persons to remove, surrender, sell or transfer their large-capacity magazines.

Preemption and Second Amendment

We have considered the possibility that the second revised draft ordinance might be challenged on the grounds that it is preempted by State law or violates the Second Amendment to the United States Constitution. We believe the second revised draft ordinance is legally defensible on both grounds. As stated above, two very similar ordinances in Northern California have withstood Second Amendment challenges at the District Court level of review. The Sunnyvale ordinance is currently pending in the Ninth Circuit Court of Appeals and will likely be considered by the Court in the beginning of 2016.

Council Rule 38

A copy of the second revised draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Police Commission and the Los Angeles Police Department with a request that any comments be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Brian L. Sottile at (213) 978-8384. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON  
Chief Assistant City Attorney

DM:BS:pg  
Transmittal

**ORDINANCE NO. \_\_\_\_\_**

An ordinance adding a new Article 6.7 to Chapter IV of the Los Angeles Municipal Code to prohibit the possession of large-capacity magazines.

**WHEREAS**, the ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine";

**WHEREAS**, any ammunition feeding device with the capacity to accept more than 10 rounds of ammunition as defined in Section 16740 of the California Penal Code is considered to be a "large-capacity" magazine, and some large-capacity magazines can hold up to 100 rounds of ammunition;

**WHEREAS**, although detachable large-capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are available for any semi-automatic firearm that accepts a detachable magazine, including semi-automatic handguns;

**WHEREAS**, the ability of large-capacity magazines to hold numerous rounds of ammunition significantly increases the lethal capacity of the automatic and semi-automatic firearms with these magazines;

**WHEREAS**, a recent study concluded that 42 percent of mass shooting incidents within the last three decades involved an assault weapon and more than half of the perpetrators possessed assault weapons, large-capacity magazines or both;

**WHEREAS**, on average, shooters who use assault weapons and/or large-capacity magazines in mass shootings shoot 151 percent more people and kill 63 percent more people than shooters who do not use assault weapons and large-capacity magazines;

**WHEREAS**, the prohibition on large-capacity magazines serves as further protection for law enforcement officers because shooters will be forced to reload – and put themselves in a position to be subdued – before they can cause mass casualties;

**WHEREAS**, large-capacity magazines were used in a number of high-profile shootings, including:

- The shooting at a San Francisco law firm on July 1, 1993, where a shooter armed with semiautomatic assault weapons and large capacity magazines, some capable of holding up to 50 rounds of ammunition, killed 8 people and injured 6 others;

- The shooting on December 7, 1993, that occurred in a Long Island Rail Road train, where a shooter armed with a semi-automatic handgun and large capacity magazines killed 6 people and wounded 19 others;
- The shooting on February 28, 1997, at a North Hollywood Bank of America where two heavily armed bank robbers emptied more than a thousand rounds of ammunition using fully automatic machine guns and an AR-15 assault rifle with high-capacity drum magazines and armor-piercing bullets, where several courageous LAPD officers were outgunned and injured as a result of the incident;
- The shooting at the Connecticut State Lottery Headquarters in Newington, Connecticut on March 6, 1998, where a gunman armed with 9mm pistol and large-capacity magazine holding 19-rounds of ammunition, killed 4 people;
- The shooting on April 20, 1999, at Columbine High School in Columbine, Colorado where two students using shot guns and semi-automatic handguns loaded with 52, 32 and 28-round large-capacity magazines killed 12 students and injured 21 additional students;
- The shooting at the North Valley Jewish Community Center in Granada Hills on August 10, 1999, where a shooter armed with an Uzi-type submachine gun and semi-automatic pistol and large-capacity magazines fired 70 shots into the lobby of the Community Center, wounding 5 people (3 children, 1 teenage counselor and an officer worker);
- The shooting on the campus of Virginia Polytechnic Institute and State University in Virginia on April 16, 2007, where a college student using two semi-automatic handguns loaded with 15-round large-capacity magazines and hollow-point ammunition killed 32 people and wounded 17 others;
- The shooting on April 3, 2009, at the American Civic Association immigration center in Binghamton, New York where a shooter armed with semi-automatic pistols, two 30-round large capacity magazines, and two 15-round large capacity magazines, killed 13 people and wounded 4 others;
- The shooting at a family-owned beer and wine wholesaler in Manchester, Connecticut on August 3, 2010, where a gunman using a Sturm Ruger SR9 pistol and two large capacity magazines holding 17-rounds of ammunition, killed 8 co-workers and seriously wounded 2 others;
- The shooting on January 8, 2011, at a constituent meeting held in a supermarket parking lot in Tucson, Arizona where U.S. Representative Gabrielle Gifford and 13 others were shot by a man using a semi-automatic pistol loaded with a 33-round large capacity magazine. Six of the people shot died, including a Federal Court Judge;

- The shooting in a movie theater in Aurora, Colorado on July 20, 2012, where a gunman using a 12-gauge Remington 870 Express Tactical shotgun, a Smith & Wesson M&P15 semi-automatic rifle with a 100-round drum magazine and a semi-automatic handgun killed 12 and injured 58 others;
- The recent shooting on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut where a gunman using a Bushmaster XM15-E2S rifle with 30-round large-capacity magazines and semi-automatic handguns fatally shot 20 children and 6 adult staff members;
- The recent shooting on July 15, 2013, near and on the campus of Santa Monica College where a shooter armed with 1,300-rounds of ammunition, including a semi-automatic AR-15 assault rifle with large-capacity magazines, capable of holding 30-rounds of ammunition, killed 5 people and seriously wounded 4 others;
- The recent shooting on August 5, 2013, at a town meeting in Ross Township, Pennsylvania where a gunman fired 28-rounds from a Ruger Mini-14 rifle, killing 3 people and injuring 2 others. The shooter used a 30-round large-capacity magazine in his rifle and had 90-rounds of ammunition in his car;
- The recent shooting on August 20, 2013, at Ronald E. McNair Discovery Learning Academy in Decatur, Georgia where a gunman using an AK 47-style assault rifle, large-capacity magazines and nearly 500 rounds of ammunition exchanged fire with local law enforcement before ultimately surrendering to local law enforcement;
- The recent shooting on September 20, 2013 at a park on the south side of Chicago where a shooter armed with an assault weapon equipped with a large-capacity magazine injured 13 people; and
- The recent shooting on November 1, 2013, at Los Angeles International Airport where a gunman using a Smith & Wesson M&P15 semi-automatic rifle loaded with a 30-round large-capacity magazine opened fire into a crowded airport terminal, killing 1 TSA agent and wounding several others. The shooter had five additional 30-round large-capacity magazines and hundreds of ammunition in his carrying bag;

**WHEREAS**, large-capacity magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity magazine; and

**WHEREAS**, large-capacity magazines are not necessary for individuals to vindicate their right to self-defense. Only in an extraordinarily rare circumstance would a person using a firearm in self-defense ever be required to use a large-capacity magazine to defend himself or herself effectively. This is particularly true in an urban center like Los Angeles where law enforcement can and does respond quickly to threats

and incidents. Conversely, the dangers of large-capacity magazines are heightened in dense urban areas like Los Angeles;

**WHEREAS**, in 1994, in recognition of the dangers posed by large-capacity magazines, Congress adopted a law prohibiting the transfer and possession of large-capacity magazines as part of the federal assault weapon ban;

**WHEREAS**, the federal law banning large-capacity magazines was enacted with a sunset clause and expired on September 13, 2004;

**WHEREAS**, a researcher hired by the U.S. Department of Justice to analyze the effect of the 1994 federal ban on assault weapons and large-capacity magazines found that “attacks with semi-automatics including assault weapons and other semi-automatics equipped with large-capacity magazines result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms”;

**WHEREAS**, since the federal ban’s sunset in 2004, the Los Angeles Police Department’s Gun Unit has seen a significant increase in the number of large-capacity magazines recovered, from 38 in 2003 to anywhere from 151 to 940 each year between 2004 and 2010;

**WHEREAS**, the number of assault rifles recovered by the Los Angeles Police Department’s Gun Unit ranged from 93 in 2010, 56 in 2011, 54 in 2012, and 63 in 2013;

**WHEREAS**, since January 1, 2000, California Penal Code Section 32310 has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving or lending of large capacity magazines; however, California law does not prohibit the possession of these magazines, and this gap in the law threatens public safety;

**WHEREAS**, any large-capacity magazine that is subject to California Penal Code Section 32390 is a nuisance wherever found within the State and can be disposed of in accordance with the provisions of Sections 18010 and 18005 of the California Penal Code; and

**WHEREAS**, it is necessary to preserve the peace and protect the general health, safety and welfare of the residents of the City.

**NOW, THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 6.7 is added to Chapter IV of the Los Angeles Municipal Code to read as follows:

**ARTICLE 6.7**

**LARGE-CAPACITY MAGAZINES – POSSESSION PROHIBITED**

**SEC. 46.30. LARGE-CAPACITY MAGAZINES – POSSESSION PROHIBITED.**

**(a) Definitions.**

(1) “**LARGE –CAPACITY MAGAZINE**” means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (i) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
- (ii) A .22 caliber tube ammunition feeding device.
- (iii) A tubular magazine that is contained in a lever-action firearm.

**(b) Prohibition on Possession of Large-Capacity Magazines**

(1) It is unlawful for any person to possess any large-capacity magazine, except as otherwise authorized by law, whether assembled or disassembled.

(2) Any person who, prior to the effective date of this article, was legally in possession of a large-capacity magazine shall have 60 days from such effective date to do any of the following without being subject to prosecution:

- (i) Remove the large-capacity magazine from the City of Los Angeles;
- (ii) Surrender the large-capacity magazine to the Los Angeles Police Department for destruction;
- (iii) Sell or transfer the large-capacity magazine lawfully in accordance with Section 32410 of the California Penal Code.

**(c) Exemptions.**

The provisions of Subsection (b) shall not apply to the following:

- (1) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine, and does so while acting within the scope of his or her duties;
- (2) A person licensed pursuant to Sections 26700 to 26915 of the California Penal Code;
- (3) A gunsmith for the purpose of maintenance, repair or modification of the large-capacity magazine;
- (4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;
- (5) Any person, corporation or other entity that manufactures the large-capacity magazine for a person mentioned in Subdivision (1), or for export pursuant to applicable federal regulations;
- (6) Any person using the large-capacity magazine solely as a prop for a motion picture, television or video production;
- (7) Any holder of a special weapons permit issued pursuant to California Penal Code Sections 18900, 31000, 32650, 32700-32720, or 33300;
- (8) Any person issued a permit pursuant to California Penal Code Section 32315 by the Department of Justice upon a showing of good cause for the possession, transportation or sale of large-capacity magazines between a person licensed pursuant to Sections 26700 to 26915 of the California Penal Code, and an out-of-state client, when those activities are in accordance with the terms and conditions of the permit;
- (9) Any federal, state or local historical society, museum or institutional collection which is open to the public, provided that the large-capacity magazine is properly housed, secured from unauthorized handling and unloaded;
- (10) Any person who finds the large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to the law;



(11) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities;

(12) Any person in the business of selling or transferring large-capacity magazines in accordance with California Penal Code Section 32310 who is in possession of a large-capacity magazine solely for the purpose of doing so; or

(13) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm;

(d) **Penalty.** Violation of this section shall constitute a misdemeanor.

(e) **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

HOLLY L. WOLCOTT, Interim City Clerk

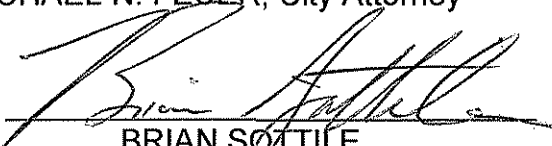
By \_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By   
BRIAN SOTTILE  
Deputy City Attorney

Date     JUN 26 2014    

File No.     CF 13-0068