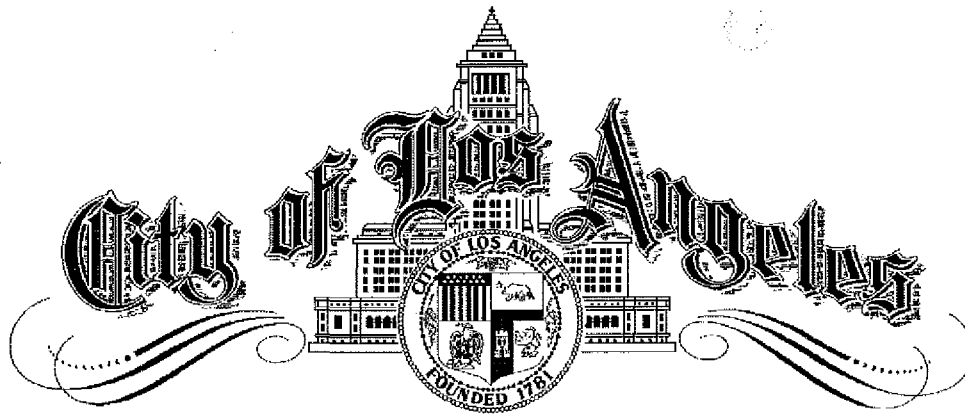


City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

(213) 978-8100 Tel
(213) 978-8312 Fax
CTrutanich@lacity.org
www.lacity.org/atty



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 13 - 0064

MAR 04 2013'

REPORT RE:

DRAFT ORDINANCE REGARDING LARGE-CAPACITY AMMUNITION 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:

On February 22, 2013, the City Attorney's Office represented to your Honorable Public Safety Committee that it would prepare a report discussing the legal feasibility of enacting an ordinance declaring large-capacity magazines to be a public nuisance within the City of Los Angeles. This report discusses how the City of Los Angeles can accomplish this goal based upon existing state laws, and transmits an ordinance, approved as to form and legality, for that purpose.

State Law

California Penal Code Section 32310¹ provides that "any person in this state who manufactures, or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine" is guilty of a crime. Section 32315 provides that the "Department of Justice may issue permits for the possession, transportation, or sale between a person licensed pursuant to Sections 26700 to 26915, inclusive, and an out-of-state client, of large capacity magazines." Section 32390 declares that any large-capacity magazine is a nuisance

¹ All further statutory references in this section are to the Penal Code, unless otherwise noted.

and subject to confiscation and summary destruction whenever found within the state as provided for by Section 18010. There are certain enumerated exceptions to Section 32390 that are provided for in Article 2 (commencing with Section 32400-32450) and in Chapter 1 of Division 2 of Title 2 (commencing with Section 17700-17745).

Section 18010 authorizes that "[t]he Attorney General, district attorney, or city attorney may bring an action to enjoin the manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving, lending, or possession of, any item that constitutes a nuisance under any of the following provisions ... (20) Section 32390, relating to a large-capacity magazine." Section 18010(b) provides that "[t]hese weapons shall be subject to confiscation and summary destruction whenever found within the state." Section 18010(c) states that "[t]hese weapons shall be destroyed in the same manner described in Section 18005, except that upon the certification of a judge or of the district attorney that the ends of justice will be served thereby, the weapon shall be preserved until the necessity for its use ceases." Section 18005(c) prescribes the relevant time periods for the mandated destruction for such large-capacity magazines.

As stated above, it is clear that under state law a large-capacity magazine is a nuisance, which is subject to confiscation and summary destruction. The State does not, however, classify large-capacity magazines as either a public or private nuisance. Government Code Section 38771 specifically provides that a city legislative body may, by ordinance, declare what constitutes a public nuisance. Therefore, the City Council can enact an ordinance declaring large-capacity magazines to be a public nuisance in the City of Los Angeles. Accordingly, the enclosed draft ordinance so providing is transmitted for your consideration.

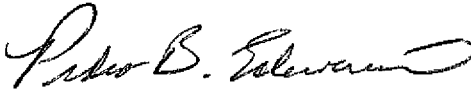
Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Police Department with the request that all comments, if any, 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 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,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:BS:pj
Transmittal

ORDINANCE NO. _____

An ordinance adding a new Article 6.7 to Chapter IV of the Los Angeles Municipal Code declaring any large-capacity magazine subject to Section 32390 of the California Penal Code to be a public nuisance and an immediate threat to the public health, safety and welfare of the citizens of Los Angeles; and setting forth, as provided in state law, that large-capacity magazines shall be confiscated and summarily destroyed and disposed of in accordance with the provisions of Sections 18010 and 18005 of the California Penal Code.

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," and, inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action; and

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 are considered to be "large-capacity" magazines; and

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; and

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 using them; and

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

- 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 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 North Valley Jewish Community Center in Granada Hills on August 10, 1999, where 5 people were wounded by gunfire (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 January 8, 2011, at a constituent meeting held in a supermarket parking lot in Tucson, Arizona, where U.S. Representative Gabrielle Gifford and eighteen 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; and

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; and

WHEREAS, any large-capacity magazine is a nuisance under California Penal Code Section 32390 and subject to confiscation and summary destruction wherever found within the state; 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 – PUBLIC NUISANCE

SEC. 46.30. LARGE-CAPACITY MAGAZINES – PUBLIC NUISANCE.

(a) The City Council finds that any large-capacity magazine, as defined in Section 16740 of the California Penal Code, that is subject to Section 32390 of the California Penal Code is, and hereby declares it to be, a public nuisance and an immediate threat to the public health, safety and welfare of the citizens of Los Angeles.

(b) Large-capacity magazines shall be subject to confiscation and summary destruction by the Police Department of the City of Los Angeles and disposed of in accordance with the provisions of Sections 18010 and 18005 of the California Penal Code.

(c) **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 _____.

JUNE LAGMAY, City Clerk

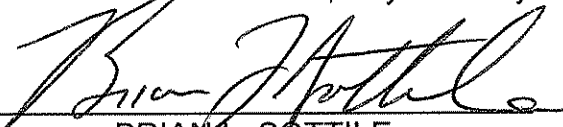
By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
BRIAN L. SOTTILE
Deputy City Attorney

Date 3-4-13

File No. CF 13-0068