

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LAURENCE JOSEPH ANDERSON,  
SCOTT MILLER, ROBERT REINHOLD  
OPDYKE, and MICHAEL A.  
WHITEHOUSE,

Plaintiffs,

vs.

CITY OF PITTSBURGH, WILLIAM  
PEDUTO, in his official capacity as  
Mayor of the City of Pittsburgh, and  
PITTSBURGH CITY COUNCIL,

Defendants.

CIVIL DIVISION

No.

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

Filed on Behalf of Plaintiffs, Laurence  
Joseph Anderson, Scott Miller, Robert  
Reinhold Opdyke, and Michael A.  
Whitehouse

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**JURY TRIAL DEMANDED**

**COURT OF COMMON PLEAS  
COUNTY OF ALLEGHENY, PENNSYLVANIA  
CIVIL ACTION – EQUITY**

LAURENCE JOSEPH ANDERSON, SCOTT  
MILLER, ROBERT REINHOLD OPDYKE,  
and MICHAEL A. WHITEHOUSE,

Plaintiffs,

v.

CITY OF PITTSBURGH, WILLIAM  
PEDUTO, in his official capacity as Mayor of  
the City of Pittsburgh, and PITTSBURGH  
CITY COUNCIL,

Defendants.

Case No. \_\_\_\_\_

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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436 Seventh Avenue, Pittsburgh, PA 15219  
TELEPHONE: 412-261-5555

**COURT OF COMMON PLEAS  
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**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

1. The City of Pittsburgh has prohibited one of the most common and important means by which its citizens exercise their fundamental right of self-defense. By banning the public possession and transportation of loaded standard-capacity firearm magazines that can carry more than 10 rounds of ammunition, Pittsburgh has violated the rights of its citizens and exceeded its authority under Pennsylvania law.

2. Worse yet, Pittsburgh has committed this violation without any realistic prospect of diminishing the misuse of firearms or the incidence of horrific mass shootings. Pittsburgh's ban on the carrying of loaded standard-capacity magazines in public will do nothing to ameliorate these public policy concerns. All it will do is leave law-abiding citizens more vulnerable to attack from better-armed and more ruthless assailants.

3. Plaintiffs are law-abiding residents of Pittsburgh who bring this action to vindicate their rights under Pennsylvania law to possess and lawfully transport firearms and ammunition free from regulation by Pittsburgh or any other Pennsylvania municipality.

## PARTIES

4. Plaintiff Laurence Joseph Anderson is a resident of Pittsburgh.
5. Plaintiff Scott Miller is a resident of Pittsburgh.
6. Plaintiff Robert Reinhold Opdyke is a resident of Pittsburgh.
7. Plaintiff Michael A. Whitehouse is a resident of Pittsburgh.
8. Defendant City of Pittsburgh is a political subdivision of the Commonwealth of Pennsylvania. Its principal office is located at 313 City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.
9. Defendant William Peduto is the Mayor of the City of Pittsburgh and is thus responsible for executing and administering the City's laws. Defendant Peduto's principal place of business is located in Pittsburgh's City-County Building.
10. Defendant Pittsburgh City Council is the governing body of the City of Pittsburgh. Its principal place of business is located in Pittsburgh's City-County building.

## JURISDICTION AND VENUE

11. This Court has jurisdiction over this dispute under Rules 1531 and 1602 of the Pennsylvania Rules of Civil Procedure, 42 PA. C.S. § 931(a), and the Pennsylvania Declaratory Judgment Act, 42 PA. C.S. § 7531, et seq.
12. Venue is proper in this Court under 42 PA. C.S. § 931(c) and Pennsylvania Rules of Civil Procedure 1006 and 2103.

## **FACTS**

### **So-Called “Large Capacity” Magazines Are Ubiquitous and Overwhelmingly Carried for Self-Defense and Other Lawful Purposes**

13. Although Pittsburgh describes most magazines that can accept more than 10 rounds of ammunition as “large capacity magazine[s],” Ordinance 2018-1219, § 1104.01(D) (Exhibit A), this is actually a gross and misleading misnomer. Magazines capable of holding more than 10 rounds of ammunition are a normal feature of firearms in the United States and are more accurately described as “standard-capacity magazines.”

14. For example, according to the 2018 edition of Gun Digest, a reference work that includes specifications of currently available firearms, magazines capable of holding more than 10 rounds come standard on many of the nation’s most popular firearms. GUN DIGEST 2018 109, 372–416, 441–49, 481-82 (Jerry Lee ed., 72d ed. 2018).

15. Magazines capable of holding more than ten rounds come standard with many of this nation’s most popular handgun models. Annual ATF manufacturing and export statistics indicate that in 2011 about 61.5% of the 2.6 million semiautomatic handguns made in the United States were in calibers typically using magazines that hold over ten rounds.

16. Approximately half of all magazines owned in America can accept more than 10 rounds. There are tens of millions—if not more—of these standard-capacity magazines throughout the United States, with at least one estimate putting the total number at more than 100 million.

17. Magazines such as these are spread throughout the country. Standard-capacity magazines are legal under both federal law and the laws of at least 42 states.

18. The ubiquity of standard-capacity magazines among law-abiding Americans demonstrates that they are overwhelmingly used for lawful purposes, such as self-defense, hunting, and target shooting.

19. There is no reliable evidence that prohibitions on standard-capacity magazines reduce violence involving firearms. Between 1994 and 2004, federal law prohibited magazines holding more than 10 rounds, but a report prepared for the U.S. Department of Justice concluded: “[W]e cannot clearly credit the ban with any of the nation’s recent drop in gun violence,” and “there has been no discernable reduction in the lethality and injuriousness of gun violence.” CHRISTOPHER S. KOPER, ET AL., UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003, REP. TO THE NAT’L INST. OF JUSTICE, U.S. DEP’T OF JUSTICE 96 (2004).

20. What is more, due to the porousness of municipal borders, there is no reason to think that a municipal-level ban would have any more effect in reducing violence committed by those who ignore the law or use alternative means to commit crimes. And there is even less reason to conclude that Pittsburgh’s ordinance will be effective, for it depends on criminals complying with a legal prohibition on *loading* magazines that may be lawfully possessed in public when unloaded.

21. There are many reasons why the average citizen would not want to be limited to substandard capacity ammunition magazines. The most obvious is to decrease the risk of running out of ammunition before being able to repel a criminal attack, which could involve multiple assailants, an assailant using a magazine containing more than 10 rounds, or an assailant using multiple firearms or magazines.

22. Police department practices make clear that standard capacity magazines holding more than ten rounds have defensive benefits. Police departments typically issue handguns with magazines that hold more than ten rounds. *See* MASSAD AYOUB, *THE COMPLETE BOOK OF HANDGUNS* 50, 87–90 (2013). They do so for good reason. For example, in 2011, New York City police officers fired more than ten rounds in 29% of incidents in which they fired their guns to defend themselves and others. The fact that police officers frequently need to fire more than 10 rounds to defend themselves suggests that law-abiding citizens likewise will sometimes find themselves in a similar situation. Law-abiding citizens, no less than police officers, are entitled to defend themselves with commonly owned firearms equipped with standard-capacity magazines.

23. Furthermore, the alternatives to standard capacity magazines—carrying multiple firearms or multiple magazines—are poor substitutes for equipping a firearm with a standard capacity magazine. Criminals, not their targets, choose when and where to attempt a crime. While criminals can ensure that they are equipped with whatever weapons they deem necessary, it is unreasonable to expect citizens to have multiple firearms available at all times in the event they are attacked. And while carrying multiple magazines may be less burdensome than carrying multiple firearms, the need to replace an empty magazine—particularly when under the stress of a criminal attack—can significantly impair a person’s capacity for self-defense. Replacing a spent magazine while under the stress of a criminal attack is even more unrealistic for individuals with disabilities or other physical limitations that prevent them from changing magazines quickly.

24. For the same reasons many gunowners prefer to carry standard capacity magazines that accept more than ten rounds, gunowners who carry firearms for self-defense

typically carry *loaded* firearms. Indeed, for most firearms, it is far more time-consuming and difficult to load a standard-capacity magazine than it is to replace a spent magazine with one that has already been loaded. In a situation in which a firearm is needed for self-defense, the time required to load a standard capacity magazine may be the difference between life and death.

25. Unlike law-abiding citizens, violent criminals will not be meaningfully constrained by Pittsburgh's ban on carrying loaded standard-capacity magazines in public. Violent criminals will have no compunction about violating the Pittsburgh ordinance. Even if violent criminals were prevented from carrying loaded standard-capacity magazines, a highly dubious assumption, they could easily compensate by bringing multiple firearms or magazines with them to the scene of the crime. Their ability to do so is made possible by the fact that violent criminals, and not their law-abiding victims, choose the time and place of crimes and can plan accordingly. Pittsburgh's ordinance thus favors criminals bent on mass mayhem, as they will ignore the law and continue carrying loaded standard-capacity magazines; use multiple magazines; use multiple firearms; or employ all of these strategies simultaneously. Law-abiding citizens will be reduced to countering this threat with a single firearm equipped with a single sub-standard capacity magazine, as people generally are not in the habit of having spare firearms and magazines readily accessible to them at all times.

**Pennsylvania Law Prohibits Local Regulation of the Possession and Transportation of Firearms and Ammunition**

26. Because firearms and ammunition are readily transported across the unmarked boundaries that separate Pennsylvania municipalities, local regulations of firearms and ammunition do little to protect the public from armed criminals. Such regulations do, however, impose substantial burdens on lawful firearm ownership by restricting the types of firearms and ammunition that law-abiding local residents may possess and transport. In recognition of these



realities and to prevent the development of a confusing patchwork of potentially conflicting local laws, the Pennsylvania General Assembly has enacted statutes that preempt the authority of home rule municipalities to regulate the possession and transportation of firearms and ammunition.

27. Pennsylvania’s Uniform Firearms Act, 18 PA. C.S. § 6120(a), states that “[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” The statute defines a “firearm” to broadly include “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon,” excluding certain air rifles. *Id.* §§ 5515(a) and 6120(b).

28. The City of Pittsburgh has in the past recognized the broad sweep of 18 PA. C.S. § 6120. Gunowners sued the City of Pittsburgh to enjoin enforcement of other firearms regulations adopted by the City Council in 1993. In return for dismissal of that action, the City of Pittsburgh entered into a stipulation, which was subsequently approved by this Court, stating that Section 6120 “codifies the state preemption of local ordinances and local action regarding firearms generally.” Stipulation and Order, *Covey v. City of Pittsburgh*, No. GD94 1499 (Feb. 24, 1995) (Exhibit B). The City of Pittsburgh further stated that it would “abide by and adhere to Pennsylvania law.” *Id.*

29. To eliminate any possible uncertainty as to whether the State’s authority to regulate the possession and transportation of firearms was meant to be exclusive, another provision of Pennsylvania law addressed to the home rule power says that “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer,

ownership, transportation or possession of firearms.” 53 PA. C.S. § 2962(g). The City of Pittsburgh has itself acknowledged that this statute means what it says: “Section 2962(g) provides that a municipality may not enact any ordinance or take any action relating to the transfer, ownership, transportation or possession of firearms.” Brief for the City of Pittsburgh, *City of Pittsburgh v. Fraternal Order of Police*, No. 18WAP2016, 2016 WL 7188262, at \*23 n.8 (Pa. Sept. 15, 2016).

30. The state statutes that preempt local regulation of firearms and ammunition have been upheld and applied by the Pennsylvania courts for decades. In the Commonwealth of Pennsylvania, “the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996).

#### **Pittsburgh Bans the Carrying of Loaded Standard Capacity Magazines**

31. In open defiance of the constraints imposed by Pennsylvania law, on April 2, 2019, the Pittsburgh City Council passed an ordinance that prohibits publicly possessing and transporting loaded magazines that accept more than 10 rounds. Mayor Peduto signed the ordinance into law on April 9.

32. The ordinance imposes this ban by purporting to regulate the “use” of standard-capacity magazines that accept more than 10 rounds, but it defines “use” to include “[l]oading [the magazine] with ammunition,” “[f]itting or installing it into a firearm,” and “[d]isplaying it with a firearm while loaded.” Ordinance 2018-1219 § 1104.03(B), Exhibit A. It is impossible to carry a firearm with a loaded magazine that accepts more than 10 rounds without loading the magazine and installing it into the firearm. Thus, although the ordinance purports says that it does not prohibit “possession” and “transportation” of standard capacity magazines, as a

practical matter it prohibits the public possession and transportation of firearms with loaded standard capacity magazines.

33. The ordinance’s prohibition on “use” of standard capacity magazines applies “in any public place within the City of Pittsburgh,” which generally includes “streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort.” Ordinance 2018-1219 § 1104.03(A), (C), Exhibit A.

34. Those who violate the ordinance “shall be fined up to \$1,000 and costs for each offense.” Ordinance 2018-1219 § 1104.06, Exhibit A.

35. During the debate over gun legislation that ultimately led to the enactment of Ordinance 2018-1219, members of the City Council publicly recognized that the legislation violates Pennsylvania law. City Council Member Darlene Harris repeatedly criticized the ordinance on this basis, observing: “[w]e cannot, under any circumstances—as I read the law in council this morning—we cannot vote on gun laws,” “[t]his is not something of ours to vote on,” “[w]e as councilmembers don’t have the right,” and “a city cannot make any gun laws.” *Pittsburgh City Council Gives Tentative Approval To Controversial Gun Control Legislation at 1:08*, CBS PITTSBURGH (Mar. 27, 2019), available at <https://cbsloc.al/2FJqKjf>; *Pittsburgh City Council Standing Committees at 52:24*, CITY CHANNEL PITTSBURGH (Mar. 27, 2019), available at <http://bit.ly/2WHsUa0>; *Pittsburgh City Council Standing Committees at 1:09:33*, CITY CHANNEL PITTSBURGH (Mar. 13, 2019), available at <http://bit.ly/2uCYauO>.

36. Other members of the City Council made statements that echoed City Council Member Harris’s concerns. Council Member Anthony Coghill said that “I think everybody realizes that—you know—the legal aspects in this. It’s more about bringing awareness to it, I felt.” *Pittsburgh City Council Standing Committees at 54:10*, CITY CHANNEL PITTSBURGH (Mar.

27, 2019) (statement of Council Member Anthony Coghill), *available at* <http://bit.ly/2WHsUa0>. Council Member Theresa Kail-Smith described the ordinance as a “political stunt” and said that “[t]he question is not whether gun violence is horrible; the question is, do we have the authority to do this?” *Pittsburgh City Council Standing Committees* at 1:13:20, CITY CHANNEL PITTSBURGH (Mar. 13, 2019) (statement of Council Member Therese Kail-Smith), *available at* <https://bit.ly/2K2z039>. And in advocating legislative action, Council Member Ricky Burgess urged the City Council to make “a moral statement” and “let the law take care of itself.” *Pittsburgh City Council Standing Committees* at 49:30, GRANICUS (Jan. 30, 2019) (statement of Rev. Ricky Burgess), *available at* <https://bit.ly/2Ua7xRW>.

**Pittsburgh’s Ban on Carrying Standard Capacity Magazines Violates Plaintiffs’ Rights Under Pennsylvania Law**

37. Plaintiffs are just four of the many Pittsburgh residents who will be forced to alter their behavior and to incur additional expense if Pittsburgh’s ordinance is permitted to go into effect.

38. Plaintiff Anderson holds a valid Pennsylvania license to carry firearms and is not subject to any legal disability that would prevent him from lawfully carrying a handgun in public places in Pittsburgh. Mr. Anderson regularly carries a handgun in public places in Pittsburgh with a loaded magazine containing more than 10 rounds. Mr. Anderson prefers to carry a fully loaded magazine that accepts more than 10 rounds because it is more effective than a smaller magazine for self-defense. If legally permitted, Mr. Anderson would continue his practice of routinely carrying a handgun in public places in Pittsburgh with a magazine containing more than 10 rounds.

39. Plaintiff Miller holds a valid Pennsylvania license to carry firearms and is not subject to any legal disability that would prevent him from lawfully carrying a handgun in public places in Pittsburgh. Mr. Miller regularly carries a handgun in public places in Pittsburgh with a loaded magazine containing more than 10 rounds. Mr. Miller prefers to carry a fully loaded magazine that accepts more than 10 rounds because it is more effective than a smaller magazine for self-defense. If legally permitted, Mr. Miller would continue his routine practice of carrying a handgun in public places in Pittsburgh with a magazine containing more than 10 rounds.

40. Plaintiff Opdyke holds a valid Pennsylvania license to carry firearms and is not subject to any legal disability that would prevent him from lawfully carrying a handgun in public places in Pittsburgh. Mr. Opdyke regularly carries a handgun in public places in Pittsburgh with a loaded magazine containing more than 10 rounds. Mr. Opdyke prefers to carry a fully loaded magazine that accepts more than 10 rounds because it is more effective than a smaller magazine for self-defense. All the magazines that Mr. Opdyke owns for the handgun that he routinely carries take more than 10 rounds. To comply with Pittsburgh's new standard-capacity magazine ban while continuing to carry his loaded handgun in public places, Mr. Opdyke would therefore be forced to purchase a magazine that accepts 10 or fewer rounds. If legally permitted, Mr. Opdyke would continue his routine practice of carrying a handgun in public places in Pittsburgh with a magazine containing more than 10 rounds.

41. Plaintiff Whitehouse holds a valid Pennsylvania license to carry firearms and is not subject to any legal disability that would prevent him from lawfully carrying a handgun in public places in Pittsburgh. Mr. Whitehouse has carried a loaded handgun with more than 10 rounds in public places in Pittsburgh in the past and would do so again in the future if legally permitted. For two of the handguns Mr. Whitehouse owns, he only owns magazines that accept

more than 10 rounds. Mr. Whitehouse sometimes chooses to carry one of those two **handguns** because of their superior accuracy, ease of use, and the larger number of rounds that their magazines will accept. Mr. Whitehouse cares about those features because they make the handguns in question more effective for self-defense. To comply with Pittsburgh's new standard-capacity magazine ban, Mr. Whitehouse would therefore be forced to either carry a different loaded handgun in public places in Pittsburgh that is not as accurate or to purchase a magazine that accepts 10 or fewer rounds.

42. The City of Pittsburgh routinely enforces the firearms prohibitions in its Code of Ordinances. From August 2016 through March 2019, data publicly released by the City of Pittsburgh indicates that there were nearly 1,400 arrests involving charges for violating firearms-related provisions of the Code of Ordinances.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **DECLARATORY JUDGMENT**

##### **Ordinance 2018-1219 is Preempted by State Law, 18 PA. C.S. § 6120 and 53 PA. C.S. § 2962(g)**

43. Plaintiffs incorporate the preceding paragraphs by reference.

44. Pursuant to the Declaratory Judgment Act, declaratory relief is designed to afford relief with respect to rights, status, and other legal relations, and the Act is to be liberally construed and administered. 42 PA. C.S. § 7541.

45. Municipalities are creations of the Commonwealth and can only exercise those powers granted by the General Assembly.

46. Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. Pittsburgh's city council is not the proper forum for the imposition of such regulation.

47. Under Pennsylvania law, "[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth," 18 PA. C.S. § 6120(a), and "[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms," 53 PA. C.S. § 2962(g). These statutes preempt all local ordinances that regulate the ownership, possession, and transportation of firearms, ammunition, and ammunition components.

48. Pittsburgh's ban on carrying loaded standard capacity magazines in public regulates the lawful ownership, possession, and transportation of firearms, ammunition, and ammunition components. Accordingly, Pittsburgh's ban on carrying loaded standard capacity magazines in public is preempted.

49. A present controversy exists between the parties as to the validity of Pittsburgh's ban on carrying loaded standard capacity magazines in public, as Pittsburgh enforces the firearms prohibitions in its Code of Ordinances and has given no indication that it will decline to enforce the new prohibition when it goes into effect.

50. Pittsburgh's ban on carrying loaded standard capacity magazines in public directly affects Plaintiffs' statutory right to possess and transport such magazines under 18 PA. C.S. § 6120(a), and 53 PA. C.S. § 2962(g).

51. Pittsburgh's ban on carrying loaded standard capacity magazines in public has a chilling effect on Plaintiffs' exercise of their right under Pennsylvania law to possess these magazines and to carry them in public for self-defense.

52. In order to comply with Pittsburgh's ban on carrying loaded standard capacity magazines in public, Plaintiffs Opdyke and Whitehouse will be forced to purchase smaller magazines that hold a maximum of ten or fewer rounds.

**WHEREFORE**, Plaintiffs respectfully request that the Honorable Court enter a declaration and final judgment that the City of Pittsburgh's ban on carrying loaded standard capacity magazines in public is preempted by 18 PA. C.S. § 6120 and 53 PA. C.S. § 2962(g).

Plaintiffs also request an award of the costs of suit, including reasonable attorneys' fees and interests as permitted by law, and grant other legal and equitable relief as the Court may deem just and proper.

## **COUNT II**

### **INJUNCTIVE RELIEF**

53. Plaintiffs incorporate the preceding paragraphs by reference.

54. The City is barred from enacting the instant ordinance pursuant to statewide preemption as provided in 18 PA. C.S. § 6120 and 53 PA. C.S. § 2962(g).

55. The City of Pittsburgh's violation of an express statutory provision preempting local regulation of firearms constitutes per se irreparable harm for purposes of injunctive relief.

56. When the General Assembly declares certain conduct to be unlawful, it is tantamount in law to calling it injurious to the public. For Defendants to continue such unlawful conduct constitutes irreparable injury.



57. The City of Pittsburgh is prohibited from exercising powers in violation of basic preemption principles and, therefore, enforcement of Ordinance 2018-1219's ban on the public possession of loaded standard capacity magazines must be permanently enjoined.

**WHEREFORE**, Plaintiffs respectfully request that the Honorable Court enter a permanent injunction restraining and enjoining Defendants and their agents, employees, and successors from enforcing Pittsburgh's ban on carrying loaded standard capacity magazines in public.

Plaintiffs also request that the Court award them the costs of suit, including reasonable attorneys' fees and interests as permitted by law, and grant other legal and equitable relief as the Court may deem just and proper.

Date: 4/9/2019

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# EXHIBIT A



1/9/2019	1	Standing Committee	Held for Post Agenda	
1/3/2019	1	Standing Committee	Held for Public Hearing	Pass
12/18/2018	1	City Council	Read and referred	

An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by enacting and adding Article XI: Weapons, Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications, and Chapter 1105: Authorized Prohibition of Large Capacity Magazines.  
(Public Hearing held 1/24/19; Post Agenda held 2/12/19)

**The Council of the City of Pittsburgh hereby enacts:**

**SECTION I** Article XI: Weapons shall provide as follows in Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications:

**§ 1104.01 DEFINITIONS**

A. Applicable definitions set forth in §§ 1101.01 and 1102.01 shall also apply to this Chapter 1104.

B. **Armor or Metal Penetrating Ammunition.** Any Ammunition, except a shotgun shell, that is designed primarily to penetrate a body vest or a body shield, and has either of the following characteristics:

1. Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness; or

2. Is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, teflon coating and / or Ammunition commonly known as "KTW Ammunition," to breach or penetrate a body vest or body shield when fired from a Firearm.

C. **Binary Trigger.** A Firearm's trigger designed to fire one round of Ammunition on the pull of the trigger and another round upon the release of the trigger.

D. **Large Capacity Magazine.** A Firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of Ammunition. This definition shall not be construed to include the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of Ammunition;

2. A .22 caliber tube Ammunition feeding device;

3. A tubular magazine that is contained in a lever-action Firearm; and

4. A magazine that is permanently inoperable.

E. **Multi-Burst Trigger Activator.** Either of the following:

1. A device designed or redesigned to be attached to a Semi-Automatic Firearm, which allows the Firearm to discharge two or more shots in a burst by activating the device; or
2. A manual or power-driven trigger-activating device constructed and designed so that it increases the rate of fire of a Semi-Automatic Firearm when attached to that Firearm.

**F. Rapid Fire Device.** Any device, part, accessory, attachment, or modification designed to accelerate substantially the rate of fire of a Firearm, including, but not limited to:

1. A binary trigger;
2. A multi-burst trigger activator; and
3. A trigger crank.

**G. Trigger Crank.** A trigger actuator that attaches to the trigger of a Semi-Automatic Firearm and causes the weapon to fire by turning the crank handle.

#### **§ 1104.02 PROHIBITED USES OF ARMOR PENETRATING AMMUNITION**

A. It shall be unlawful to use Armor or Metal Penetrating Ammunition in any public place within the City of Pittsburgh.

B. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

C. For purposes of this Section, “use” of Ammunition does not include possession, ownership, transportation or transfer. “Use” of Ammunition shall include, but is not limited to:

1. Discharging or attempting to discharge by means of a Firearm; and
2. Loading it into a Firearm or magazine.

#### **§ 1104.03 PROHIBITED USE OF LARGE CAPACITY MAGAZINE**

A. It shall be unlawful to use in any public place within the City of Pittsburgh any Large Capacity Magazine.

B. For purposes of this Section, “use” of a Large Capacity Magazine does not include possession, ownership, transportation or transfer. “Use” of a Large Capacity Magazine shall include:

1. Employing it to discharge or in attempt to discharge Ammunition by means of a Firearm;
2. Loading it with Ammunition;
3. Fitting or installing it into a Firearm;

4. Brandishing it with a Firearm;
5. Displaying it with a Firearm while loaded; and
6. Employing it for any purpose prohibited by the laws of Pennsylvania or of the United States.

C. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

D. For purposes of this Section, the term “brandishing” means, with respect to a Firearm, to display all or part of the Firearm, or otherwise make the presence of the Firearm known to another person, in order to intimidate that person, regardless of whether the Firearm is directly visible to that person.

#### **§ 1104.04 USE OF RAPID FIRE DEVICES PROHIBITED**

A. It shall be unlawful to use any rapid fire device in any public place within the City of Pittsburgh.

B. This Chapter shall not be construed to prohibit the use of a replacement trigger or trigger components manufactured and intended to decrease the weight of the trigger pull, or to improve the quality and release of the trigger pull in a Firearm.

#### **§ 1104.05 EXEMPTIONS**

A. The contents of this Chapter shall not apply to any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws.

B. Nothing in this Chapter shall be deemed to restrict a person’s ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person’s or another person’s person or property or for lawful hunting purposes.

#### **§ 1104.06 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY**

A. Any person who violates the provisions of this Chapter shall be fined up to \$1,000 and costs for each offense.

#### **§ 1104.07 APPLICATION OF CHAPTER**

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI: Weapons.

### § 1104.08 EFFECTIVE DATE

A. This Chapter shall take effect 60 days after its enactment.

### § 1104.09 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

### § 1104.10 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions on Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of such military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus routinely upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and
5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal

regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians with a prohibition on Assault Weapons and Large Capacity Magazines, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Ammunition and Ammunition components, as distinguished from ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. The City Council has authority to legislate regarding Firearm accessories that do not come within applicable state law definitions of Firearms or Ammunition and Ammunition components; and

12. The City Council has authority to legislate regarding accessories that increase the lethality of Firearms.

**SECTION II. Article XI: Weapons shall provide as follows in Chapter 1105: Authorized Prohibition of Large Capacity Magazines:**

## **§ 1105.01 DEFINITIONS**



A. Applicable definitions set forth in §§ 1101.01, 1102.01 and 1104.01 shall apply as well in this Chapter 1105.

### **§ 1105.02 PROHIBITION OF LARGE CAPACITY MAGAZINES**

A. Following the effective date set forth in § 1105.06, it shall be unlawful to own, possess, transfer or transport a Large Capacity Magazine within the City of Pittsburgh.

### **§ 1105.03 EXEMPTIONS**

A. In addition to the exemptions otherwise enumerated herein, the contents of this Chapter shall not apply to:

1. Any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws;
2. Any federal, state, or local historical society, museum, or institutional collection that is open to the public, provided that the following conditions are met:
  - a. The Firearm or item is housed appropriately;
  - b. The Firearm or item is secured from handling by those unauthorized to do so; and
  - c. The Firearm or device is unloaded, when and if possible.

### **§ 1105.04 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY**

A. Any person found in violation of this Chapter or who otherwise fails to comply shall be fined up to \$1,000 and costs for each offense.

B. Each day of a continuing violation of or failure to comply with this Chapter shall constitute a separate and distinct offense.

### **§ 1105.05 APPLICATION OF CHAPTER**

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI.

### **§ 1105.06 EFFECTIVE DATE**

A. Section 1105.02 of this Chapter shall take effect 60 days after, and to the extent permitted by, action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing the implementation and enforcement of § 1105.02 by the City of Pittsburgh.

### § 1105.07 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

### § 1105.08 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions on Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of such military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus routinely upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and
5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law;

and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians with a prohibition on Assault Weapons and Large Capacity Magazines, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Ammunition and Ammunition components, as distinguished from ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. The City Council has authority to legislate regarding Firearm accessories that do not come within applicable state law definitions of Firearms or Ammunition and Ammunition components; and

12. The City Council has authority to legislate regarding accessories that increase the lethality of Firearms.

# EXHIBIT B

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

**PRESTON COVEY and  
ALLEGHENY COUNTY  
SPORTSMEN'S LEAGUE,**

**Plaintiffs,**

**vs.**

**CITY OF PITTSBURGH,**

**Defendant.**

**CIVIL DIVISION**

**No. GD94 1499**

**Code: 020**

**Issue No:**

**STIPULATION AND ORDER**

**Filed on behalf of Plaintiffs**

**Counsel of Record for This Party:**

**C. Robert Keenan III  
Pa. I.D. No. 30423**

**DAVIES, McFARLAND &  
CARROLL, P.C.  
Firm #281  
One Gateway Center, 10th Floor  
Pittsburgh, PA 15222-1416**

**(412) 281-0737**

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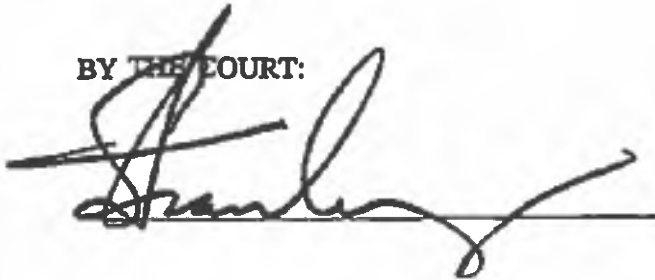
IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PRESTON COVEY and ALLEGHENY )  
COUNTY SPORTSMEN'S LEAGUE, )  
 ) NO. GD94 - 1499  
Plaintiffs, )  
 )  
vs. )  
 )  
CITY OF PITTSBURGH, )  
 )  
Defendants. )

ORDER OF COURT

AND NOW, this 27th day of February, 1995, pursuant to the foregoing Stipulation, it is hereby ordered, adjudged, and decreed that the Stipulation is granted and the agreement of the parties is confirmed by This Honorable Court.

BY THE COURT:



**VERIFICATION**

I certify/verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to falsification to authorities.

Date: March 31, 2019

  
Laurence Joseph Anderson



**VERIFICATION**

I certify/verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that statements made herein are made subject to the penalties of 18 PA. C.S.A. § 4904, relating to falsification to authorities.


Date: 3-31-19

Scott Miller  
Scott Miller

**VERIFICATION**

I certify/verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to falsification to authorities.

Date: 3/17/2012

  
Robert Reinhold Opdyke

**VERIFICATION**

I certify/verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that statements made herein are made subject to the penalties of 18 PA. C.S.A. § 4904, relating to falsification to authorities.

Date: 09/01/2019

  
\_\_\_\_\_  
Michael A. Whitehouse