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*Arnald Sotil*  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

### ORDINANCE NO. 13352 C.M.S.

INTRODUCED BY COUNCILMEMBERS CAMPBELL WASHINGTON AND KALB

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#### ORDINANCE PROHIBITING 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"; 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 is considered to be a "large-capacity" magazine, and some large-capacity magazines can hold up to 100 rounds of ammunition; 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 automatic and semiautomatic firearms equipped with these magazines; and

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

**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; and

**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; and

**WHEREAS**, large-capacity magazines have been 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 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 office 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 coworkers 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 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 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 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 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

**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 Oakland 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 Oakland; and

**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; and

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

**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 semiautomatics 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”; and

**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; 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; 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;

**WHEREAS**, state and federal courts across the country have rejected the argument that large-capacity ammunition magazine prohibitions violate the Second Amendment; 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 CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The following Chapter is added to the Oakland Municipal Code

**CHAPTER**

**Possession of Large-Capacity Magazines Prohibited**

**A. Title.**

This chapter shall be known as Oakland's Ban on Possession of Large-Capacity Magazines Act.

**B. Findings and Purpose.**

The City Council finds as follows:

1. This law is intended to reduce gun violence and make the City safer.
2. The ability of large-capacity magazines to hold numerous rounds of ammunition significantly increases the lethal capacity of automatic and semiautomatic firearms equipped with these magazines.
3. Large-capacity magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity magazine.
4. 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 Oakland 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 Oakland.

5. It has been reported that from 2011 to 2012, roughly ten percent of all handguns seized by the Oakland Police Department had large-capacity magazines.
6. It has also been reported that large-capacity magazines are difficult to trace to their point of origin because ammunition magazines for public sale are not stamped with serial numbers.
7. In 2015 alone, the Oakland Police Department reported that 101 criminal cases were charged where a large capacity magazine was recovered.

### **C. Definitions.**

“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:

- 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.

### **D. Possession of Large-Capacity Magazines Prohibited.**

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 90 days from such effective date to do any of the following without being subject to prosecution:
  - a. Remove the large-capacity magazine from the City of Oakland;
  - b. Surrender the large-capacity magazine to the Oakland Police Department for destruction;
  - c. Sell or transfer the large-capacity magazine lawfully in accordance with Section 32410 of the California Penal Code.

## **E. Exemptions.**

The provisions of Subsection D. 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 a large-capacity magazine for a person specified in subdivision 1., or for an expert 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, so long as it does not contain any live ammunition;
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 a 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;

#### **F. Penalty.**

A violation of this section shall be subject to enforcement through criminal prosecution and/or civil penalties, as provided herein.

1. Violation a Misdemeanor

A person who violates this Chapter shall be guilty of a misdemeanor punishable by imprisonment in the County Jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000), or by both. Each violation shall be deemed a distinct and separate offense.

2. Civil Penalties

The City may assess civil penalties pursuant to Oakland Municipal Code Chapter 1.08 (Civil Penalties) in the amount of one thousand dollars (\$1,000 per violation).

#### **G. Remedies not exclusive.**

Remedies under this Chapter are cumulative and not exclusive. They are in addition to and do not supersede or limit other administrative, civil, and/or criminal remedies provided under state or federal law, or other provisions of the Oakland Municipal Code. The City may seek an order for the award of attorney's fees.

#### **H. Amendments to State laws adopted herein.**

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, such amendments shall be deemed automatically adopted as part of this chapter as if fully set forth herein unless the City Council amends this Chapter to provide otherwise.

**SECTION 2. Severability and Validity.**

If any provision of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions. The City Council declares that it would have adopted the remaining provisions irrespective of the provisions, sections, sentences, clauses, or words declared invalid or unconstitutional.

**SECTION 3. Effective Date.**

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall be effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

JAN 19 2016

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~ AND PRESIDENT  
GIBSON MCELHANEY - 7

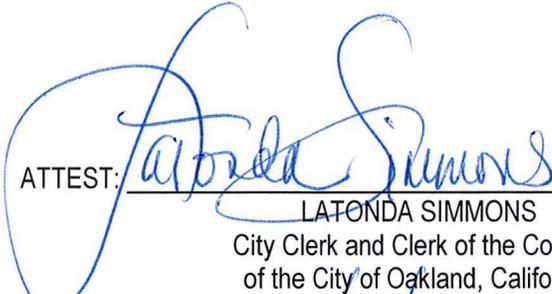
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST:

  
\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

2/5/14

Introduction Date

JAN 05 2016

## **NOTICE AND DIGEST**

### **ORDINANCE PROHIBITING POSSESSION OF LARGE-CAPACITY MAGAZINES**

This ordinance prohibits the possession of large-capacity magazines. Violation may be punishable as a misdemeanor and/or a civil penalty.