

Date: February 1, 2023

To: Mayor Aftab Pureval
From: Emily Smart Woerner, City Solicitor *EESW*
Subject: **Emergency Ordinance – Modifying Title IX of the Cincinnati Municipal Code by Enacting New Chapter 915 “Weapons Offenses”**

Transmitted herewith is an emergency ordinance captioned as follows:

MODIFYING Title IX, “Misdemeanors,” by enacting new Chapter 915, “Weapons Offenses,” of the Cincinnati Municipal Code to implement common sense gun reform and take necessary action to stem the death and injuries resulting from the use and accessibility of guns.

EESW/CMS(lnk)
Attachment
376149

EMERGENCY

City of Cincinnati

CMZ

EESW

An Ordinance No. _____ - 2023

MODIFYING Title IX, “Misdemeanors,” by enacting new Chapter 915, “Weapons Offenses,” of the Cincinnati Municipal Code to implement common sense gun reform and take necessary action to stem the death and injuries resulting from the use and accessibility of guns.

WHEREAS, more Ohioans died from firearms in 2021 than almost any year on record, according to Ohio Department of Health data; and

WHEREAS, the Ohio legislature has steadily relaxed state gun laws; and

WHEREAS, gun violence has continually plagued our city and has robbed us of our most valuable assets, our people; and

WHEREAS, on February 2, 2022, Council passed Resolution No. 0011-2022, expressing Council’s “commitment to reducing the prevalence of gun violence in our City and protecting citizens from gun violence” and Council’s belief that gun violence is a public health crisis in the City of Cincinnati; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) released mortality data in 2022 that showed 45,222 firearm-related deaths occurred in the United States, which is a new high in deaths related to guns; and

WHEREAS, according to the Eunice Kennedy Shriver National Institute of Child Health and Human Development of the National Institutes of Health (“NIH”), in 2020, “firearm-related injuries surpassed motor vehicle crashes to become the leading cause of death among people ages 1 to 19 years in the United States”; and

WHEREAS, according to an analysis of the CDC data by University of Michigan researchers and as reported by the NIH, “firearm deaths among children and adolescents jumped nearly thirty percent between 2019 and 2020 — more than double the 13.5 percent increase seen in the general population”; and

WHEREAS, thirteen percent of the juveniles who were arrested for guns in 2022 brought the firearm with them to school; and

WHEREAS, in October 2022, a six-year-old child shot and killed his three-year-old brother in Cincinnati after finding a loaded gun in their house, and in May 2020, an eight-year-old child shot and killed himself after accessing a loaded gun in his house; and

WHEREAS, access to loaded guns and improperly stored guns poses a significant and unacceptable risk of injury and death to occupants of and visitors to homes, especially to children; and

WHEREAS, the safety of residents is of paramount importance; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Chapter 915, "Weapons Offenses," of the Cincinnati Municipal Code is hereby enacted as follows:

Section 915-1. – Definitions.

For purposes of this chapter, the words and phrases defined in this chapter shall have the meanings ascribed to them unless a different meaning is clearly indicated by the context.

Sec. 915-1-C. Child.

"Child" means a child under eighteen years of age or a mentally or a physically handicapped child under twenty-one years of age.

Sec. 915-1-D. – Dangerous Ordnance.

(a) "Dangerous ordnance" means any of the following, except as provided in subsection (b) of this section:

- (1) Any automatic or sawed-off firearm, zip-gun, or ballistic knife;
- (2) Any explosive device or incendiary device;
- (3) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, peccretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions;
- (4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;
- (5) Any firearm muffler or suppressor;

- (6) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(b) “Dangerous ordnance” does not include any of the following:

- (1) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder;
- (2) Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm;
- (3) Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;
- (4) Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (b)(3) of this section during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;
- (5) Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece;
- (6) Any device that is expressly excepted from the definition of a destructive device pursuant to the “Gun Control Act of 1968,” 82 Stat. 1213, 18 U.S.C. 921(a)(4), as amended, and regulations issued under that act; or
- (7) Any firearm with an overall length of at least twenty-six inches that is approved for sale by the federal Bureau of Alcohol, Tobacco, Firearms, and explosives under the “Gun Control Act of 1968,” 82 Stat. 1213, 18 U.S.C. 921(a)(3), but that is found by the bureau not to be regulated under the “National Firearms Act,” 68A Stat. 725 (1934), 26 U.S.C. 5845(a).

Sec. 915-1-F. – Firearm.

(a) “Firearm” means:

- (1) any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant; or
- (2) the frame or receiver of any such weapon as defined in 27 CFR 478.12.

- (b) “Firearm” includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.
- (c) The trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm when determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant.

Sec. 915-1-I. – Intimate Partner.

“Intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, an individual who cohabitates or has cohabited with the person, and an individual who, at the time of the conduct in question, is in a dating relationship with the person who also is an adult or who, within the twelve months preceding the conduct in question, has had a dating relationship with the person who also is an adult.

Sec. 915-1-M. – Misdemeanor Crime of Domestic Violence.

“Misdemeanor crime of domestic violence” shall have the same meaning as used in 18 U.S.C. § 921(a).

Sec. 915-1-N. – Negligent or Negligently.

“Negligent” or “negligently” means when, because of a substantial lapse from due care, a person fails to perceive a risk that the person’s conduct may cause a certain result or may be of a certain nature or fails to avoid a risk that the person’s conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that such circumstances may exist.

Sec. 915-1-S. – Safe Storage.

“Safe storage” means:

- (a) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;
- (b) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or
- (c) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

Sec. 915-1-U. – Under Operation of Law or Legal Process.

“Under operation of law or legal process” shall not mean mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction.

Sec. 915-3. – Child Endangering.

- (a) No person who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child shall create a substantial risk to the health or safety of the child by violating a duty of care, protection, or support.
- (b) It shall be a substantial risk to the health or safety of a child for a person who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child to negligently store or leave a firearm in a manner or location in the person’s residence or vehicle where the person knows or reasonably should know a child is able to gain access to the firearm.
- (c) This section does not apply to a person who does either of the following:
 - (1) Stores or leaves a firearm in the person’s residence or vehicle if the firearm is kept in safe storage; or
 - (2) Stores or leaves a firearm in the person’s residence or vehicle if a child gains access to the firearm as a result of any other person’s unlawful entry into a person’s residence or vehicle.
- (d) Penalties.

Whoever violates this section is guilty of a first degree misdemeanor.

- (e) Nothing in this section prohibits a person who is in the person’s residence or vehicle from carrying a firearm on the person’s body or placing a firearm in a location that is under the person’s immediate control.
- (f) This section shall not apply if the circumstances indicate that the firearm was unlawfully furnished to the child, violation of which would be prosecuted under applicable state law.
- (g) Any instrumentality that has been used in a violation of this section shall be seized and is subject to forfeiture pursuant to Chapter 2981 of the Ohio Revised Code.

Sec. 915-5. – Having weapons while under disability.

- (a) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if either of the following apply:

(1) The person is subject to a court order that:

- (A) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (B) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (C) Provides one of the following:
 - (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

(2) The person has been convicted of a misdemeanor offense of domestic violence.

- (b) Whoever violates this section is guilty of misdemeanor having weapons while under disability, a misdemeanor punishable by up to one year in jail.
- (c) Any instrumentality that has been used in a violation of this section shall be seized and is subject to forfeiture pursuant to Chapter 2981 of the Ohio Revised Code.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is

the immediate need to take action to mitigate the impacts of gun violence on the health and safety of the residents of and visitors to Cincinnati.

Passed: _____, 2023

Aftab Pureval, Mayor

Attest: _____
Clerk