

City of Rochester Chapter 47

§ 47-4. EN Storage and display of firearms, ammunition and explosives. [Added 9-24-1996, Ord. 96-297EN]

A. Purpose and intent. The Council finds that it is necessary to regulate the commercial storage, possession and display of firearms, ammunition or explosives pursuant to § 139-d of the General Municipal Law in order to provide for the public health, safety and welfare of all persons in the City of Rochester. The Council finds that the location of such activities close to residential uses is not compatible with residential uses and can pose a danger to residents through fire or explosion or as a result of burglaries at such locations. The Council therefore intends to regulate the location of such activities and to place additional regulations upon those activities in order to assure that such activities are conducted in a safe manner. The restrictions found herein shall be in addition to restrictions found in Chapter 115, Zoning, of the Municipal Code, and whichever regulations are more restrictive shall be applicable to any potential location where such activities are to be conducted.

B. Location. The storage, possession or display of firearms, ammunition or explosives within a building occupied by a residential use, or within a building located within one hundred (100) feet of any residential use, which distance shall be measured from the closest point of the building, or portion thereof, used for the storage, possession or display of firearms, ammunition or explosives to the nearest point of the lot line of the property with a residential use, is hereby prohibited.

C. Standards of design, construction and maintenance of buildings and structures in which firearms, ammunition or explosives are stored.

(1) Perimeter doorways. All perimeter doorways shall meet one of the following:

(a) A windowless steel security door equipped with a high-security cylinder lock;

(b) A windowed metal door that is equipped with a high-security cylinder lock. If the window has an opening of five (5) inches or more measured in any direction, the window shall be covered with steel bars of at least one-half-inch diameter no further than six (6) inches apart, or metal grating of at least nine (9) gauge which has no spaces larger than six (6) inches wide measured in any direction, affixed to the exterior or interior of the door; or

(c) A metal grate or a metal folding scissors gate of at least nine (9) gauge which has no spaces larger than six (6) inches wide measured in any direction that is padlocked and affixed to the premises independent of the door and doorframe when the premises is not open for business.

(2) Windows. All windows shall be covered with steel bars of a least one-half-inch diameter no further than six (6) inches apart; or metal grating of at least nine (9) gauge which has no spaces larger than six (6) inches wide measured in any direction, affixed to the exterior or interior of the window frame; or a metal grate or a metal folding scissors gate of at least nine (9) gauge which has no spaces larger than six (6) inches wide measured in any direction that is padlocked and affixed to the premises independent of the door and doorframe when the premises is not open for business.

(3) Heating, ventilating, air-conditioning and service openings. All heating, ventilating, air-conditioning and service openings shall be secured with steel bars, metal grating or an alarm system.

(4) Alarm systems. Any building or structure used for the storage, possession and display of firearms, ammunition or explosives shall be protected by an alarm system which, when activated, directly notifies either a security guard on duty at the location, the Emergency Communications Center (through a designated line other than 911), an answering service or a central station, of a fire or smoke or intrusion or attempted intrusion into the premises. If an answering service or central station is used, the answering service or central station shall provide the service of receiving on a continuous basis through trained employees, emergency signals from the alarm systems and, thereafter, immediately relaying the message by live voice to 911.

D. Visibility of interior to be maintained at all times. The interior of any building or structure used for the storage, possession and display of firearms, ammunition or explosives shall be visible through any windows at all times when open for business, and no drapes or blinds should be used that would block the view of police or passersby who might observe unusual activity within the premises. The exterior of the premises shall be illuminated at night and during the hours when business is not conducted within.

E. Combustible materials. Combustible materials shall not be stored in any building or structure or that portion thereof used for the storage, possession and display of firearms, ammunition or explosives.

F. Fire-extinguishing equipment. Fully operable listed fire-extinguishing equipment shall be maintained in any building or structure used for the storage, possession and display of firearms, ammunition or explosives and made easily accessible.

G. Smoking and open flames prohibited. Smoking, matches, spark-producing devices and open flames shall be prohibited in any building or structure or that portion thereof used for the storage, possession and display of firearms, ammunition or explosives.

H. Standards of security for storage of firearms, ammunition or explosives.

(1) Storage of ammunition and explosives. All ammunition and explosives shall be stored in compliance with 9 NYCRR 1176 et seq. and 12 NYCRR 39 et seq. Further, all ammunition when being displayed shall be kept in locked cases or behind the counter in an area not accessible to the public.

(2) Storage of firearms when open for business.

(a) No firearms shall be stored, exhibited or displayed in windows of the premises.

(b) Firearms storage or inventory areas shall be physically separated from counter and display areas and access to these areas shall be carefully controlled.

(c) All firearm display cases shall be kept locked and secured at all times and not readily accessible to the public. All keys to such display cases shall not leave the control of authorized personnel.

(d) Trigger locks which disable firearms and prevent them from functioning must be locked to each firearm at all times, or the firearms must be secured in a locked case or be

otherwise locked, or the firearms must be dispensed in an area behind the counter that is not accessible to the public. These requirements shall not apply to a firearm being shown to a customer, being repaired, or otherwise being worked on.

(3) Storage of firearms when not open for business. When not open for business, all firearms shall be stored in accordance with one of the following:

(a) All firearms shall be stored in a locked fireproof safe or vault located in the business premises;

(b) All firearms must be secured by a hardened steel rod or cable of at least one-eighth (1/8) inch in diameter through the trigger guard of the firearm. The steel cord or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the ready removal of the firearms from the premises;
or

(c) All firearms shall be secured in a manner that prevents the ready removal of the firearms from the premises, as approved by the Chief of Police or the Chief's designee.

I. The regulations provided for herein shall not apply to the personal possession, use or ownership of firearms or ammunition therefor.

§ 47-5. Firearms, shotguns, rifles and other dangerous weapons. EN [Amended 9-11-1951; 1-11-1955; 5-10-1960; 1-27-1970, Ord. 70-36; 5-28-1974, Ord. 74-180; 5-27-1986, Ord. 86-163; 3-16-1993, Ord. 93-62]

A. Purpose and intent. The Council finds that violent crime is a serious problem in the city and firearms and other dangerous weapons are frequently used in the commission of crimes, particularly homicides and assaults. The possession of such weapons also often leads to accidental deaths and injuries. The possession and use of assault weapons and ammunition feeding devices for criminal purposes is increasing and poses a serious danger to public safety. The use of weapons by persons under the influence of drugs and/or alcohol can readily lead to serious injury or death. The possession of weapons in public facilities and places also poses a serious danger to public safety. The possession of toy or imitation weapons which substantially duplicate actual weapons poses a danger to the person possessing the weapon and to others. In order to promote and protect the health, safety and welfare of the public, the Council finds it necessary to place restrictions upon the possession and use of such weapons. The restrictions imposed by this section are intended to be in addition to restrictions found in state law and are not intended to conflict with state law provisions.

B. As used in this section, the following terms shall have the meanings indicated:

AIR GUN -- [NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in *Citizens for a Safer Community v. City of Rochester*, Index No. 93-08421.]

AMMUNITION -- Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

AMMUNITION FEEDING DEVICE -- Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with any center-fire rifle, shotgun or pistol which

employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger which, in the case of a rifle or shotgun holds in excess of five (5) cartridges, or in the case of a pistol holds in excess of seventeen (17) cartridges.

ASSAULT WEAPON:

(1) Any center-fire rifle or shotgun which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which is loaded or capable of being loaded with a combination of more than six (6) cartridges in the ammunition feeding device and chamber combined. For the purposes of this section, a weapon is capable of being loaded if it is possessed by one who, at the same time, possesses:

(a) In the case of a rifle, a fixed or detachable ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such rifle and which has a capacity of more than five (5) cartridges; or

(b) In the case of a shotgun, an ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such shotgun and which has a capacity of more than five (5) cartridges.

(2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has:

(a) A flash suppressor attached to the weapon reducing muzzle flash;

(b) A grenade launcher;

(c) A sighting device making a target visible at night;

(d) A barrel jacket surrounding all or a portion of the barrel to dissipate heat therefrom; or

(e) A multi-burst trigger activator.

(3) Any stockless pistol grip shotgun.

(4) The following weapons manufactured prior to the effective date of this section.

[NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]

(5) For purposes of this section, the term "assault weapon" shall not include any of the following:

(a) Any weapon which has been modified to render it permanently inoperable or permanently make it a device no longer defined as an "assault weapon";

(b) Weapons that do not use cartridges or shells;

(c) Manually operated bolt-action weapons, lever-action weapons, slide-action weapons or single-shot weapons;

(d) Multiple-barrel weapons, revolving-cylinder weapons except shotguns, weapons that use exclusively a rotary Mannlicher-style magazine; or

(e) Any antique firearm as defined in § 265.00 of the New York State Penal Law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States Law.

DISPOSE OF -- To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of.

DRUG -- Any substance listed in § 3306 of the Public Health Law of the State of New York.

DWELLING -- As defined in § 115-13 of the Municipal Code

(6) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or

(7) Possession of a firearm by a person licensed to carry a firearm pursuant to § 400.00 of the Penal Law or possession or transportation by a gunsmith or dealer in firearms in accordance with a license issued by the State of New York or the United States, except that this subsection shall not apply in a park or a public facility other than a parking garage.

D. No person shall store a firearm, rifle, shotgun or air gun in a dwelling in the city unless said firearm, rifle, shotgun or air gun is completely enclosed or contained in a nontransparent locked carrying case or in a locked gun rack, cabinet, closet or safe, or a locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired. This requirement shall not apply to a rifle, shotgun or licensed firearm carried on the body of the owner or within such close proximity of the owner that the owner can retrieve it as quickly and easily as if it were carried on the owner's body.

E. No person shall dispose of any firearm, rifle, shotgun, air gun or ammunition in the city. This prohibition shall not apply to:

- (1) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
- (2) A person disposing of the same to a gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
- (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law;
- (4) A person disposing of a licensed firearm in accordance with law;
- (5) Disposition by intestate or testamentary bequest; or
- (6) A person disposing of a rifle, shotgun, air gun or ammunition to a family member.

F. No person shall possess an assault weapon or an ammunition feeding device in the city. This prohibition shall not apply to:

- (1) A police officer or peace officer authorized to possess the same;
- (2) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
- (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
- (4) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the city.

G. No person shall dispose of an assault weapon or ammunition feeding device in the city. This prohibition shall not apply to:

- (1) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or

(2) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the city.

H. No person shall carry a firearm, shotgun, rifle or air gun in the city while such person has one-tenth of one per centum (1/10 of 1%) or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, breath, urine or saliva.

I. No person shall carry a firearm, shotgun, rifle or air gun in the city while in an intoxicated condition.

J. No person shall carry a firearm, shotgun, rifle or air gun in the city while the person's ability to safely carry such weapon is impaired by the use of a drug.

K. Any person who carries a firearm, shotgun, rifle or air gun in this city shall be deemed to have given consent to a breath test and a chemical test of the person's breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of the person's blood, provided that any test is administered at the direction of a police officer having reasonable grounds therefor. A chemical test must be administered within two (2) hours after such person has been placed under arrest for a violation of this section or any other law or ordinance involving the use or possession of a firearm, rifle, shotgun or air gun, or within two (2) hours after a breath test indicates that alcohol has been consumed by such person. Upon the trial of any action arising out of an arrest for a violation of Subsection H, I or J of this section, the court shall admit evidence of the amount of alcohol or drugs in the blood of the person carrying the firearm, shotgun, rifle or air gun as shown by a test administered pursuant to this section. Evidence of a refusal to submit to a chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of such subsections, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and the person persisted in such refusal.

L. [NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]

M. Discharge of weapons; permits.

(1) No person shall discharge an air gun, shotgun, rifle, assault weapon, machine gun, submachine gun or a firearm of any kind or description in the city, except police officers, peace officers, members of the military and persons holding permits as in this subsection provided.

(2) The Chief of Police is hereby authorized to grant permits for the discharge of shotguns at clay pigeons at any particular location or for the discharge of weapons at target ranges subject to such restrictions and conditions as the Chief may deem necessary. Any person holding such a permit shall obey all the restrictions and conditions contained herein.

N. The owner of a firearm, shotgun, rifle, assault weapon, machine gun or submachine gun, which becomes lost or stolen, shall report the loss or theft to the Rochester Police Department within 24 hours after the loss or theft is discovered or reasonably should be discovered. The owner of such a weapon shall store the weapon in a safe and secure manner as required in Subsection D of this section and shall check such weapon at least once each week, or immediately upon returning to the city if the owner is absent from the city for more than one week. Failure to perform such a check shall not be a defense to a prosecution for a violation of this subsection. [Added 9-15-1998, Ord. 98-345 EN]

O. Notwithstanding the penalties contained in § 47-8, a violation of any provision of this section shall be punishable by a fine not to exceed one thousand dollars (\$1,000.) or by imprisonment not to exceed one hundred eighty (180) days, or by both such fine and imprisonment.

P. The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid, the decision of the court shall not affect or impair any of the remaining provisions of the same. It is hereby declared to be the intention of the Council that this section would have been adopted had such unconstitutional or invalid provision not been included herein. If any term or provision of this section shall be declared unconstitutional, invalid or ineffective in whole, or in part, by a court of competent jurisdiction, then to the extent that it is not constitutional, invalid or ineffective, such term or provision shall be in force and effect, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.