

## **MEMORANDUM**

To: Dublin City Council  
Marsha I. Grigsby, City Manager  
Anne Clarke, Clerk of Council

From: Stephen J. Smith  
Stephen J. Smith, Jr.

Date: August 22, 2013

Re: Ordinance 73-13 – Repealing Section 137.08

---

### **I. INTRODUCTION**

In 2012, Dublin City Council enacted Ordinance 16-12 to amend the firearms provisions in the Dublin Codified Ordinances to be consistent with Ohio law. As part of Ordinance 16-12, Section 137.08 was amended to include language that clarified that this Section did not infringe on an individual's right to keep and bear arms under federal and state law. Since the adoption of Ordinance 16-12, additional questions have been raised regarding Section 137.08.

### **II. BACKGROUND**

Section 137.08 regulates the "importation, purchase, sale, or transfer" of assault weapons and large capacity magazines.

Under R.C. § 9.68, a municipality may not regulate the "ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition." (emphasis added). The definition of "firearm" under R.C. § 2923.11 includes "any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant."

The broad definition of "firearm" under Ohio law includes assault weapons, thus, the provisions of Section 137.08 could be read to be inconsistent with R.C. § 9.68.

### **III. RECOMMENDATION**

In light of the recent inquiries regarding Section 137.08 and following a review of Ohio law, the Law Department recommends that Section 137.08 be repealed as assault weapons, also known as "automatic firearms" or "dangerous ordinance," are regulated by Chapter 2923 of the Ohio Revised Code. The manufacturing of firearms would continue to be regulated by the City's zoning restrictions.

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

**73-13**

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

## **AN ORDINANCE REPEALING SECTION 137.08 OF THE DUBLIN CODIFIED ORDINANCES RELATED TO THE REGULATION OF FIREARMS TO COMPLY WITH OHIO LAW**

**WHEREAS**, in 2012, Council approved modifications to the Dublin Codified Ordinances that resulted from the Supreme Court's decision in *Cleveland v. State*; and

**WHEREAS**, subsequent to that time, other questions have been raised regarding the City's ability to prohibit the sale and/or transfer of the firearms, including assault weapons; and

**WHEREAS**, the provisions regulating the sale and transfer of firearms, including assault weapons, in Dublin Code Section 137.08 could be read to be inconsistent with Section 9.68 of the Ohio Revised Code; and

**WHEREAS**, assault weapons, also known as "automatic firearms" or "dangerous ordinance," are regulated by Chapter 2923 of the Ohio Revised Code; and

**WHEREAS**, the manufacturing of weapons, including assault weapons, would be governed by the City's zoning regulations.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring that:

Section 1. Section 137.08 of the Dublin Codified Ordinances is hereby repealed.

Section 2. This Ordinance shall take effect and be in force upon the earliest date permitted by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

# Dublin Codified Ordinances – Section 137.08

## § 137.08 UNLAWFUL MANUFACTURING, IMPORTATION, PURCHASE, SALE, OR TRANSFER OF ASSAULT WEAPONS.

(A) No person, corporation or other entity in the city may manufacture, import, purchase, sell or transfer any assault weapon or large capacity magazine.

(B) Division (A) of this section shall not apply to:

(1) Any government officer, agent, or employee, member of armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine, and does so while acting within the scope of his or her duties;

(2) The manufacture, sale or transfer of an assault weapon or large capacity ammunition feeding device by a firearm manufacturer or dealer that is properly licensed under federal, state, and local laws to any branch of the armed forces of the United States, or to a law enforcement agency in the city for use by that agency or its employees for law enforcement purposes; or

(3) Any person that is properly licensed to acquire or possess an assault weapon and/or large capacity magazine under federal, state or local law.

(C) Whoever violates this section is guilty of unlawful manufacturing, importation, purchase, sale or transfer of assault weapons, a misdemeanor of the first degree. If the offender has previously been convicted under this section, upon the second conviction the court shall impose a sentence of imprisonment of at least 30 days, which sentence is mandatory and may not be suspended, modified, or subject to probation during that 30-day period. If the offender has twice previously been convicted under this section, upon the third or more conviction the court shall impose a sentence of imprisonment of at least 90 days, which sentence is mandatory and may not be suspended, modified or subject to probation during that 90-day period.

(D) This section is intended to incorporate the various provisions of the Ohio Revised Code that relate to assault weapons, and nothing contained in this section shall be construed as a limitation on an individual's right to keep and bear arms under federal or state law.

(E) Severability. If any provision or term of this chapter is for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of the chapter or any part thereof.

('80 Code, § 549.08) (Ord. 19-93, passed 3-15-93; Am. Ord. 48-97, passed 6-2-97; Am. Ord. 84-04, passed 2-7-05; Am. Ord. 16-12, passed 3-26-12) Penalty, see § 130.99