

IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE THIRTIETH JUDICIAL
DISTRICT AT MEMPHIS

TY TIMMERMANN, GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION, and
TENNESSEE FIREARMS ASSOCIATION,
Plaintiffs,

v.

Civil No.: CT-4797-24
Division 8

CITY OF MEMPHIS and
CERELYN DAVIS,
in her Official Capacity
as the Chief of the Memphis Police Department,
Defendants.

**MOTION OF MEMPHIS CITY COUNCIL TO DISMISS COMPLAINT AND TO DENY
PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF AND INCORPORATED
MEMORANDUM OF LAW**

COMES NOW, the Memphis City Council, ("City Council") in its capacity as the duly elected and acting legislative body of the City¹, to move the Court (A) to dismiss the Complaint pursuant to Tennessee Rules of Civil Procedure 12.02 (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (6) failure to state a claim upon which relief can be granted and (7) failure to join a party under Rule 19 and (B) to deny Plaintiffs' request for injunctive relief.

In support of its motion the Memphis City Council states as follows:

Plaintiffs have the burden of establishing that this Court has jurisdiction over the subject matter and over all persons who would be adversely affected by a judgment of the

¹ The Memphis City Council intends to file a motion for the Court to order that the Memphis City Council, the City's legislative body, be made a party defendant in this action pursuant to Rule 19.01 of the Tennessee Rules of Civil Procedure or in the alternative for the entry of an order permitting the Memphis City Council to intervene in this action as a party defendant as a matter of right pursuant to Rule 24.01 of the Tennessee Rules of Civil Procedure.

Court. Similarly, Plaintiffs have the burden of establishing that they are entitled to injunctive relief. Plaintiffs' have failed to allege sufficient facts to satisfy any of their burdens of proof.

Lack of Jurisdiction Over the Subject Matter

The justiciability doctrines of standing, ripeness, mootness, and political question continue as viable defenses against claims for relief in Tennessee Courts. *See Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008). The Tennessee Supreme Court explained the effect of the justiciability doctrines on the power of courts to decide claims made by parties as follows:

Justiciability doctrines assist the courts in determining whether a particular case presents a legal controversy. The justiciability doctrines recognized by Tennessee courts mirror the justiciability doctrines employed by the United States Supreme Court and the federal courts.³ Compare 13 Charles Alan Wright, Arthur R. Miller, Edward H. Cooper & Richard D. Freer, *Federal Practice and Procedure* § 3529, at 612 (3d ed. 2008) (hereinafter “*Federal Practice and Procedure*”), with Barbara Kritchevsky, *Justiciability in Tennessee, Part One: Principles and Limits*, 15 Mem. St. U.L.Rev. 1, 3 n. 5 (1984). These doctrines include: (1) the prohibition against advisory opinions,⁴ (2) standing,⁵ (3) ripeness,⁶ (4) mootness,⁷ (5) the political question doctrine,⁸ and (6) exhaustion of administrative remedies.⁹

A case must remain justiciable (remain a legal controversy) from the time it is filed until the moment of final appellate disposition. (*citations omitted*). While the doctrines of standing and ripeness focus on the suit's birth, the doctrine of mootness focuses attention on the suit's death. 13B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper *Federal Practice and Procedure* § 3533.1, at 735–37. A moot case is one that has lost its justiciability either by court decision, acts of the parties, or some other reason occurring after commencement of the case. *West v. Vought Aircraft Indus., Inc.*, 256 S.W.3d at 625; *McCanless v. Klein*, 182 Tenn. at 637, 188 S.W.2d at 747; *McIntyre v. Traughber*, 884 S.W.2d at 137. A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party.

Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cnty., 301 S.W.3d 196, 203–04 (Tenn. 2009).

Here, Plaintiffs' claims are not ripe and therefore not justiciable. Ripeness focuses on the timing of the action rather than on the parties who bring the suit. A court must weigh in deciding whether a case is ripe for review at the pre-enforcement stage whether the likelihood that the injury alleged by the plaintiff will ever come to pass, whether the probability of enforcement of a law occurring is substantial and of sufficient immediacy and reality to warrant the issuance of an injunction or other relief. Thus, the ripeness requirement aims to prevent the court from entangling itself in abstract disagreements. Plaintiffs must have suffered an "injury in fact which is concrete and particularized, "actual or imminent, not 'conjectural' or 'hypothetical,' and must be "likely," as opposed to merely "speculative," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

Here, Plaintiffs have not established and cannot establish any of the requirements for justiciability of this controversy. The Complaint alleges that Plaintiffs are fearful that Referendum Ordinance No 5908 will be enforced by the City once it becomes effective on January 6, 2024. Yet, Plaintiffs allege no facts to support their speculation that the Referendum Ordinance No 5908 will be enforced by the City once it becomes effective; moreover, Plaintiffs have made no showing that Referendum Ordinance No 5908 can be enforced once it becomes effective.

In fact, the provisions of Ordinance No. 5908 are not facially or automatically enforceable or self-executing because they lack the specific details needed for their enforcement and implementation but rather establish the maximum authority of the City Council to adopt ordinances and policies to implement such Charter provisions. Until the City Council breathes life into the Charter Amendments, Plaintiff's subjective fears of harm have no objective possibility of occurring in the immediate future.

By its charter and state law the City Council is vested with the authority, in its legislative discretion, by ordinance, to declare which state misdemeanor offenses committed within the City shall be enforced as City misdemeanors within the City. *See* Memphis Charter §§ 360 and 370. This authority allows the City Council to mirror any state law that establishes a state misdemeanor offense. *See* City Code § 20-1. In other words, the City's misdemeanor ordinances for state offenses are dependent upon the existence of an identical state statute. For example, the City Council adopted an ordinance in 1988 that mirrored state misdemeanor statutes prohibiting carrying guns and other weapons within the City. *See* City Code § 20-21. This Ordinance is still in full force and effect, but no longer mirrors Tennessee Code Annotated § 39-17-1307 and therefore cannot be enforced as a City Misdemeanor Ordinance to the extent that it does not mirror Tennessee Code Annotated § 39-17-1307. Indeed, Plaintiffs have not alleged a single instance where the lawful owner of a handgun has been arrested or cited for openly carrying such a handgun within the City since January 1, 2021. As germane to the present case, Tennessee Code Annotated § 39-17-1307 now provides:

(g) It is an exception to the application of subsection (a) that a person is carrying, whether openly or concealed, a handgun and:

(1)(A) The person is at least twenty-one (21) years of age; or

(B) The person is at least eighteen (18) years of age and:

(i) Is an honorably discharged or retired veteran of the United States armed forces;

(ii) Is an honorably discharged member of the army national guard, the army reserve, the navy reserve, the marine corps reserve, the air national guard, the air force reserve, or the coast guard reserve, who has successfully completed a basic training program; or

(iii) Is a member of the United States armed forces on active duty status or is a current member of the army national guard, the army reserve, the navy reserve, the marine corps reserve, the air national guard, the air force reserve,

or the coast guard reserve, who has successfully completed a basic training program....

(2) The person lawfully possesses the handgun.

Thus, as to Plaintiffs, any gun ordinance adopted by the Council that mirrors Tennessee Code Annotated § 39-17-1307 would absolutely protect not prevent any person that lawfully possesses a handgun from carrying such a handgun in the City. As such, Plaintiffs cannot prove any actual or imminent threat to their desire to openly carry a handgun in the City as long as they satisfy the requirements of existing state statutes.

This conclusion is further buttressed by Tennessee's Municipal Court Jurisdiction Act which limits the City's municipal court's jurisdiction as follows:

(2) A municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, **if and only** if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars (\$50.00). (Emphasis added.).

See Tenn. Code Ann. § 16-18-302(a)(2).

Ordinance No. 5908 does not specify any policies and procedures or fines for violations of its provisions and does not identify any court that could enforce its provisions. This is especially true of extreme orders of protection; the City Courts have no jurisdiction to grant or adjudicate extreme orders of protection.

The City Council clearly expressed its intention not to authorize enforcement of Ordinance No. 5908 before or after it was approved by the qualified voters of the City. Rather, the Council expressly indicated that it would need help from the Tennessee

General Assembly to help it fulfill the wishes of its citizens to curb the proliferation of gun violence in Memphis before the Gun Charter provisions could be enforced.

At its December 17, 2024 meeting the City Council announced its intention to take up an ordinance at its January 7, 2025 meeting that would adopt the charter amendments in Ordinance 5908 but would expressly make them effective only after the occurrence of either of the following circumstances, namely:

1. The passage of any enabling legislation adopted by the Tennessee General Assembly or the United States Congress that authorizes municipalities and/or the City of Memphis to enforce ordinances that regulate the use, purchase, transfer, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation firearms within the City; or
2. The passage of any enabling legislation adopted by the Tennessee General Assembly or the United States Congress that authorizes municipalities and/or the City of Memphis to enforce ordinances that provide for obtaining and prosecuting violations of Emergency Ex Parte Orders;
3. The entry of a final decree or judgment by a court of competent jurisdiction declaring or deciding that Tennessee municipalities and/or the City of Memphis are authorized under Tennessee or federal law (i) to enforce ordinances that regulate the use, purchase, transfer, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation firearms within the City or (ii) to enforce ordinances that provide for obtaining and prosecuting violations of Emergency Ex Parte Orders....

A copy of the proposed Ordinance is attached as Exhibit "A".

Based on the forgoing discussion, the present lawsuit is premature and not ripe for adjudication. Moreover, once the proposed ordinance is adopted by the Council, this action will be moot and subject to dismissal on that ground, The Council suggests that the Complaint should be dismissed **without prejudice** so that it can be refiled by

Plaintiffs² if circumstances later arise that show that Plaintiffs will suffer actual, immediate and irreparable injury, loss, or damage. At this point, there is no need for a temporary restraining order, because there is nothing to restrain. The present suit is not ripe and may never be ripe. The Tennessee Supreme Court explained why similar amendments to the City's Charter were not ripe for adjudication in *City of Memphis v. Shelby Cnty. Election Comm'n*, 146 S.W.3d 531, 538–39 (Tenn. 2004) as follows:

Upon due consideration, we agree with the City that a challenge to the substantive constitutional validity of the Ordinance is not ripe for judicial determination. The City's voters may or may not approve the Ordinance. If the Ordinance is approved, the City may or may not adopt a privilege tax to which the Ordinance speaks. The City may or may not seek approval by the General Assembly for such a tax, and the General Assembly may or may not approve any such request. In short, we decline to pass upon the constitutionality of a measure that is not now the law and may never become the law. For ***539** us to do so at this premature stage would violate the established rule that appellate courts will not render advisory opinions, *Veach v. State*, 491 S.W.2d 81, 82 (Tenn.1973); *Banks v. Jenkins*, 224 Tenn. 23, 449 S.W.2d 712, 717 (1969), and will not decide theoretical issues based on contingencies that may or may not arise. (citations omitted).

The City, therefore, respectfully urges the Court to follow the guidance of the Tennessee Supreme Court and dismiss the Complaint without prejudice to being refiled when and if the City attempts to enforce the provisions of Referendum Ordinance No. 5909 by legislative or administrative action. No such action has been alleged nor is any such action threatened or contemplated by the City. Dismissal is the proper remedy and will conserve the judicial resources of this Court for cases with presently active controversies.

² By Local Rule Four (E) the case would be assigned to Division VIII if refiled after a dismissal without prejudice.

WHEREFORE PREMISES CONSIDERED the Memphis City Council prays for an order dismissing the Complaint without prejudice at Plaintiffs' cost.

Respectfully submitted,

BY: /s/ Allan J. Wade
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Attorneys for the Memphis City Council

CERTIFICATE OF SERVICE

I certify that I forwarded a copy of the foregoing document to the following individuals by Hand delivery, U.S. mail, postage prepaid, electronic means of filing with this Court or electronic mail, as indicated below on this the 20th day of December 2024:

	Hand Delivery
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EXHIBIT A

TO

**MOTION OF MEMPHIS CITY COUNCIL TO DISMISS COMPLAINT AND TO
DENY PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF AND
INCORPORATED MEMORANDUM OF LAW**

MINUTES
COUNCIL COMMITTEE MEETING

CITY OF MEMPHIS

December 17, 2024

ROLLCALL: Canale, Carlisle, Cooper-Sutton, Easter-Thomas, Ford, Green, Spinosa, Swearengen-Washington, Walker, and White
Logan, Warren, and Chairman Smiley were absent

1. A RESOLUTION TO ALLOCATE AND APPROPRIATE \$2,600,000 IN CITY COUNCIL COMMUNITY GRANT FUNDS TO NONPROFIT AGENCIES FOR FY25. ALL COUNCIL DISTRICTS. SPONSORED BY BUDGET COMMITTEE.

MOTION: Ford
SECOND: Swearengen-Washington
AYES: Canale, Carlisle, Cooper-Sutton, Easter-Thomas, Ford, Green, Swearengen-Washington, Walker, and White.
Spinosa, and Warren was absent.

2. A RESOLUTION TO AMEND THE COUNCIL FY25 GRANT ALLOCATIONS. ALL COUNCIL DISTRICTS. SPONSORED BY COUNCILMAN FORD, SR.

MOTION: Ford
SECOND: Swearengen-Washington
AYES: Canale, Carlisle, Cooper-Sutton, Easter-Thomas, Ford, Green, Swearengen-Washington, Walker, and White.
Spinosa, and Warren was absent.

CM Ford, Sr. spoke.

3. A RESOLUTION TO AMEND THE AMERICAN RESCUE PLAN ACT (ARPA) ALLOCATIONS. ALL COUNCIL DISTRICTS. SPONSORED BY COUNCILWOMAN WHITE. (REQUEST FOR SAME NIGHT MINUTES)

MOTION: Ford
SECOND: Swearengen-Washington
AYES: Canale, Carlisle, Cooper-Sutton, Easter-Thomas, Ford, Green, Swearengen-Washington, Walker, and White.
Spinosa, and Warren was absent.

CW White spoke.

Chief Hyman spoke.

CM Carlisle spoke.

CW White spoke.

CW Cooper-Sutton spoke.

4. DISCUSSION OF ORDINANCE 5921 RELATED TO 2025 MEETING DATES. ALL COUNCIL DISTRICTS. REQUESTED BY CHAIRMAN SMILEY.

CM Ford, Sr. spoke and requested March 4 be changed to March 11 and March 18 to March 25.

CM Warren spoke.

CM Ford, Sr. spoke.

CM Carlisle spoke.

July 8 and July 22.

5. DISCUSSION REGARDING THE BUDGET COMMITTEE MEETING SCHEDULE. ALL COUNCIL DISTRICTS. REQUESTED BY COUNCILMAN CARLISLE.

CM Carlisle spoke.

CM Carlisle proposed the ideas of introducing ground rules for the Budget Committee or hosting the Budget Committee in the Council Chambers simultaneously as other committees.

6. DISCUSSION OF ORDINANCE TO AMEND TITLE 10, CHAPTER 20 – MISCELLANEOUS OFFENSES AND PROVISIONS – OF THE CODE OF ORDINANCES OF MEMPHIS, TENNESSEE, TO ADD PROVISIONS RELATIVE TO THE REGULATION OF DEADLY WEAPONS AND EXTREME PROTECTION ORDERS

CM Canale asked Attorney Wade to speak on this item.

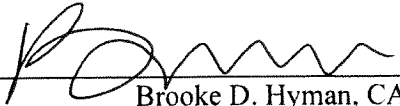
Attorney Wade spoke.

Attorney Wade presented a draft of the Ordinance to be sponsored by Dr. Warren and discussed how it would presently effectuate Referendum Ordinance 5908 when and if the Tennessee General Assembly adopts legislation to aid Memphis in reducing the proliferation of gun related crimes in the City.

CM Canale announced that by Council Rule the ordinance will be added to the Executive Committee Meeting on January 7, 2025 for discussion and action.

CM Canale announced add-ons and holds.

I Brooke D. Hyman hereby declare that I am the Chief Administrative Officer for the Memphis City Council and attest that the December 17, 2024, meeting minutes for the Executive Session are true and correct.



Brooke D. Hyman, CAO
Memphis City Council

12/18/24

Date

ORDINANCE TO AMEND TITLE 10, CHAPTER 20 – MISCELLANEOUS OFFENSES AND PROVISIONS – OF THE CODE OF ORDINANCES OF MEMPHIS, TENNESSEE, TO ADD PROVISIONS RELATIVE TO THE REGULATION OF DEADLY WEAPONS AND EXTREME PROTECTION ORDERS

WHEREAS, Referendum Ordinance No. 5877 was approved by the Memphis City Council on July 11, 2023, to be published and submitted by the City of Memphis to its qualified voters during the general election on August 1, 2024.

WHEREAS, the Referendum ordinance was subsequently amended and restated in Ordinance No. 5908 to submit the questions to the qualified voters of the City of Memphis during the general election on November 4, 2024.

WHEREAS, the qualified voters approved the amendments to the Charter of the City of Memphis.

WHEREAS, it is the intent of the Council to implement the demonstrated will of the people of Memphis and adopt the proposed amendments.

WHEREAS, the City's Charter vests the City Council with the authority, in its legislative discretion, by ordinance to declare which state misdemeanor offenses committed within the City shall be enforced as misdemeanors within the City. *See* Memphis Charter §§ 360 and 370.

WHEREAS, the provisions of Ordinance No. 5908 are not automatically enforceable or self-executing because they lack the specific details needed for their enforcement and implementation but rather establish the maximum authority of the City Council to adopt ordinances and policies to implement such Charter provisions.

WHEREAS, the Council has no present intention to authorize enforcement and implementation of any provisions of Ordinance No. 5908 that are inconsistent with state law but intends to create legislation that authorizes and supports vigorous enforcement of gun laws adopted by the Tennessee General Assembly.

WHEREAS, it is the intent of this ordinance to adopt the following provisions, which were approved by the qualified voters of the City of Memphis during the state general election on November 4, 2024, in order to declare which state misdemeanor offenses committed within the City, as so approved by Memphis voters, shall be enforced as misdemeanors within the City to be effective upon approval by the Tennessee General Assembly of such laws as may necessary to allow for police and judicial enforcement of violations of such provisions in the City.

WHEREAS, it is the intent of this Ordinance to request the City Administration and the Memphis Police Department to provide advice on policies, procedures and directives that the Council can adopt in order to abate violation of existing provisions of state gun laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that

Section 1. Article 10, Chapter 20 of the Code of Ordinances of Memphis, Tennessee, is hereby amended to add the following provisions

Section 10-20-30. Weapons – Carrying

- A. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.
- B. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.
- C. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat.
- D. The proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.
- E. It shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.
- F. Any person who violates this section shall be guilty of a misdemeanor and upon conviction shall be subject to punishment as provided in Section 1-1-8.

Section 10-20-31. Commercial Sale of Assault Rifles

- A. The commercial sale of assault rifles within the City of Memphis shall be deemed unlawful and is prohibited.
- B. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:
 - 1. Any federal, state, local law enforcement agency;
 - 2. The United States Armed Forces or department or agency of the United States;
 - 3. Tennessee National Guard, or a department, agency, or political subdivision of a state; or
 - 4. A Law Enforcement Officer.
- C. This prohibition shall not apply to those pre-existing owners who can demonstrate that the commercial sale of an assault rifle was completed prior to January 1, 2025.
 - 1. A pre-existing owner is one who, in the purchase of an assault rifle in a commercial

sale prior to January 1, 2025, completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle and complied with any other requirements regarding the purchase and sale of weapons, codified in Tenn. Code Ann. §§ 39-17-1316 and 39-17-1351.

Section 10-20-32. Extreme Risk Protection Orders

A. Definitions

1. "Petitioner" means:

- a. A law enforcement officer or agency, including an attorney for the state;
- b. A member of the family of the respondent, which shall be understood to mean a parent, spouse, child, or sibling of the respondent;
- c. A member of the household of the respondent;
- d. A dating or intimate partner of the respondent;
- e. A health care provider who has provided health services to the respondent;
- f. An official of a school or school system in which the respondent is enrolled or has been enrolled within the preceding month;

2. "Respondent" means the person against whom an order under Section 20-35 or 20-36 has been sought or granted.

B. Types of Orders

1. The petitioner may apply for an emergency ex parte order as provided in Section 20-35 or an order following a hearing as provided in Section 20-36.

Section 10-20-33. Emergency Ex Parte Order

(a) Basis for Order. The court shall issue an emergency ex parte extreme risk protection order upon submission of an application by a petitioner, supported by an affidavit or sworn oral statement of the petitioner or other witness, that provides specific facts establishing probable cause that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. The court shall take up and decide such an application on the day it is submitted, or if review and decision of the application on the same day is not feasible, then as quickly as possible but in no case later than forty-eight hours.

(b) Content of Order. An order issued under this section shall,

1. prohibit the respondent from possessing, using, purchasing, manufacturing, or otherwise receiving a firearm;

2. order the respondent to provisionally surrender any firearms in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order; and

3. inform the respondent of the time and place of the hearing under Section 3 to determine whether he or she will be subject to a continuing prohibition on possessing and acquiring firearms.

(c) Search and Seizure.

1. If the application and its supporting affidavit or statement establish probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

2. The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to firearm while an order under this section remains in effect.

3. If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the return of the firearm as provided in Section 20-36 (c)(3).

(d) Time for Service and Searches. The responsible law enforcement agency shall serve the order on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

Section 20-36. Order After Hearing

(a) Order After Hearing. Upon application for an extreme risk protection order, supported by an affidavit or sworn oral statement of the petitioner or other witness that provides specific facts giving rise to the concern about the significant danger or extreme risk described in Section 20-35, the court may issue an order under this section, which shall be effective for a period of one (1) year after a hearing. An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, or otherwise receiving a firearm; and

(2) order the respondent to surrender any firearm in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order.

(b) Basis for order. The court shall issue such an order based on a preponderance of the evidence that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. In determining the satisfaction of this requirement, the court shall consider all relevant facts and circumstances after reviewing the petitioner's application and conducting the hearing described in Section 20-35(d). The court may order a psychological evaluation of the respondent, including voluntary or involuntary commitment of the respondent for purposes of such an evaluation, to the extent authorized by other law.

(c) Search and Seizure.

(1) If the evidence presented at the hearing establishes probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to a firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the prompt return of the firearm by providing an affidavit to the law enforcement agency affirming his or her ownership of the firearm and providing assurance that he or she will safeguard the firearm against access by the respondent. The law enforcement agency shall return the firearm to the owner upon its confirmation, including by a check of the National Instant Criminal Background Check System and the applicable state firearm background check system, that the owner is not legally disqualified from possessing or receiving the firearm.

(d) Time for Hearings and Service.

(1) A hearing under this section shall be held within three (3) days of the filing of the application, or within one (1) day of the issuance of an emergency ex parte order under Section 20-35, if such an order is issued. The responsible law enforcement agency shall serve notice of the hearing on the respondent promptly after the filing of the application or issuance of an emergency ex parte order, but notice may be provided by publication or mailing if the respondent cannot be personally served within the specified period. The respondent shall be entitled to one continuance of up to two (2) days on request, and the court may thereafter grant

an additional continuance or continuances for good cause. Any emergency ex parte order under Section 20-35 shall remain in effect until the hearing is held. The court may temporarily extend the emergency order at the hearing, pending a decision on a final order.

(2) The responsible law enforcement agency shall serve an order issued under this section on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

(e) Termination and Renewal of Orders.

(1) A respondent may file a motion to terminate an order under this Section one time during the effective period of that order. The respondent shall have the burden of proving, by the same standard of proof required for issuance of such an order, that he or she does not pose a significant danger or extreme risk of personal injury or death to himself or herself or another.

(2) The petitioner may seek renewals of an order under this section for an additional six (6) months at any time preceding its expiration. Renewals after the initial order shall be granted subject to the same standards and requirements as an initial order. The preceding order shall remain in effect until the renewal hearing is held and the court grants or denies a renewed order.

(3) If the respondent fails to appear at, or cannot be personally served in relation to, any hearing or renewal hearing under this section, the default does not affect the court's authority to issue an order or entitle the respondent to challenge the order prior to its expiration. The order will lapse after one (1) year if no eligible petitioner seeks its renewal.

Section 20-37. Entry Into Background Check Systems

The court shall forward any order issued under Section 20-35 or 20-36 to an appropriate law enforcement agency on the day it is issued. Upon receipt of an order under Section 20-36, the law enforcement agency shall make the order available to the National Instant Criminal Background Check System and any state system used to identify persons who are prohibited from possessing firearms.

Section 20-38. Violations

A. The following persons shall be in violation of the City Code of Ordinances:

1. FILER OF FALSE OR HARASSING APPLICATION. – Any person filing an application under Section 20-35 or 20-36 containing information that he or she knows to be materially false, or for the purpose of harassing the respondent.

2. **RESPONDENT NOT COMPLYING WITH ORDER.** – Any person who knowingly violates an order under Section 20-35 or 20-36 , including by possessing or acquiring a firearm in violation of the order or failing to surrender a firearm as required by the order.

3. **PROVIDER OF PROHIBITED ACCESS TO RESPONDENT.** – Any person who knowingly provides the subject of an order under Section 20-35 or 20-36 access to a firearm, in violation of an assurance the person has provided in an affidavit under Section 20-35(c)(3) or 20-36(c)(3) that he or she will safeguard the firearm against access by the respondent.

SECTION 2. Severability Clause.

BE IT FURTHER ORDAINED That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. Codification Clause.

BE IT FURTHER ORDAINED that this Ordinance amends Title 10, Chapter 20 of the Official 2021 City Code. The City has authorized the Municipal Code Corporation to provide a republication of the City’s Ordinances in the Official City Code, as amended from time to time, for the convenience of the public. The Official 2021 City Code and the official version of all new, amending, repealing and clarifying ordinances adopted by the City Council are maintained by the City’s Comptroller in the Office of Council Records.

SECTION 4. Repeal of Inconsistent Ordinances. Ordinance Section 10-20-21-Weapons-Carrying that was adopted to mirror the misdemeanor provisions of Tennessee Code Annotated §§ 39-6-1701, -1702 is hereby repealed in its entirety.

SECTION 5. Effective Date.

BE IT FURTHER ORDAINED that, notwithstanding any other provision of law to the contrary, this Ordinance shall take effect, and to the extent permitted, on the thirtieth 30th day following the occurrence of either of the following circumstances in the interests of the public welfare, namely:

1. The passage of any enabling legislation adopted by the Tennessee General Assembly or the United States Congress that authorizes municipalities and/or the City of Memphis to enforce ordinances that regulate the use, purchase, transfer, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation firearms within the City; or
2. The passage of any enabling legislation adopted by the Tennessee General Assembly or the United States Congress that authorizes municipalities and/or the City of Memphis to enforce ordinances that provide for obtaining and prosecuting violations of Emergency Ex Parte Orders;

3. The entry of a final decree or judgment by a court of competent jurisdiction declaring or deciding that Tennessee municipalities and/or the City of Memphis are authorized under Tennessee or federal law (i) to enforce ordinances that regulate the use, purchase, transfer, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation firearms within the City or (ii) to enforce ordinances that provide for obtaining and prosecuting violations of Emergency Ex Parte Orders.
4. The Council Attorney shall inform the Council prior to the thirtieth (30th) day following the occurrence of any of the circumstances described above in subsections 1-3 and report the options for additional ordinances necessary as a result of the occurrence of any of the circumstances described above in subsections 1-3.

SECTION 6. Adoption. BE IT FURTHER ORDAINED that this Ordinance shall be and become a finally adopted ordinance after having been passed by City Council, signed by the Chair of Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become operative in accordance with its terms as otherwise provided by law and shall remain operative unless and until the City Council alters, amends clarifies or repeals it by a superseding, amending, clarifying or codifying ordinance.

Sponsor(s):
Councilman Dr, Jeff Warren

JB SMILEY, JR.
CHAIRMAN