



1200 Wilmette Avenue  
Wilmette, IL 60091

(847) 853-7509  
Fax (847) 853-7700  
TDD (847) 853-7634

**NOTICE OF MEETING  
PUBLIC SAFETY COMMITTEE OF THE  
BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE  
Monday, February 11, 2019 at 7:00 PM  
Community Recreation Center (Room #106)  
3000 Glenview Road, Wilmette, Illinois 60091**

***AGENDA***

- I. **Call to Order**
- II. **Approval of Minutes- October 10, 2018**
- III. **Public Comment (Items not on the agenda)**
- IV. **Discussion of Regulations Pertaining to the Possession, Use, and Storage of Firearms**
- V. **Discussion of the Village's Firearm & Ammunition Disposal Program**
- VI. **Adjournment**

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**MEETING MINUTES  
PUBLIC SAFETY COMMITTEE OF THE VILLAGE BOARD**

**WEDNESDAY, October 10<sup>th</sup>, 2018  
7:00 P.M.  
COMMITTEE ROOM (2<sup>ND</sup> FLOOR) OF VILLAGE HALL**

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Members Present: Trustee Joel Kurzman, Chair  
Trustee Senta Plunkett  
Trustee Kathy Dodd

Staff Present: Kyle Murphy, Chief of Police  
Patrick Collins, Deputy Chief of Police  
Michael Clark, Police Sergeant

**I. CALL TO ORDER.**

Trustee Kurzman, Chair, called the meeting to order at 7:02 PM. Committee Members Trustee Plunkett and Trustee Dodd were present. There were no public members present. Trustee Kurzman welcomed all in attendance and had those present introduce themselves.

**II. APPROVAL OF MINUTES**

Trustee Kurzman directed the Committee's attention to the draft minutes of the Public Safety Committee meeting of October 23, 2017. Trustee Plunkett moved that the Committee approve the minutes, seconded by Trustee Dodd. All voted aye. The motion carried.

**III. NEW BUSINESS**

Trustee Kurzman related that there were two items on the agenda for new business and that he was going to introduce a third item during public comment.

- A. Review of Conducted Energy Weapons as a Less Lethal Option for Wilmette Police.

Trustee Kurzman opened up the conversation on this item to Chief Kyle Murphy. He related that the Trustees had received a memorandum and additional resource on this item prior to the meeting.

Chief Kyle Murphy referred to the memorandum and the supporting documents in addressing this item. He advised that the Police Department has been analyzing Conducted Energy Weapons (Tasers) for some time. Based on this, the Department

has realized that there is a need to request the purchase of Tasers in order to fill the gap that exists in the Wilmette Police Department's less lethal options. Another basis for the request is the recommendation of the Village's Intergovernmental Risk Management Agency (IRMA) to purchase Tasers, which IRMA believes are effective less lethal tools and reduce the potential injuries to both officers and arrestees during active resistance incidents.

Trustee Kurzman commented that he learned a lot on the less lethal tools that police officers have in general and on Tasers. Trustee Kurzman related he had questions concerning Tasers that he would like to bring up for public discussion. He noted that this is an important and sensitive topic. Trustees Dodd and Plunkett agreed with Trustee Kurzman and would also ask questions during the discussion.

Trustee Kurzman asked where the Taser would be on the Use of Force Continuum, which he found educational concerning the order of use of force options on non-compliant subjects.

Chief Murphy stated that the Taser would be placed on the high end of the Use of Force Continuum. However, the Taser would not be a replacement for a firearm that is used for deadly force encounters. The Taser falls in the less than lethal force option and one of the advantages to having a Taser is that in scenarios where the force is escalating, the application of the Taser may minimize an incident from getting to a deadly force encounter. On the lower end of the continuum, the Taser is placed in the less lethal force option for an active aggressor. An officer's decision to use a Taser will be influenced by numerous factors to include type of active resistance, weather, space, location, subject's clothing, etc.

Trustee Dodd related from the review of materials and talking to Chief Murphy, Wilmette Officers have a high response (firearm) and low response (spray or baton). The Taser would be in between these two responses. Trustee Dodd inquired about the training that the Wilmette Officers would receive.

Chief Murphy reviewed the annual use of force training that officers receive to include law, policy, marksmanship, defensive tactics, scenario based and judgement training in defensive tactics and firearms and other simulated exercises. Chief Murphy added how the department uses two training simulators. Scenario base training put officers in different scenarios that require them to make decisions while under stress. For training in Tasers, it will fall into this annual use of force training. There will be new policy and procedure development; an 8 hour initial certification training class and annual re-certification classes.

Trustee Plunkett referred to five year use of force statistics that Chief Murphy had discussed with her earlier (firearm presentation (18); OC Spray (6) and Physical Force (53)). She related that physical force was used the most by Wilmette Officers. Trustee Plunkett asked what injuries to officers have occurred, whether the use of physical force could be more dangerous and would the baton be eliminated.

Chief Murphy related that in the past five years, injuries to officers have been minor such as bruising, abrasions and exposure to blood. He advised that physical force could be more dangerous than the use of a Taser. When dealing with persons who have underlining health conditions, studies have shown that the physical struggle far exceeds any exhaustive workout and that the Taser could end the confrontation prior to reaching an elevated physiological effect from the physical confrontation. The Department would want to keep the baton as a use of force option. In addition to defending blocks and strikes on a subject, the baton has other use of force applications like applying pressure point compliance and non-force applications like breaking out a window to gain entry in an emergency.

Trustee Dodd brought up an earlier conversation with Chief Murphy on the usage of Tasers in other neighboring communities. The neighboring communities that have Tasers reported using the Taser between 0 to 2 times a year. She asked whether Wilmette Police would expect the same usage rate.

Chief Murphy related that the Department would anticipate the same low usage. Other agencies related that the presentation of the Taser often acts as a deterrent and no reported serious injury to the suspect or officer.

Trustee Dodd and Trustee Kurzman asked what affect or likelihood of serious injury to a suspect with underlining medical conditions or mental conditions.

Chief Murphy related that officers would most likely not know whether a person has serious underlining medical condition prior to using a Taser on a person who is actively resisting. Studies have shown that actual physical force application can be more dangerous to a person with underlining conditions than a Taser application. The elevated physiological state of the person during a use of force encounter is going to impact a person with underlying medical conditions and the longer the duration of the confrontation the greater the risk. There are inherent risks is using physical force, OC Spray or Tasers on a persons with underlining medical conditions. One of the advantages of Tasers is that in certain circumstances the Taser would likely reduce the length of the confrontation.

Trustee Kurzman related that it makes sense that the availability of a Taser could reduce the need for potential lethal force. But would having Tasers available likely increase the number of incidents of less lethal force.

Chief Murphy acknowledged ten years ago some agencies had an overreliance on Tasers. But, he does not see that happening in Wilmette because of the use of force training program and the defensive tactics training, Wilmette Officers have a high level of confidence to deal with non-compliant persons. However, there are clearly incidents that having Tasers available would be a safer option than physical force. Based on data and experiences of surrounding agencies, Chief Murphy believes that usage would be minimal and similar to surrounding agencies.

Trustee Dodd discussed an incident in Florida where an officer used a Taser on a person having a seizure. She believes that the Taser did not cause the seizure but the officer misinterpreted what was happening.

Chief Murphy related that this would be addressed in training of officers so that they properly assess the situation. Also, because the officers are confident due to the annual use of force training, there would not be an overreliance on Tasers.

Trustee Plunket believes that residents would agree with Wilmette Officers having the option of Taser. But, there would be concern if it was likely that Tasers would be used in the more normal regular circumstances that residents or their friends may see themselves in.

Chief Murphy related that we would not expect to see this because of our low history of use of force incidents and lack of excessive force; quality of Department use of force training and the high caliber of police officers hired. Also, the circumstances that a Taser would be used in would be when a person is actively resisting an arrest. An advantage of us getting Tasers later than most agencies is that there has been adjustments by Taser in equipment, training and best practices that will be beneficial in training of officers in the application.

Trustee Kurzman asked about whether the recurring expenditure of Taser was allocated in the budget.

Chief Murphy related that the recurring cost is built into the budget and that the maintenance program provides free maintenance, unlimited cartridges to complete training above the recommended level, replacement batteries and new devices after 5 years. The feedback from the neighboring agencies is that devices need to be replaced in 5 years. The vendor advised that batteries will need to be replaced prior to the 5 year period.

Trustee Dodd asked on other possible vendors of Tasers and would we be able to negotiate price.

Chief Murphy related that Axon is a single source vendor that has several purchase options and that we were mindful on selecting the option that would be best for the Village.

Trustee Dodd related that she believes residents will view the purchase of Tasers positively and that when use of force has to be used, Tasers will reduce the risk to the person and the officer.

Trustee Plunkett related that she believes that it is sensible idea and that a lot of research and study has been taken to make this decision and that 56 agencies of the 62 members of IRMA have Tasers.

Trustee Kurzman was concerned about adding weaponry and some residents also expressed concern. But, he has received only positive feedback concerning the

Police Department. When put into this context and after reviewing the material, he is comfortable with the decision. He is especially comfortable because Chief Murphy is requesting Tasers and would only request it to improve service to the community.

Trustee Plunkett made a motion that we recommend the purchase of 18 Tasers for the Wilmette Police Department as discussed in the meeting, seconded by Trustee Dodd. All voted aye. The motion carried.

#### B. Review of Crime Statistics.

Trustee Kurzman related that his request to review of crime statistics is not related to the Tasers but due to a growing perception that crime has increased. This may be the result of increased police notification through email and social media. Trustee Kurzman would like to review crime statistics in order to determine if it is only a perception and that crime has not increased in Wilmette. He also believes that analyzing the statistics could put residents' concerns at ease.

Chief Murphy related that the handout has three of the most prevalent crimes in Wilmette. Wilmette is fortunate in that violent crimes such as robbery are very low. Historically, property crimes such as residential burglary, motor vehicle thefts and burglary to autos are the prevalent crimes that impact the community and concern residents. In order to evaluate current crime statistics, we compared these property crimes from two six year periods that were separated by 10 years to determine if we are experiencing an increase in crime. Historically, the crime statistics for certain crimes fluctuate depending on who is in custody. There are several prolific offenders who, when incarcerated, the crime rate goes down. At this time, we are pleased that we do have a decrease in crime in 2018. But, we are approaching the time period when historically we see an increase in residential burglaries due to several factors.

On burglary to motor vehicles, Trustee Dodd asked about comparison of forced and unforced auto burglaries.

Chief Murphy related that in 2017, only 2 of the 100 reported auto burglaries were forced. Whether the offenders are coming to commit motor vehicle thefts or auto burglaries, locking your vehicle is a deterrent. This is why we have participated in the 9PM Routine campaign that reminds residents to make sure their vehicles and homes are locked up. Chief Murphy related that burglaries to unlocked vehicles is not an issue specific to Wilmette. It is common that the patterns and trends we experience are consistent with neighboring communities.

Trustee Kurzman asked Chief Murphy's opinion about the resident who spoke at a Village Board meeting that suggested charging for police service if the burglary occurred to an unlocked vehicle.

Chief Murphy related that he has heard this before and would not be in favor of it. This would victimize the crime victim twice and would deter the reporting of these crimes. The reporting of the crime is very important for us to investigate these pattern crimes and allows us to focus our efforts. Chief Murphy acknowledged that not locking

vehicles and residences may be attracting a crime element to Wilmette, but would prefer to educate and inform residents to lock their cars instead of imposing a fine.

Trustee Plunkett asked about why the groups are doing burglaries to autos.

Chief Murphy related that there are some that are doing burglaries to obtain property. There are also other groups that are trying to steal cars in order to do other crimes and often violent crimes in Chicago.

Trustee Dodd suggested that the review of Crime Statistics become an annual review of the Public Safety Committee after those periods that the Village sees increased burglaries. This would possibly allow us, if needed, to determine where to focus our efforts to reduce crime. Trustee Kurzman agreed with the suggestion.

Trustee Kurzman noticed a fluctuation in crime statistics and wondered what factor(s) caused this. He mentioned the decrease in residential burglaries in 2006.

Chief Murphy replied that where we see a significant decrease in residential burglaries, it is often related to who is in custody. With auto burglaries, we are currently dealing with offenders who are looking to steal cars in addition to taking the property left in the vehicle. However, we have noticed that there is less fluctuation year to year in motor vehicle thefts as compared to 10 years ago. This is concerning. We have made numerous arrests of these offenders but these offenders are not easily deterred.

Trustee Plunkett liked the increase communication with adults and expressed that the communication with adults continue. Similar to police communication with children on safety, communication with the adults is beneficial for the community.

Chief Murphy reviewed the philosophy on communicating with residents and that we want to make sure the messages have a purpose and are read. We use many different forms of communication to include Crime Alerts, Communicator and our police social media platforms.

Trustee Kurzman asked whether Chief Murphy believed that we are currently in an upward trend that would concern the Police Department or the community.

Chief Murphy related that he does not believe that there is currently an upward trend in crime in the community. However, we are also not satisfied with the current levels and does not diminish are efforts to prevent these crimes. Education and communication with the public is one aspect. Our assertive Investigations Unit and active patrol are other aspects that we use to deter crime in the community. If patterns are established, we will focus our attention to that area using a variety of patrol strategies including covert cars and additional units.

Trustee Kurzman asked whether some neighborhoods are affected more than others.

Chief Murphy related that if offenders are using public transportation we will often see burglaries near these public transportation areas. If offenders are using the highway, we will often see burglaries in residential neighborhoods off the highway. If the offenders have vehicles, we may see patterns sometimes in a focused area near a specific road that they drove or we may see a wide pattern throughout Wilmette and other jurisdictions. We will change our patrol strategies to meet these changes.

#### **IV. PUBLIC COMMENT**

Trustee Kurzman mentioned the two recent incidents that occurred in the Wilmette that involved firearms and Wilmette is not immune to gun tragedy. The first was a suicide by a female that obtained her husband's firearm and the second was a parent that called the police department when they found the juvenile had obtained firearms that belonged to his deceased grandfather and had been locked in a cabinet. Trustee Kurzman related the firearms were legally owned but fell in the wrong hands. The results were tragic but could have been worse. He did his own independent research on safe storage of guns and legislative efforts to regulate safe storage. He noted Gabby Gifford's efforts and Seattle efforts on gun control and safe storage regulations. He realized that these regulations face strong opposition. Trustee Kurzman related that safe storage of guns is known to decrease risk of accidental firearm injury and suicides by youth. One poll says that 76% of registered voters across America support requirement that firearms be stored in a safe storage unit. Trustee Kurzman stated that he asked Village Counsel to do research and share with this Committee in a very narrow way specific to safe storage. This will be shared with the Public Safety Committee in a future meeting. Based on his research, he related that his expectations on enacting a safe gun regulation is low but the conversation may spark a discussion and promote safe storage.

Chief Murphy related that the Police Department would rely on the research work that is being done by the Village Legal Counsel. This will require thorough legal research and will need to wait to see the results of this research.

Trustee Kurzman asked whether the Police Department has any information on number of Wilmette residents that properly use safe storage of firearms.

Chief Murphy related that at this time, the Department does not have specific statistics on Wilmette residents' habits of safe storage of firearms. We would rely on the feedback and research done by Village Counsel.

Trustee Kurzman wanted to reiterate that his interest is very narrow on the storage of the weapons and not on whether a weapon is banned or whether a person should have a weapon. His interest is a public safety focus on preventing firearms from getting into the wrong hands such as youth or persons with mental health concerns. The research would be beneficial to know what can and can't be done. He would be satisfied with an outreach program to the public about this topic.

Trustee Plunkett related that at this time she is not in a position to address this topic without further research. In terms of public outreach on safe storage, she asked if a resident called the Department what advice would they receive.

Chief Murphy related that we have had occurrences that residents have turned weapons into the Department for destruction. We would also try to provide advice to a resident on the safe storage of firearms based on the circumstances of that resident so that the weapon is secure.

Trustee Plunkett asked if there is some specific safe storage that would be recommended by the Department.

Chief Murphy advised that there are numerous safe storage devices on the market with many different options of securing the device. In Illinois, firearms dealers are required to provide a trigger lock or other lock device with the purchase of a firearm.

Trustee Dodd asked if there are any laws that require firearms dealers to give safe storage instructions of firearms.

Chief Murphy related that he is unaware of any law that requires a firearms dealers to provide safe storage instructions.

Trustee Kurzman related that in the case of Seattle, the legislation is tied up in court. But, Seattle Public Health has a public outreach program with a wealth of resources on safe storage and that we may learn from them. He related that there are many different storage devices that have a wide range of security and cost. Trustee Kurzman believes that it is imperative that if persons are going to own guns that persons need to be responsible owners for safety of the public.

There was no other public comment.

## **V. ADJOURNMENT**

Trustee Plunkett moved to adjourn the meeting at 8:29 PM, seconded by Trustee Dodd. All voted aye, the motion carried.

Respectfully submitted,

Patrick Collins  
Wilmette Deputy Chief of Police



## Law Department

**SUBJECT:** LOCAL FIREARM REGULATIONS: SAFETY LOCKS/SAFE STORAGE  
**To:** Public Safety Committee  
**FROM:** [Jeffrey M. Stein](#), Corporation Counsel  
**DATE:** January 17, 2019

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Trustee Kurzman, as Chairman of the Public Safety Committee (a standing committee of the Village Board), requested an opinion from the Corporation Counsel's Office in regards to the legality and ability of the Village adopting an ordinance regulating the safe storage and/or application of safety locks upon firearms. This request was further narrowed to apply to the safe storage and/or safety locks for firearms for those firearm owners that are living with children or individuals with a mental health concern.

### STATE LAWS REGULATING AND PREEMPTING MUNICIPAL REGULATIONS OF FIREARM OWNERSHIP, POSSESSION, AND CONCEALED CARRY

#### Illinois Gun Licensing Statutes

In Illinois, there are two main statutes that regulate the possession and use of firearms and three other statutes that have an impact upon the possession and use of firearms. The two main licensing statutes are the Firearm Owners Identification Card Act ("FOICA") and the Firearm Concealed Carry Act ("FCCA"). First, the FOICA regulates the ownership and possession of firearms, but not the right to carry such firearms in public. Second, the FCCA regulates the carrying of such handguns upon one's person. Collectively the FOICA and FCCA shall be referred to as the "Licensing Statutes."

The Licensing Statutes regulate who can own, possess, use, and carry certain types of firearms. Per the FOICA, an individual may not obtain a Firearms Owner's Identification Card (the necessary license to legally own a firearm in Illinois) if that person is:

1. Not at least 21 years of age or if under 21 has the written consent of a parent or legal guardian to possess and acquire firearms;
2. A convicted felon;
3. Is addicted to narcotics;
4. Has been a patient in a mental health facility within the past 5 years; or is otherwise not certified by a mental health provider that they do not pose a risk to themselves or others;
5. Has an intellectual disability;
6. Subject to an order of protection;

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7. Has been convicted within the past 5 years of:
  - a. Battery;
  - b. Assault;
  - c. Aggravated assault;
  - d. Violation of an order of protection;
8. Has been convicted of:
  - a. domestic battery;
  - b. aggravated domestic battery;
9. Been involuntarily admitted into a mental health facility;
10. A person with a developmental disability.

Under the FCCA, a conceal carry license will only be granted to individuals:

1. Over the age of 21;
2. Has a current Firearms Owner's Identification Card and is not otherwise prohibited from obtaining one;
3. Has not been convicted of a misdemeanor involving the use or threat of physical force or violence within the last 5 years; or has 2 or more violations for DUI within the last 5 years;
4. Is not subject to a pending arrest warrant or a prosecution;
5. Has not been in residential or court-ordered treatment for alcoholism within the past 5 years;
6. Has completed the required firearms training classes.

### Other Statutes Having an Impact upon the Possession and Use of Firearms

The other three statutes that have some relation to the possession and use of firearms are:

1. Section 24-9 Firearms; Child Protection of the Criminal Code of 2012;
2. Section 24-9.5 Handgun Safety Devices of the Criminal Code of 2012;
3. The Firearms Restraining Order Act (the Licensing Statutes and these three statutes combined shall be referred to as the "Statutes".)

First, Sec 24-9. Firearms; Child Protection., makes it unlawful for any person to store or leave, within premises under his or her control, a firearm if the person knows or has reason to believe that a minor under the age of 14 years who does not have a Firearm Owners Identification Card is likely to gain access to the firearm without lawful permission of the minor's parents, guardian, and the minor causes death or great bodily harm with the firearm, unless the firearm is:

1. secured by a device, other than the safety of the firearm, designed to render the firearm inoperable,
2. placed in a securely locked box or container; or
3. placed in some other location that a reasonable person would believe to be secure from a minor under the age of 14 years. (720 ILCS 5/24-9).

Second, Sec. 24-9/5 Handgun safety devices., makes it unlawful for federal firearms dealers to offer for sale a handgun without a mechanism, other than the safety of the firearm, designed to render the firearm inoperable or inaccessible. (720 ILCS 5/24-9.5).

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Finally, the Firearms Restraining Order Act (which is to take effect on January 1, 2019), provides for a Circuit Court process to allow family members or “intimate partners” to petition to have firearms removed – by local law enforcement officers – from another’s possession, when those individuals “pose a danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm” 430 ILCS 67/1 *et. seq.*

### State Law Preemption of Local Regulation

As you can see, the Statutes have an impact upon the regulation of possession and use of firearms, but the Licensing Statutes clearly play the most significant part in such regulations.

The first issue that must be addressed is, is there a preemption of local regulations on the use and possession of firearms. The Licensing Statutes both contain express preemption language on the regulation of firearms (both handguns and assault weapons) by municipalities. The FOICA contains the following provisions, which was adopted in 2013:

#### Sec. 13.1. Preemption.

(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection

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(c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.

(d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

The FCCA contains the following language:

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

As such, there is a clear preemption of the field of firearm regulation. Now it must be determined if the specific regulations inquired about would still be considered a regulation that is expressly preempted by the Licensing Statutes. The quick answer is "yes", it is likely that any regulation imposed by the Village would be validly challenged (as was the case in Deerfield) and the Village would need to defend these regulations as being lawful and not preempted by the Statutes.

The Licensing Statutes regulate each of those particular issues and therefore, it is likely that any such regulation is prohibited by the preemption language found in the Licensing Statutes. The Licensing Statutes, in part:

1. require storage of firearms in certain cases;
2. restrict ownership to anyone under 21 years of age who has not been authorized by their parents to own a gun;
3. provide for different classes of mental health concerns that are restricted from firearm ownership;

In addition to the Licensing Statutes, the other statutes, in part:

1. require trigger locks or other safe storage devices when a handgun is sold;

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2. make it illegal to allow access of firearms to children under the age of 14 when the gun owner is not present and when that child uses such firearms to cause great bodily harm or death;
3. provide for a court run process to remove firearms from certain individuals that may cause harm to themselves or others.

### Storage of Firearms

Specifically, the FOICA expressly states that the “possession of firearms...” does not apply to non-residents that have unloaded firearms enclosed in a case. While this applies to non-residents transporting and using firearms (presumably for hunting or range shooting) in Illinois, it still does regulate the storage of those firearms.

Storage of handguns, in certain circumstances, is expressly regulated in the FCCA as well. A handgun must be stored in a locked container in the following circumstances:

1. when in a vehicle that is left unattended;
2. for all child care facilities operating in a family home when such children are present.

Additionally, FOICA regulates the age in which a person may own and possess a firearm. FOICA also defines and restricts those that are “addicted to narcotics,” “adjudicated as a person with a mental disability,” “person with a development disability,” and “person with an intellectual disability,” from obtaining a FOID Card. In addition, anyone under the age of 21 to get parental permission before getting a FOID Card. The new Firearms Restraining Order Act, will also now allow for a process by which a person may have firearms removed from the possession of another that may be a danger to themselves or others.

As such, the General Assembly could have easily included storage requirements or use of safety trigger locks for those under 21 or those living with someone under 21 or with a mental health, developmental or intellectual concern; just like they did for child care facilities. In addition, the General Assembly determined that a 14 year old was the proper age to allow access to a firearm without the owner being subject to criminal penalties should great bodily harm or death occur; in this situation the General Assembly chose 14 as the proper age, and could have added any of the numerous categories of individuals that are barred from legally owning weapons to this prohibition as well. Furthermore, the General Assembly could have made it illegal to allow access to such weapons at any time, not just when a tragedy occurs (although it is possible even a state regulation requiring all firearms to be inoperable when a minor or someone with a mental health concern could have access to them is a violation of the Second Amendment; discussed more thoroughly below).

While these very specific regulations may seem irrelevant to the specific issue at hand, this statutory regulation looked at as a whole, is directly on point as the General Assembly did regulate this particular field – the storage of handguns in these limited circumstances – and then preempted the field. Therefore, while the legislature had the ability to require safe storage of handguns in all sorts of situations, (within Constitutional limitations discussed more thoroughly below), it chose to regulate only these specific instances and not others. Whether wise or unwise, the General Assembly chose these regulations and at the same time declared

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firearm regulation to be a matter of statewide concern and expressly preempted local governments from enacting their own regulations in any form.

Based upon the clear language that the regulation and possession of handguns are exclusive functions of the State found in the Licensing Statutes, any Village ordinance attempting to regulate the specific areas detailed in this memorandum would likely be deemed invalid and without effect. Furthermore, the statutory scheme to allow municipalities to provide for additional regulations of assault weapons has passed and can no longer be imposed per the FOICA.

Accordingly, it is the opinion of the Corporation Counsel, based upon the broad restrictions found in the Licensing Statutes that the Village cannot legally mandate a gun owner to safely store their firearm or install a trigger lock on the firearm, even when a child or someone with a mental illness is able to get to the firearms. The General Assembly has clearly determined that this is a matter of statewide concern and not for local governments to take up. To do so, would be a prohibited regulation of firearms, which is expressly preempted by the Licensing Statutes, as this field of regulation has been entered by the State and then deemed by the State as its exclusive function. Furthermore, the Criminal Code does address certain storage and possession issues which are now part of the preempted regulatory field as expressly provided for in the Statutes. Finally, a newly enacted statute provides for the removal of firearms through a circuit court process, also part of the preempted regulatory field.

## SECOND AMENDMENT FEDERAL LAW MAY ALSO NOT ALLOW SUCH REGULATIONS

While the memorandum could end with the conclusions made above, a look at federal caselaw may also shed some light on this issue as well, especially in regards to rendering a handgun inoperable.

While the state law clearly prohibits the regulation of firearms by local governments, the United States Supreme Court ("Court") also provides some clarification on regulations making handguns inoperable by both Illinois and Wilmette. The Court has expressly opined that state and local regulations making handguns inoperable, and not immediately accessible, is unconstitutional.

In District of Columbia v. Heller, the Court issued its landmark opinion on the subject of firearm possession under the Second Amendment of the United States Constitution. District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783 (2008). In a lengthy and comprehensive opinion, the Court ruled that the District's ban on handgun possession in the home and its requirement that a lawfully possessed firearm in the home remain inoperable either by being disassembled or bound by a trigger lock was a clear violation of the Second Amendment. The Court stated in regards to the requirement that the firearm be rendered inoperable that doing so "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional" District of Columbia v. Heller, 554 U.S. 570, 630, 128 S. Ct. 2783, 2818.

The Court, in its concluding remarks stated the following, which is relevant to the underlying intent of this requested memorandum:

We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many *amici* who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns, [citations omitted]. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct. District of Columbia v. Heller, 554 U.S. 570, 636, 128 S. Ct. 2783, 2822 (2008).

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#### Federal Court Rulings Not From the Supreme Court or the Seventh Circuit

To date, these rulings have provided the rule of law followed in the state and local jurisdictions of the United States Court of Appeals for the Seventh Circuit (which includes Illinois and Wilmette). There is a case, out of San Francisco, California (and another one out of Alameda, California – not discussed in this memo as it is repetitive and less relevant), in regards to the required safe storage of handguns when in the home. In Jackson v. City & Cty. of S.F. the United States Court of Appeals for the Ninth Circuit upheld a San Francisco regulation that required a handgun, when in a residence, to be stored in a locked container or disabled with a trigger lock or carried upon the person of an individual over the age of 18. Jackson v. City & Cty. of S.F., 746 F.3d 953 (9th Cir. 2014). The Ninth Circuit essentially ruled that the regulation imposed was not a substantial burden on the Second Amendment right itself and therefore the interest in protecting others from gun related injuries was a legitimate government purpose and upheld the regulation.

The Jackson case was appealed to the Court, but not heard by it (the fact that the Court did not hear this case is not indicative to how the Court would rule). While the Court did refuse to hear this case, however, in an uncommon manner, two Supreme Court Justices (Scalia and Thomas) provided a dissent to the denial of the request. Justice Thomas stated, speaking for both him and Justice Scalia, “the decision of the Court of Appeals is in serious tension with Heller.” Jackson v. City & Cty. of S.F., 135 S. Ct. 2799 (2015). Continuing, Justice Thomas concluded, “we warned in Heller that ‘[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.’ [internal citations omitted] The Court of Appeals in this case recognized that San Francisco’s law burdened the core component of the Second Amendment guarantee, yet upheld the law. Because of the importance of the constitutional right at stake and the questionable nature of the Court of Appeals’ judgment, I would have granted a writ of certiorari.” Jackson v. City & Cty. of S.F., 135 S. Ct. 2799, 2802 (2015).

## CONFIDENTIAL AND PRIVILEGED OPINION

While the Ninth Circuit ruling would indicate that the inquired about regulations would be permissible under Federal law, those rulings are not controlling law in Wilmette. Therefore, the rulings in Heller and McDonald are still the controlling law in Wilmette, and as such, a trigger lock requirement is unconstitutional.

### Other State Laws

The question has been raised, why Seattle can or why San Francisco can impose such regulations when Wilmette cannot. The Corporation Counsel does not know the specifics of California or Washington state law and the relationships between the state government and local government in those states. With that being said, the simple response to this inquiry is that the regulations of other municipalities in other states are often irrelevant to Wilmette's ability or lack of ability to do so under Illinois law. Regardless of the issues in other states, municipal authority is a basis and function of their respective states and has no impact or bearing upon Illinois and Wilmette's relationship to Illinois except when the regulation is an Illinois regulation. Unless such a regulation is struck down or upheld under a federal (not state) preemption theory, the state preemption or lack of state preemption of local governments from other states has zero bearing upon the preemptions Wilmette must adhere to.

As a side note, the issue of preemption was never raised in the San Francisco case, rather that case was based upon the issues raised in Heller and the Second Amendment. As for the Seattle case, that ordinance was challenged by the NRA and was dismissed by the trial court in that jurisdiction. Per the articles reporting on this case (as the dismissal order does not explain why the case was dismissed) the dismissal was not based upon the merits of preemption. Rather, the case was dismissed on the theory that the plaintiffs did not have standing to sue, leaving a future challenge to the ordinances.

However, at the last election, a referendum in the State of Washington passed requiring the state legislature to enact additional safety and training laws for firearms, including storage. As such, it is possible the Seattle ordinance will no longer be in effect once the State of Washington enacts its own regulations on the same subject matter.

### **Conclusion and Opinion on Legality of Potential Firearm Related Regulations**

To conclude, it is the Corporation Counsel's opinion that any local regulation of handguns or firearms has been expressly preempted under Illinois law and would be deemed invalid. This is applicable even if such regulations are limited to age or those with mental illness (which are already addressed in some form in the various Statutes). Furthermore, any regulation that renders a handgun or firearm inoperable, despite the potential access of that firearm by others, when it could potentially be needed for self-defense would be deemed unconstitutional per the Court's decisions expressly ruling on this specific subject.

Finally, while important to look at from a policy perspective, the ability of other out of state local governments to enact regulations under their respective state laws has no bearing or precedent upon Wilmette's ability or inability to enact similar regulations.



**DATE:** January 14, 2019  
**TO:** Public Safety Committee  
**FROM:** Kyle Murphy, Chief of Police  
**SUBJECT:** Unwanted Weapon / Ammunition Destruction Program

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The Wilmette Police Department has always been a location where citizens could turn in unwanted firearms and/or ammunition for destruction at any time. Citizens who contact us concerning unwanted firearms are directed:

- Do not transport a firearm or ammunition without a Firearm Owner Identification (FOID) card.
- Place the empty firearm into a case or bag in the trunk or back of your vehicle.
- Place ammunition in a case or bag in the trunk or back of your vehicle.
- Drive directly to the police station.
- Deliver the empty firearm and ammunition in the case or bag to the front desk of the police station.
- If you do not possess a FOID card, an Officer can respond to your home to remove the item(s).

Recovered ammunition is regularly brought by Police Department personnel to the Northeastern Illinois Regional Police Crime Laboratory (NIRCL) for proper disposal. Firearms are held and turned over to the NIRCL for destruction annually. Firearms are melted down and completely destroyed.

Between 2008 -2018, Wilmette had 130 incidents of citizens, primarily residents, turning in unwanted ammunition and/or firearms for destruction. Out of those 130 incidents 71 firearms were collected. About half of the firearms were rifles and the other half were handguns. The vast majority of firearms turned in were operational.

The Wilmette Police also offers temporary safe storage of firearms. If special circumstances exist in the home and the resident wishes to temporarily remove firearms, The Wilmette Police can safely store these items in the short term.

The Police Department has also been working with the Village's communication team on enhancing public education regarding the program. Please see attached document.



# I HAVE AN OLD FIREARM AND I DO NOT WANT IT IN MY HOME, WHAT DO I DO?

## Firearm Destruction

The Wilmette Police Department accepts unwanted firearms and ammunition for destruction from residents. No appointment is required.

- Do not transport a firearm or ammunition without a Firearm Owner Identification (FOID) card.
- Place the empty firearm into a case or bag in the trunk or back of your vehicle.
- Place ammunition in a case or bag in the trunk or back of your vehicle.
- Drive directly to the police station.
- Deliver the empty firearm and ammunition in the case or bag to the front desk of the police station.

## Firearm Temporary Safe Storage

If special circumstances exist in your home and you wish to have firearms temporarily removed for safe storage, please contact the police department.



**Wilmette Police**  
710 Ridge Road  
Wilmette, IL 60091  
(847) 256-1200  
[www.wilmette.com/police-department](http://www.wilmette.com/police-department)

If you are not familiar with handling a firearm call the Wilmette Police at (847) 256-1200 and an officer will respond.

Unloaded firearms and ammunition can be brought to the Wilmette Police Station for destruction or temporary storage.

If firearms are kept in the home, firearms should be properly stored by using trigger locks and gun safes.

Assume all firearms are loaded.

Never point a firearm at something you do not want to destroy.

Keep your finger off the trigger.

Educate your household about firearm safety.



## Law Department

**SUBJECT:** LOCAL FIREARM REGULATIONS: SAFETY LOCKS/SAFE STORAGE  
**To:** Public Safety Committee  
**FROM:** [Jeffrey M. Stein](#), Corporation Counsel  
**DATE:** January 17, 2019

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Trustee Kurzman, as Chairman of the Public Safety Committee (a standing committee of the Village Board), requested an opinion from the Corporation Counsel's Office in regards to the legality and ability of the Village adopting an ordinance regulating the safe storage and/or application of safety locks upon firearms. This request was further narrowed to apply to the safe storage and/or safety locks for firearms for those firearm owners that are living with children or individuals with a mental health concern.

### STATE LAWS REGULATING AND PREEMPTING MUNICIPAL REGULATIONS OF FIREARM OWNERSHIP, POSSESSION, AND CONCEALED CARRY

#### Illinois Gun Licensing Statutes

In Illinois, there are two main statutes that regulate the possession and use of firearms and three other statutes that have an impact upon the possession and use of firearms. The two main licensing statutes are the Firearm Owners Identification Card Act ("FOICA") and the Firearm Concealed Carry Act ("FCCA"). First, the FOICA regulates the ownership and possession of firearms, but not the right to carry such firearms in public. Second, the FCCA regulates the carrying of such handguns upon one's person. Collectively the FOICA and FCCA shall be referred to as the "Licensing Statutes."

The Licensing Statutes regulate who can own, possess, use, and carry certain types of firearms. Per the FOICA, an individual may not obtain a Firearms Owner's Identification Card (the necessary license to legally own a firearm in Illinois) if that person is:

1. Not at least 21 years of age or if under 21 has the written consent of a parent or legal guardian to possess and acquire firearms;
2. A convicted felon;
3. Is addicted to narcotics;
4. Has been a patient in a mental health facility within the past 5 years; or is otherwise not certified by a mental health provider that they do not pose a risk to themselves or others;
5. Has an intellectual disability;
6. Subject to an order of protection;

7. Has been convicted within the past 5 years of:
  - a. Battery;
  - b. Assault;
  - c. Aggravated assault;
  - d. Violation of an order of protection;
8. Has been convicted of:
  - a. domestic battery;
  - b. aggravated domestic battery;
9. Been involuntarily admitted into a mental health facility;
10. A person with a developmental disability.

Under the FCCA, a conceal carry license will only be granted to individuals:

1. Over the age of 21;
2. Has a current Firearms Owner's Identification Card and is not otherwise prohibited from obtaining one;
3. Has not been convicted of a misdemeanor involving the use or threat of physical force or violence within the last 5 years; or has 2 or more violations for DUI within the last 5 years;
4. Is not subject to a pending arrest warrant or a prosecution;
5. Has not been in residential or court-ordered treatment for alcoholism within the past 5 years;
6. Has completed the required firearms training classes.

#### Other Statutes Having an Impact upon the Possession and Use of Firearms

The other three statutes that have some relation to the possession and use of firearms are:

1. Section 24-9 Firearms; Child Protection of the Criminal Code of 2012;
2. Section 24-9.5 Handgun Safety Devices of the Criminal Code of 2012;
3. The Firearms Restraining Order Act (the Licensing Statutes and these three statutes combined shall be referred to as the "Statutes".)

First, Sec 24-9. Firearms; Child Protection., makes it unlawful for any person to store or leave, within premises under his or her control, a firearm if the person knows or has reason to believe that a minor under the age of 14 years who does not have a Firearm Owners Identification Card is likely to gain access to the firearm without lawful permission of the minor's parents, guardian, and the minor causes death or great bodily harm with the firearm, unless the firearm is:

1. secured by a device, other than the safety of the firearm, designed to render the firearm inoperable,
2. placed in a securely locked box or container; or
3. placed in some other location that a reasonable person would believe to be secure from a minor under the age of 14 years. (720 ILCS 5/24-9).

Second, Sec. 24-9/5 Handgun safety devices., makes it unlawful for federal firearms dealers to offer for sale a handgun without a mechanism, other than the safety of the firearm, designed to render the firearm inoperable or inaccessible. (720 ILCS 5/24-9.5).

Finally, the Firearms Restraining Order Act (which is to take effect on January 1, 2019), provides for a Circuit Court process to allow family members or “intimate partners” to petition to have firearms removed – by local law enforcement officers – from another’s possession, when those individuals “pose a danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm” 430 ILCS 67/1 *et. seq.*

### State Law Preemption of Local Regulation

As you can see, the Statutes have an impact upon the regulation of possession and use of firearms, but the Licensing Statutes clearly play the most significant part in such regulations.

The first issue that must be addressed is, is there a preemption of local regulations on the use and possession of firearms. The Licensing Statutes both contain express preemption language on the regulation of firearms (both handguns and assault weapons) by municipalities. The FOICA contains the following provisions, which was adopted in 2013:

#### Sec. 13.1. Preemption.

(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection

(c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.

(d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

The FCCA contains the following language:

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

As such, there is a clear preemption of the field of firearm regulation. Now it must be determined if the specific regulations inquired about would still be considered a regulation that is expressly preempted by the Licensing Statutes. The quick answer is "yes", it is likely that any regulation imposed by the Village would be validly challenged (as was the case in Deerfield) and the Village would need to defend these regulations as being lawful and not preempted by the Statutes.

The Licensing Statutes regulate each of those particular issues and therefore, it is likely that any such regulation is prohibited by the preemption language found in the Licensing Statutes. The Licensing Statutes, in part:

1. require storage of firearms in certain cases;
2. restrict ownership to anyone under 21 years of age who has not been authorized by their parents to own a gun;
3. provide for different classes of mental health concerns that are restricted from firearm ownership;

In addition to the Licensing Statutes, the other statutes, in part:

1. require trigger locks or other safe storage devices when a handgun is sold;

2. make it illegal to allow access of firearms to children under the age of 14 when the gun owner is not present and when that child uses such firearms to cause great bodily harm or death;
3. provide for a court run process to remove firearms from certain individuals that may cause harm to themselves or others.

### Storage of Firearms

Specifically, the FOICA expressly states that the “possession of firearms...” does not apply to non-residents that have unloaded firearms enclosed in a case. While this applies to non-residents transporting and using firearms (presumably for hunting or range shooting) in Illinois, it still does regulate the storage of those firearms.

Storage of handguns, in certain circumstances, is expressly regulated in the FCCA as well. A handgun must be stored in a locked container in the following circumstances:

1. when in a vehicle that is left unattended;
2. for all child care facilities operating in a family home when such children are present.

Additionally, FOICA regulates the age in which a person may own and possess a firearm. FOICA also defines and restricts those that are “addicted to narcotics,” “adjudicated as a person with a mental disability,” “person with a development disability,” and “person with an intellectual disability,” from obtaining a FOID Card. In addition, anyone under the age of 21 to get parental permission before getting a FOID Card. The new Firearms Restraining Order Act, will also now allow for a process by which a person may have firearms removed from the possession of another that may be a danger to themselves or others.

As such, the General Assembly could have easily included storage requirements or use of safety trigger locks for those under 21 or those living with someone under 21 or with a mental health, developmental or intellectual concern; just like they did for child care facilities. In addition, the General Assembly determined that a 14 year old was the proper age to allow access to a firearm without the owner being subject to criminal penalties should great bodily harm or death occur; in this situation the General Assembly chose 14 as the proper age, and could have added any of the numerous categories of individuals that are barred from legally owning weapons to this prohibition as well. Furthermore, the General Assembly could have made it illegal to allow access to such weapons at any time, not just when a tragedy occurs (although it is possible even a state regulation requiring all firearms to be inoperable when a minor or someone with a mental health concern could have access to them is a violation of the Second Amendment; discussed more thoroughly below).

While these very specific regulations may seem irrelevant to the specific issue at hand, this statutory regulation looked at as a whole, is directly on point as the General Assembly did regulate this particular field – the storage of handguns in these limited circumstances – and then preempted the field. Therefore, while the legislature had the ability to require safe storage of handguns in all sorts of situations, (within Constitutional limitations discussed more thoroughly below), it chose to regulate only these specific instances and not others. Whether wise or unwise, the General Assembly chose these regulations and at the same time declared

firearm regulation to be a matter of statewide concern and expressly preempted local governments from enacting their own regulations in any form.

Based upon the clear language that the regulation and possession of handguns are exclusive functions of the State found in the Licensing Statutes, any Village ordinance attempting to regulate the specific areas detailed in this memorandum would likely be deemed invalid and without effect. Furthermore, the statutory scheme to allow municipalities to provide for additional regulations of assault weapons has passed and can no longer be imposed per the FOICA.

Accordingly, it is the opinion of the Corporation Counsel, based upon the broad restrictions found in the Licensing Statutes that the Village cannot legally mandate a gun owner to safely store their firearm or install a trigger lock on the firearm, even when a child or someone with a mental illness is able to get to the firearms. The General Assembly has clearly determined that this is a matter of statewide concern and not for local governments to take up. To do so, would be a prohibited regulation of firearms, which is expressly preempted by the Licensing Statutes, as this field of regulation has been entered by the State and then deemed by the State as its exclusive function. Furthermore, the Criminal Code does address certain storage and possession issues which are now part of the preempted regulatory field as expressly provided for in the Statutes. Finally, a newly enacted statute provides for the removal of firearms through a circuit court process, also part of the preempted regulatory field.

## SECOND AMENDMENT FEDERAL LAW MAY ALSO NOT ALLOW SUCH REGULATIONS

While the memorandum could end with the conclusions made above, a look at federal caselaw may also shed some light on this issue as well, especially in regards to rendering a handgun inoperable.

While the state law clearly prohibits the regulation of firearms by local governments, the United States Supreme Court ("Court") also provides some clarification on regulations making handguns inoperable by both Illinois and Wilmette. The Court has expressly opined that state and local regulations making handguns inoperable, and not immediately accessible, is unconstitutional.

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### **Conclusion and Opinion on Legality of Potential Firearm Related Regulations**

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Finally, while important to look at from a policy perspective, the ability of other out of state local governments to enact regulations under their respective state laws has no bearing or precedent upon Wilmette's ability or inability to enact similar regulations.

# Public Safety Committee Meeting

February 11, 2019

# Tonight's Meeting

- Review of the Village's existing gun safety programs
- Legal overview in regards to Safe Storage laws
- Answers to common questions from the community
- Comments and questions from the public

# Gun Safety Programs

- The Village has or participates in the following gun safety programs:
  - Gun Disposal Program
  - Temporary Safe Storage of Firearms
  - Project Child Safe
  - Clear & Present Danger Form
  - Concealed Carry Review
  - Domestic Bond Screening Process
  - Firearm Restraining Order Act
  - Public Education Presentations

# Gun Safety Programs

## Wilmette Firearm Disposal Program

- The Police Department is a location where citizens can turn in unwanted firearms and/or ammunition at any time for destruction
- Firearms and ammunition are brought by the Police Department to the Northeastern Illinois Regional Police Crime Laboratory (NIRCL), are melted down and completely destroyed
- Between 2008 – 2018, 130 residents have turned in unwanted firearms and/or ammunition
  - 71 firearms have been collected, half of which were rifles and the other half handguns
  - The majority of firearms were operational at the time they were turned in

# Gun Safety Programs

## Wilmette Temporary Storage Program

- The Police Department offers residents the opportunity to temporarily store firearms
- If special circumstances exist in a home and the resident wishes to temporarily remove the firearms for the safety of those in or out of the home, the Police Department will store them at no cost
- This program is utilized regularly by Wilmette residents

# Gun Safety Programs

## Project Child Safe

- The Police Department has partnered with Project Child Safe, which is a public safety campaign aimed at educating parents and families on gun safety and promoting safe storage practices
- For more than 15 years, the Police Department has provided child safety locks to gun owners at no cost
- With the passage of a State law in 2012 requiring gun sellers to provide a lock at time of sale, interest in the program has lessened, but the Department continues to provide this service



# Gun Safety Programs

## Clear and Present Danger Form

- Pursuant to Illinois law, the Police Department and school administrators report to the State of Illinois individuals deemed to pose a clear and present danger
- These reports are utilized by the State in determining whether to grant a FOID card
- The goal of this program is to protect the health and safety of the public by denying persons who pose a clear and present danger from having lawful access to weapons

# Gun Safety Programs

## Concealed Carry Review

- Concealed Carry Licenses (CCL) are issued by the State only to individuals who are:
  - Over age of 21
  - Have a current Firearms Owner's Identification Card (FOID) and is not prohibited from obtaining one
  - Has not been convicted of a misdemeanor involving the use of threat of physical force or violence within the last five years; or has two or more DUI violations within the last five years
  - Is not subject to a pending arrest warrant or prosecution
  - Has not been in residential or court-ordered treatment for alcoholism in past five years
  - Has completed the required firearms training classes
- The State's concealed carry licensing program allows local law enforcement to object to the issuance of a CCL license based upon a reasonable suspicion that the applicant is a danger to themselves or others, or a threat to public safety
  - The Police Department has on occasion availed itself of this option to ensure public safety

# Gun Safety Programs

## Domestic Bond Screening Process

- As part of an arrest for violation of the Domestic Violence Act, the Police Department provides the Cook County States' Attorney a screening form to include information as to whether threats were made with weapons, if the arrestee owns/possesses a firearm, or has an authorized Firearm Owner's Identification Card (FOID)
- In most instances where any of the above have been met, the States' Attorney will request and the Court will require that the arrestee turn over all firearms to the Police Department

# Gun Safety Programs

## Firearms Restraining Order Act

- Effective January 1, 2019, per new State law, family and household members may petition the court to remove a person's access to firearms on an ex parte basis
- The removal of firearms is based on evidence that an individual is a danger to themselves or others

# Gun Safety Programs

## Public Education Programs

- The Police Department conducts private and public facility security surveys and emergency preparedness planning which includes weapon detection and concealed carry laws
- Some local schools partner with the Police Department to conduct child safety talks to educate students about what to do if they find a firearm
- The Village is in process of developing a more robust public education campaign to promote its firearm disposal and temporary storage programs

# Safe Storage Legal Analysis

## 2<sup>nd</sup> Amendment- District of Columbia v. Heller

- Local regulation of safe storage is very likely prohibited under the 2<sup>nd</sup> Amendment based on the Heller ruling, though this has not been tested in the Seventh Circuit

## State Law- Local Pre-emption under the Firearm Concealed Carry Act

- The State of Illinois has very clearly pre-empted local regulation of firearms as follows:
  - *The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution*

# Common Questions Pertaining to Gun Safety

- What are recommended best practices for safe storage?
- What is the Cook County Assault Weapons Ban and does Wilmette enforce it?
- Why didn't the Village implement firearm regulations in 2013 when the State provided municipalities with a 10-day window to do so
- What regulations did Deerfield pass and can Wilmette do the same?
- What regulations did Northbrook pass and can Wilmette do the same?
- Other Programs- Is there an existing gun registry, can the Village implement a gun registry or mandate gun safety courses, can the Village implement a gun buyback program to reduce the number of weapons in the community?

# Safe Storage Best Practices

- To prevent accidents and / or theft of weapons, the Police Department recommends:
  - Firearms be stored unloaded and in a mounted gun safe
  - If there is an individual in your household who may be a threat to themselves or others, avail yourself of the Police Department's temporary storage program
- Additional safe storage options, which may be used in addition to a gun safe, include:
  - Lock Box
  - Trigger Locks
  - Cable Locks



# Cook County Assault Weapon Ban

- Cook County Ordinance prohibits the possession of assault weapons within the County
  - Because the Village has not opted out of the County Ordinance, the assault weapons ban applies in Wilmette
- Wilmette Police have not encountered an assault weapon in the community during the course of any crime, police investigation, or other instance since 1995
- While Wilmette Police are not authorized to enforce Cook County ordinances (we can only enforce local and State laws), the Village policy is to notify the Cook County Sheriff's Office if assault weapons are encountered in the community
  - It would then be the responsibility of the Sheriff's Office to enforce the County Ordinance

# State of Illinois Legislation

- In 2013, the State of Illinois pre-empted local regulation of firearms via the Firearm Concealed Carry Act and provided municipalities with 10-days to pass their own assault weapon regulations
- Even during this 10-day period, municipalities were prohibited from regulating handguns based on the State law
- The Village Board did not act in 2013 for the following reasons:
  - The Cook County Assault Weapons Ban was in effect and the Village had no intention to opt out
  - There was not an identified assault weapon problem in the community (note previously slide in that the Police Department has not encountered an assault weapon within the Village since 1995)
  - The 10-day window to pass an ordinance did not provide adequate time for public notice and discussion

# Village of Deerfield Regulations

- In 2013, Deerfield passed a safe storage of assault weapons ordinance within the 10 day timeframe as provided by State law
- In 2018, Deerfield expanded this ordinance to include an outright ban on the possession, manufacture, sale, transfer, or storage of any assault weapon and large capacity magazines
- This ordinance was immediately challenged by two lawsuits
- In June 2018, a judge granted the petitioners a temporary restraining order, thereby prohibiting Deerfield from enforcing the ordinance at this time

## Can the Village pass a similar ordinance?

Even if Deerfield's ordinance is ruled constitutional, Wilmette would be unable to implement a similar regulation under State law due to the requirement that initial regulations be in place during the 10-day period in 2013.

# Village of Northbrook Regulations

- In 2018, Northbrook took the following actions:
  - Banned the possession, sale and manufacture of bump stocks
  - Prohibited the concealed carry of firearms in businesses where alcohol is sold and can be consumed on the property

## Can the Village pass a similar ordinance?

- Possibly- Further legal analysis would be required
  - The Federal Government has passed rules banning bump stocks (subject to resolution of a lawsuit) and the State has introduced legislation to ban them
- In 2014 and again in 2018, the Liquor Control Commissioner (Village President) sent a letter to liquor license holders in Wilmette, notifying them of the State's concealed carry legislation, and included a sticker they could place on their front door to prohibit concealed carry
- Of the Village's 27 licensed establishments at which liquor is consumed onsite, 11 have posted the sticker

# What Other Programs Can the Village Pursue?

## Gun Registry

- There is no gun registry in the State of Illinois and the Village does not have the authority to create one
- However, when the Police Department has contact with an individual they can determine if they have a valid FOID and/or CCL

## Gun Safety Programs

- The Village does not have the authority to mandate gun safety courses
- If the Committee so desires, Village Staff can prepare gun safety public education materials

## Gun Buyback Program

- The Village could implement its own voluntary gun buyback program
- The Police Department has an existing firearm disposal program (there is no monetary reward for participation) that has proven effective and additional public education could be conducted to promote the program; the effectiveness of this program may mitigate the need to fund a buyback program