

ORDINANCE NUMBER NO.: 2019-056

*Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina,
Chapter 14, Offenses and Miscellaneous Provisions, to add
Article XII Extreme Risk Protection Orders*

BE IT ORDAINED by the Mayor and City Council of the City of Columbia, South Carolina this 17th day of September, 2019, that the 1998 Code of Ordinance of the City of Columbia, South Carolina, Chapter 14, Offenses and Miscellaneous Provisions, is amended to add Article XII Extreme Risk Protection Orders, to read as follows:

Article XII. Extreme Risk Protection Orders

Sec. 14-351. Findings and purpose.

For the purposes of this article, the city council does hereby find that:

1. The first duty of the government of the City of Columbia, South Carolina is to protect their people; and,
2. Gun violence and gun suicides present a public health and public safety crisis in the United States; and,
3. A February 2018 Politico/Morning Consult poll found that 76 percent of registered voters across America supported requiring that all gun owners store their guns in a safe storage unit; and,
4. Every year in the United States, on average, more than 250 children under 18 gain access to a gun and unintentionally shoot themselves or someone else, and nearly 600 more die by suicide performed with a gun; and,
5. Storing household guns locked, unloaded, or separate from the ammunition is associated with reductions in the risk of self-inflicted shootings among, and unintentional shootings by, children and teenagers; and,
6. An estimated 4.6 million American children and teens under 18 still live in homes with at least one gun that is loaded and unlocked despite the lifesaving effect that responsible gun storage can have; and,
7. Available evidence, as compiled by the RAND Corporation, indicates that child access prevention laws or safe storage laws reduce self-inflicted fatal or nonfatal firearm injuries among youth and reduce unintentional firearm injuries or unintentional firearm deaths among children; and,
8. Over 22,000 Americans every year, including over 1,000 children and teens, die by firearm suicide; and,
9. A meta-analysis of 14 different scientific studies concluded that access to a firearm triples the risk of death by suicide of anyone in the household; and,
10. Among commonly used methods of self-harm, firearms are by far the most lethal, with a fatality rate of approximately 85 percent, compared to less than five percent with other methods, such that while firearms are used in less than six percent of suicide attempts, over half of suicide deaths result from suicide attempts performed with firearms; and,
11. Extreme risk protection order laws have been shown to help prevent firearm suicides, as shown by the empirical evidence of reduced suicide rates under Connecticut's and Indiana's laws; and
12. Extreme risk protection order laws can also prevent gun crimes, as an analysis of mass shootings from 2009 to 2017 revealed that in 51 percent of incidents the shooter exhibited warning signs that he posed a danger to himself or others before the shooting; and
13. City Council recognizes that S.C. Code §23-31-510 restricts municipal regulation of transfer, ownership, possession, or transportation of firearms, ammunition, or components of firearms, and that S.C. Code §23-31-520 denies a municipality the right to confiscate a firearm unless incident to an arrest; and,

14. City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on transfer, ownership, possession, or transportation of firearms, ammunition, or components of firearms, unless and until governing law allows it to become effective; and

15. House Bill No. H. 3275, a proposed statewide extreme risk protection order law was introduced to the General Assembly of South Carolina in the 2019 Session; and

16. The City Council calls upon the South Carolina General Assembly to protect all South Carolinians by enacting a statewide extreme risk protection order; and

17. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The South Carolina Supreme Court has recognized likewise with regard to Article I, section 20 of the South Carolina Constitution; and

22. The City Council has authority to legislate regarding the use of firearms, as distinguished from their ownership, possession, transfer, or transportation, in order to protect members of the public.

23. This ordinance is hereby enacted, not to give law enforcement the authority to confiscate firearms, but to give the Court the authority to order parties to relinquish firearms, to either licensed gun dealers or law enforcement, if the Court, given the extreme risk circumstance, deems the relinquishment appropriate for the safety and well-being of the individual, family members, or the public.

Sec. 14-352. Scope.

The provisions of this article relate to extreme risk protection orders.

Sec. 14-353. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Court shall mean any court of competent jurisdiction.

Extreme risk protection order shall mean a court order prohibiting a person from having in the person's possession or control, purchasing or receiving or attempting to purchase or receive, a firearm, based upon a finding that the person presents a risk of suicide or of causing the death of, or serious bodily injury to, another person.

Family or household member shall mean spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by first-degree consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

Concealed Weapon Permits means a concealed carry permit issued under S.C. Code Section 23-31-210 et seq. (relating to licenses), or any similar license issued pursuant to the laws of another state.

Law enforcement officer means a City of Columbia police officer or other duly sworn and authorized officer who is empowered by law to conduct investigations of or to make an arrest for an offense enumerated in this code or an equivalent crime in another jurisdiction and an attorney authorized by law to prosecute or participate in the prosecution of such offense.

Serious bodily injury means a bodily injury that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Sec. 14-354. Preliminary matters.

(a). The following individuals shall have standing to file a petition requesting that the court issue an extreme risk protection order or renew an existing extreme risk protection order:

1. A law enforcement officer; or
 2. A family or household member of a person believed to present a risk of suicide or of causing the death of, or extreme bodily injury to, another person.
- (b) No filing fee may be charged for a petition under this article.
- (c) An extreme risk protection order is effective at the time of service.
- (d) A respondent under this article shall have the right to be represented by counsel. If the respondent cannot afford an attorney and meets the income guidelines applicable to representation by a public defender in a criminal case, the court shall appoint counsel upon the request of the respondent.

Sec. 14-355. Petition for extreme risk protection order.

- (a) A petition for an extreme risk protection order shall set forth facts that demonstrate the risk presented by the respondent's ability to purchase firearms or have possession or control of firearms, and shall describe the number, types and locations of any firearms known or believed to be owned by the respondent or known or believed to be in the respondent's possession or control.
- (b) A petition for an extreme risk protection order, at the time of the filing, shall also identify all known restraining orders, orders of protection, and pending lawsuits, complaints, petitions, or actions pending, active, or filed within one year prior to the petition for an extreme risk protection order involving the respondent, including, but not limited to, an order entered pursuant to S.C. Code Section 20-4-10 et seq. (relating to protection from abuse).
- (c) The court may consider all relevant evidence, but in no case shall an order be issued under this article relating to interim extreme risk protection order or relating to order after hearing absent a demonstration of risk due to behaviors or events occurring in the preceding 24 months.
- (d) In determining whether grounds exist to issue an extreme risk protection order, the court shall consider evidence of the following factors and the recency of any behaviors or events:
1. Suicide threats or attempts.
 2. Threats or acts of violence or attempted acts of violence.
 3. Domestic abuse, including any violation of a protection from abuse order, under S.C. Code 20-4-10 (relating to protection from abuse) or a similar law in another state.
 4. Cruelty to animals under S.C. Code Section 47-1-40 (relating to cruelty to animals) or a similar law in another state.
 5. Abuse of controlled substances or alcohol, or any criminal offense that involves controlled substances or alcohol.
 6. Unlawful or reckless use, display or brandishing of a firearm.
 7. Recent acquisition or attempted acquisition of a firearm.
 8. The possession, use or control of a firearm as a part of the respondent's employment.
 9. Any additional information the court finds to be reliable, including a statement by the respondent.
 10. An order by a court of competent jurisdiction has been issued pursuant to S.C. Code Sec. 44-22-100, et seq.

Sec. 14-356. Interim extreme risk protection order.

- (a) The court reviewing a petition shall issue an interim extreme risk protection order if it finds, by a preponderance of the evidence, that:
1. The respondent presents a risk of suicide or of causing the death of, or serious bodily injury to, another person; and
 2. The risk is imminent and other circumstances that would make it safe to proceed by ordering a hearing under this article relating to hearing on petition without issuing an interim extreme risk protection order do not exist.
- (b) An interim extreme risk protection order shall include:

1. The date and time the order was issued.
 2. Instructions for relinquishment of any firearm or firearms license that the respondent owns or that is in the respondent's possession or control.
 3. Notification of the penalties for violating the order.
 4. If the order was issued by a court and a hearing is scheduled under this article the order shall include:
 - a. Notice of the time, date and location of the hearing;
 - b. Notice of the right to request a continuance, and instructions on requesting a continuance or waiving the hearing;
 - c. Notice of the fact that, at the hearing, or if the hearing is waived, the court may extend the order for up to one year; and
 - d. Notice of the right to an attorney under this article (relating to preliminary matters).
- (c) An interim extreme risk protection order issued by a court shall be in effect until following a hearing it is either vacated or terminated.
- (d) If the court orders an interim extreme risk protection order under this article, the court shall schedule a hearing on the petition to be held no more than 10 days from the date of the order.
- (e) The respondent may request a continuance on a hearing scheduled to take place after the issuance of an interim order, which the court shall grant. No hearing shall be continued except with the consent of the respondent.

Sec. 14-357. Hearing on petition.

- (a) Upon reviewing a petition filed under this article (relating to petition for extreme risk protection order), the court may issue an order for a hearing on the petition, which shall be scheduled to be held no more than 10 days from the date of the petition.
- (b) If the hearing is scheduled to take place fewer than three business days after service of the order, the court shall grant a continuance until at least three business days after service, if requested by the respondent. The court shall notify the respondent of the respondent's right to a continuance under this article.
- (c) If the respondent waives the right to be present at a hearing or fails to appear for a hearing on a petition scheduled under this article, the court may proceed with the hearing and may issue an extreme risk protection order in the respondent's absence.

Sec. 14-358. Notice to law enforcement.

- (a) The court issuing an extreme risk protection order, an order for a hearing, or an order renewing, vacating or terminating an extreme risk protection order shall cause a copy of the order to be delivered to the local law enforcement agency and the South Carolina Law Enforcement Division.
- (b) Upon receipt of an extreme risk protection order or an order renewing, vacating or terminating an extreme risk protection order, the City of Columbia Police Department shall advise the South Carolina Law Enforcement Division and request or cause the South Carolina Law Enforcement Division to enter the order into the appropriate database so that notice of the order is provided through the South Carolina Instant Check System and the Federal Bureau of Investigation National Instant Criminal Background Check System.

Sec. 14-359. Service.

- (a) Service of an extreme risk protection order or an order for a hearing shall be made in person by a law enforcement officer, as directed by the court issuing the order. At the time of service, the law enforcement officer shall provide the respondent with a copy of the petition.
- (b) Immediately upon completion of service of an extreme risk protection order, the law enforcement officer completing service shall make a return of service to the court and shall provide a copy of the return of service to the petitioner.

Sec. 14-360. Order after hearing.

(a) The court shall issue an extreme risk protection order after conducting a hearing ordered under this article (relating to interim extreme risk protection order) or (relating to hearing on petition), or after the respondent waives the right to a hearing under this article, if the court finds by clear and convincing evidence that the respondent presents a risk of suicide or of causing the death of, or serious bodily injury to, another person.

(b) An extreme risk protection order issued after a hearing shall be made effective for no less than three months nor more than one year.

(c) The order shall include:

1. The date and time the order was issued.
2. The time frame and manner in which the respondent may request a termination hearing.
3. Instructions for relinquishment of any firearm that the respondent owns or that is in the respondent's possession or control, and any firearms license that is issued to the respondent.
4. Notification of the penalties for violating the order.

Sec. 14-361. Termination of hearing.

(a) A respondent subject to an extreme risk protection order may submit one written request at any time during the effective period of the order for a hearing to determine whether the order should be terminated.

(b) Upon receipt of a request for a termination hearing, the court shall set a date for the hearing and shall provide notice of the hearing to the petitioner, the City of Columbia Police Department or other appropriate local law enforcement agency and the South Carolina Law Enforcement Division.

(c) At a termination hearing, the respondent seeking termination of the order shall have the burden of proving, by clear and convincing evidence, that the respondent does not present a risk of suicide or of causing the death of, or serious bodily injury to, another person.

Sec. 14-362. Renewal of order.

(a) A petition to renew an extreme risk protection order shall set forth facts that support a renewal of the order. The court may deny the petition based on the information set forth in the petition or may schedule a hearing. The court shall provide notice of the hearing to the petitioner, the respondent, the local law enforcement agency and the South Carolina Law Enforcement Division.

(b) If the court finds by clear and convincing evidence, based on factors set forth under this section (relating to petition for extreme risk protection order), that the respondent continues to present a risk of suicide or of causing the death of, or serious bodily injury to, another person, the court may renew the extreme risk protection order for a duration of no fewer than three months and no more than one year from the date of the order.

(c) The following limitations shall apply:

1. A petition under this article must be filed at least 60 days prior to the expiration of the order.
2. A renewal hearing shall take place no later than 30 days prior to the expiration date set in an existing order.
3. No extreme risk protection order may be renewed more than twice under this article.

Sec. 14-363. Relinquishment of firearms.

(a) An extreme risk protection order issued under this article (relating to interim extreme risk protection order) or (relating to order after hearing) shall require the relinquishment of all firearms owned by the respondent or in the respondent's possession or control within 24 hours following service of the order, except for cause shown, in which case the court issuing the order shall specify the time for relinquishment of any or all of the respondent's firearms and notify the subject of the order that they can relinquish the firearms to a licensed gun dealer that is willing to take custody of the firearms or to local law enforcement.

(b) A law enforcement officer serving an extreme risk protection order shall request that all firearms and any firearms license in the respondent's possession or control be immediately relinquished into the custody of the law enforcement officer. A law enforcement officer taking custody of a firearm or firearms license under this article shall transfer the firearm or firearms license to the Columbia Police Department (CPD) Property and Evidence Facility for safekeeping.

(c) A respondent shall, within the time frame specified in the order, relinquish to a licensed gun dealer willing to take custody of the firearm or license or to a law enforcement officer any firearm or license remaining in the respondent's possession or control after the time of service.

(d) A licensed gun dealer or law enforcement officer taking custody of a firearm or license from a respondent shall provide the respondent with a copy of a signed and dated receipt. The receipt shall include a detailed description indicating the serial number and condition of each firearm and notification that firearms will be deemed abandoned and may then be disposed of in accordance with State law. The licensed gun dealer or law enforcement officer issuing the receipt shall file the original with the court and if gun dealer, provide a copy to the appropriate local law enforcement agency.

(e) A firearms dealer accepting custody of a firearm under this article shall provide the respondent and local law enforcement agency with an affidavit as specified in subsection (g):

(g) The affidavit shall include the following:

1. The caption of the case in which the extreme risk protection order was issued.
2. The name, address, date of birth and Social Security number of the respondent.
3. A list of all firearms relinquished to the dealer and a detailed description of each firearm, including its condition and, if applicable, the manufacturer, model and serial number.
4. The name and license number of the dealer and the address of the licensed premises.
5. An acknowledgment that the dealer will not return a firearm to the respondent while the respondent is subject to an extreme risk protection order.
6. An acknowledgment that the firearm, if sold or transferred, will be sold or transferred in compliance with State law and that no firearm will be returned to a respondent or any third party until the dealer has independently confirmed that the person requesting return of the firearm is legally eligible to possess firearms under Federal and State law.

(h) In addition, the licensed gun dealer or appropriate law enforcement agency shall be liable to the lawful owner of said relinquished firearm for any loss, damage or substantial decrease in value of said firearm that is a direct result of a lack of reasonable care by the licensed gun dealer or appropriate law enforcement agency.

Sec. 14-364. Return of firearms.

(a) Subject to this article if, following a hearing, a court vacates an interim extreme risk protection order, the court shall order the immediate return of all relinquished firearms and licenses to the respondent. Upon termination or expiration of an extreme risk protection order, the respondent may request that CPD return the firearm or license that had been relinquished. Subject to this article, the dealer shall return the firearm or license to the respondent as soon as possible but not later than the end of the next business day after the day on which the respondent makes the request.

(b) A third party may request the return of a relinquished firearm at any time by providing proof of ownership and a sworn affidavit. Proof of ownership may consist of a statement in the affidavit. The affidavit shall affirm the following:

1. The third party will not intentionally or knowingly return a firearm to a person subject to an extreme risk protection order nor intentionally or knowingly allow a person subject to an extreme risk protection order to have access to a firearm.
2. The third party understands that intentionally or knowingly allowing a person subject to an extreme risk protection order to have access to a firearm constitutes a violation of this article, and shall be guilty of a misdemeanor and punished, upon conviction, in accordance with section 1-5 of this code.

3. If the third party is a member of the household of a person who is subject to an extreme risk protection order, that any firearm returned to the third party will be stored either in a gun safe to which the person does not have and will not be permitted to access, or in a location outside the home to which the person does not have access.

(c) Prior to returning a firearm to any person, the law enforcement agency or firearms dealer in possession of the firearm shall independently confirm that the person requesting return of the firearm is legally eligible to possess firearms under Federal and State law. The law enforcement agency or dealer receiving a request under this article shall conduct the required background check as soon as possible, but not later than the end of the next business day after the day on which the respondent makes the request.

Sec. 14-365. Abuse of process.

(a) A person who files a petition for an extreme risk protection order knowing the information in the petition to be materially false, or with the intent to harass another, constitutes a violation of this article, and shall be guilty of a misdemeanor and punished, upon conviction, in accordance with section 1-5 of this code.

(b) A person determined to have violated this article or determined by the court to have acted in bad faith for the purpose of harassing the respondent shall be ordered to pay full restitution to the respondent. For purposes of this article, restitution shall include, but not be limited to, reasonable attorney fees, costs of storage and other expenses incurred by the respondent as a result of the false reporting or false swearing.

Sec. 14-366. Mental health and chemical dependency services.

During any proceeding under this article, the court shall consider whether mental health or chemical dependency or domestic abuse treatment is necessary, and may order the petitioner to file the appropriate action in a court of competent jurisdiction for an order for a mental health or chemical dependency evaluation or for domestic abuse treatment.

Sec. 14-367. Penalties for violations.

(a) A person who is the subject of an extreme risk protection order issued pursuant to this article (relating to interim extreme risk protection order) or (relating to order after hearing), if he intentionally or knowingly fails to relinquish a firearm or firearms license as required by the order, constitutes a violation of this article, and shall be guilty of a misdemeanor and punished, upon conviction, in accordance with section 1-5 of this code.

(b) A person who intentionally or knowingly accepts possession of a firearm from a person he knows is the subject of an extreme risk protection order issued pursuant to this article (relating to interim extreme risk protection order) or this article (relating to order after hearing) constitutes a violation of this article, and shall be guilty of a misdemeanor and punished, upon conviction, in accordance with section 1-5 of this code.

1. It shall be an affirmative defense to any prosecution under this article that the person accepting possession of a firearm in violation of this article:

- a. Notified the law enforcement officer as soon as practicable that he has taken possession; and
- b. Relinquished possession of any firearm in violation of this article as directed by the law enforcement officer.

(c) A person who has accepted possession of a firearm or firearms license pursuant to this article, if he intentionally or knowingly returns a firearm or firearms license to a respondent or intentionally or knowingly allows a respondent to have access to the firearm or firearms license prior to the expiration of an extreme risk protection order or the issuance of a court order that vacates or terminates an extreme risk protection order under this article, constitutes a violation of this article, and shall be guilty of a misdemeanor and punished, upon conviction, in accordance with section 1-5 of this code.

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Sec. 14-368. Interpretation consistent with state law.

This article shall be interpreted to be consistent with any legislation enacted by the South Carolina General Assembly addressing the same subject matter.

Sec. 14-369. Severability.

The provisions of this section are severable, and if any part of this section should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of the section and the remainder of the section shall remain in full force and effect.

Requested by:

Mayor Benjamin




Mayor

Approved by:




City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 8/20/2019

Final Reading: 9/17/2019