

1 **CITY OF SEATTLE**

2 **ORDINANCE _____**

3 **COUNCIL BILL _____**

4 ..title

5 AN ORDINANCE relating to the safe storage of and access to firearms; adding a new Chapter
6 10.79 to the Seattle Municipal Code.

7 ..body

8 WHEREAS, gun violence is a public health and public safety crisis in the United States; and

9 WHEREAS, in 2016, the Centers for Disease Control and Prevention reported that the total

10 number of firearm deaths for all ages was 38,658, and the total number firearm deaths for

11 persons under 20 years old was 3,155;¹ and

12 WHEREAS, in 2015, 714 Washington State residents died from a firearm injury, including 39

13 children under the age of 18;² and

14 WHEREAS, 78 percent of firearm deaths in Washington State between 2010 and 2017 were due

15 to suicide;³ and

16 WHEREAS, in 2015, a child or teen under the age of 17 was killed by gunfire in Washington

17 State every nine days, on average;⁴ and

18 WHEREAS, crime statistics show guns play a significant role in many crimes against persons in

19 Seattle, with crime reports indicating the involvement of a firearm in 66 percent of

20 homicides, 17 percent of robbery incidents, and nine percent of aggravated assaults from

21 2015 through 2017; and

¹ www.cdc.gov/injury/wisqars

² <https://www.kingcounty.gov/depts/health/violence-injury-prevention/violence-prevention/gun-violence/LOK-IT-UP/~media/depts/health/violence-injury-prevention/documents/firearm-facts.ashx>

³ <http://www.spokesman.com/stories/2018/mar/25/in-washington-78-percent-of-gun-deaths-are-suicide/#/0>

⁴ <https://www.kingcounty.gov/depts/health/violence-injury-prevention/violence-prevention/gun-violence/LOK-IT-UP/firearm-facts.aspx>

1 WHEREAS, the Seattle Police Department has taken 3,153 firearms into custody between 2015
2 and 2017 through the course of its regular duties; and

3 WHEREAS, according to the federal Bureau of Justice Statistics, an average of at least 232,000
4 guns were stolen per year from 2005 to 2010;⁵ and

5 WHEREAS, in the City of Seattle, guns are stolen from homes and cars, including at least 250
6 guns that were reported stolen in the City of Seattle in 2017; and

7 WHEREAS, an estimated 150,000 adults in King County reported keeping a firearm unlocked in
8 their homes in 2015;⁶ and

9 WHEREAS, Seattle and King County have long taken a public health approach to reducing gun
10 violence, including the “LOK-IT-UP” initiative, which informs the public about the
11 importance of safe storage and partners with firearm retailers to increase availability of
12 safe storage devices to their customers; and

13 WHEREAS, the Harborview Injury Prevention and Research Center and Seattle Children’s
14 Hospital have joined with Public Health—Seattle & King County and other community
15 partners to organize safe firearm storage giveaway events in Seattle and around
16 Washington State, and through such events have already given away 4,067 lock boxes to
17 the public, and anticipate continuing to organize such events; and

18 WHEREAS, across the nation, youth are organizing and leading the call for change to our gun
19 laws, including organizing the National School Walkout on March 14, 2018, and the
20 March for Our Lives on March 24, 2018, both of which were supported by The City of
21 Seattle and its residents; and

⁵ <https://www.bjs.gov/index.cfm?iid=4534&ty=pbdetail>

⁶ <https://www.kingcounty.gov/depts/health/violence-injury-prevention/violence-prevention/gun-violence/LOK-IT-UP/firearm-facts.aspx>

1 WHEREAS, a February 2018 *Politico*/Morning Consult poll found that 76 percent of registered
2 voters across America supported requiring that all gun owners store their guns in a safe
3 storage unit;⁷ and

4 WHEREAS, a study conducted at the Harborview Injury Prevention and Research Center found
5 that safe storage of guns decreased the risk of accidental firearm injuries and suicides to
6 youth by 73 percent; and

7 WHEREAS, available evidence, as compiled by the RAND Corporation, indicates that child
8 access prevention laws or safe storage laws reduce self-inflicted fatal or nonfatal firearm
9 injuries among youth and reduce unintentional firearm injuries or unintentional firearm
10 deaths among children;⁸ and

11 WHEREAS, requiring guns to be safely locked when not carried or in the control of a person in
12 no way violates an individual's Second Amendment rights or Washington State law; and

13 WHEREAS, this ordinance does not impose criminal penalties on any person for any act or
14 omission, and is not intended to regulate the registration, licensing, possession, purchase,
15 sale, acquisition, transfer, discharge, or transportation of firearms, or any other element
16 relating to firearms or parts thereof, including ammunition and reloader components; and

17 WHEREAS, a requirement of safe storage for firearms by The City of Seattle is an evidence-
18 based approach to addressing the public health and public safety crisis of gun violence
19 with a three-pronged impact of reducing stolen guns getting into the hands of criminals,
20 reducing accidental shootings by children, and reducing the risk of suicide; NOW,
21 THEREFORE,

⁷ <https://www.politico.com/story/2018/02/28/gun-control-polling-parkland-430099>

⁸ https://www.rand.org/pubs/research_reports/RR2088.html

1 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

2 Section 1. A new Chapter 10.79 is added to the Seattle Municipal Code as follows:

3 **Chapter 10.79 STORAGE OF FIREARMS**

4 **10.79.010 Definitions**

5 For purposes of this Chapter 10.79, the following definitions apply:

6 A. “At-risk person” means any person who has made statements or exhibited behavior
7 that indicates to a reasonable person there is a likelihood that the person is at risk of attempting
8 suicide or causing physical harm to oneself or others.

9 B. “Firearm” means a weapon or device from which a projectile or projectiles may be
10 fired by an explosive such as gunpowder, including but not limited to any machine gun, pistol,
11 rifle, short-barreled rifle, short-barreled shotgun, or shotgun as those terms are defined in RCW
12 9.41.010. “Firearm” does not include a flare gun or other pyrotechnic visual distress signaling
13 device, or a powder-actuated tool or other device designed solely to be used for construction
14 purposes.

15 C. “Lawfully authorized user” means any person who:

- 16 1. Is not in the unlawful possession of a firearm under RCW 9.41.040; and
17 2. Is not prohibited from possessing a firearm under any other state or federal law;
18 and
19 3. Has the express permission of the owner to possess and use the firearm.

20 D. “Locked container” includes any storage device approved of or meeting specifications
21 established by the Chief of Police by rule promulgated in accordance with Chapter 3.02.

22 E. “Minor” means a person under 18 years of age who is not authorized under RCW
23 9.41.042 to possess a firearm.

1 F. “Prohibited person” means any person who is not a lawfully authorized user.

2 **10.79.020 Safe storage of firearms**

3 It shall be a civil infraction for any person to store or keep any firearm in any premises unless
4 such weapon is secured in a locked container, properly engaged so as to render such weapon
5 inaccessible or unusable to any person other than the owner or other lawfully authorized user.

6 Notwithstanding the foregoing, for purposes of this Section 10.79.020, such weapon shall be
7 deemed lawfully stored or lawfully kept if carried by or under the control of the owner or other
8 lawfully authorized user.

9 **10.79.030 Unauthorized access prevention**

10 It shall be a civil infraction if any person knows or reasonably should know that a minor, an at-
11 risk person, or a prohibited person is likely to gain access to a firearm belonging to or under the
12 control of that person, and a minor, an at-risk person, or a prohibited person obtains the firearm.

13 **10.79.040 Penalties**

14 A. A violation of Section 10.79.020 shall constitute a civil infraction subject to a civil
15 fine or forfeiture not to exceed \$500. For good cause shown, the court may provide for the
16 performance of community restitution, in lieu of the fine or forfeiture imposed under this
17 subsection 10.79.040.A.

18 B. A violation of Section 10.79.020 or 10.79.030 shall constitute a civil infraction subject
19 to a civil fine or forfeiture in an amount up to \$1,000 if a prohibited person, an at-risk person, or
20 a minor obtains a firearm as a result of the violation. For good cause shown, the court may
21 provide for the performance of community restitution, in lieu of the fine or forfeiture imposed
22 under this subsection 10.79.040.B.

1 C. A violation of Section 10.79.020 or 10.79.030 shall constitute a civil infraction subject
2 to a civil fine or forfeiture in an amount up to \$10,000 if a prohibited person, an at-risk person, or
3 a minor obtains a firearm and uses it to injure or cause the death of oneself or another, or uses the
4 firearm in connection with a crime.

5 D. A violation of Section 10.79.020 or 10.79.030 shall be prima facie evidence of
6 negligence per se in any civil proceeding if a prohibited person, an at-risk person, or a minor
7 obtains a firearm, and causes personal injury to or the death of oneself or another, or uses the
8 firearm in connection with a crime.

9 E. Nothing in this Chapter 10.79 shall be construed to alter any requirements, including,
10 but not limited to, any warrant requirements applicable under the Fourth Amendment to the
11 United States Constitution or Article I, Section 7 of the Washington State Constitution.

12 F. Sections 10.79.020 and 10.79.030 shall not apply to “antique firearms,” as defined in
13 RCW 9.41.010.

14 **10.79.050 Notice of infraction—Issuance**

15 A. A peace officer has the authority to issue a notice of infraction:

- 16 1. When an infraction under this Chapter 10.79 is committed in the officer's presence;
17 2. If an officer has reasonable cause to believe that a person has committed an
18 infraction under this Chapter 10.79.

19 B. A court may issue a notice of infraction upon receipt of a written statement of the
20 officer that there is reasonable cause to believe that an infraction was committed.

21 **10.79.060 Response to notice of infraction—Contesting determination—Hearing—Failure**
22 **to appear**

1 A. Any person who receives a notice of infraction shall respond to such notice as
2 provided in this section within 15 days of the date of the notice.

3 B. If the person determined to have committed the infraction does not contest the
4 determination the person shall respond by completing the appropriate portion of the notice of
5 infraction and submitting it, either by mail or in person, to the Seattle Municipal Court. A check
6 or money order in the amount of the penalty prescribed for the infraction must be submitted with
7 the response. When a response that does not contest the determination is received, an appropriate
8 order shall be entered in the court's records.

9 C. If the person determined to have committed the infraction wishes to contest the
10 determination the person shall respond by completing the portion of the notice of infraction
11 requesting a hearing and submitting it, either by mail or in person, to the Seattle Municipal
12 Court. The court shall notify the person in writing of the time, place, and date of the hearing, and
13 that date shall not be sooner than seven days from the date of the notice, except by agreement.

14 D. If the person determined to have committed the infraction does not contest the
15 determination but wishes to explain mitigating circumstances surrounding the infraction, the
16 person shall respond by completing the portion of the notice of infraction requesting a hearing
17 for that purpose and submitting it, either by mail or in person, to the Seattle Municipal Court.
18 The court shall notify the person in writing of the time, place, and date of the hearing.

19 E. In any hearing conducted pursuant to subsections 10.79.060.C or 10.79.060.D, the
20 court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of
21 its order, for up to one year and impose conditions upon the defendant the court deems
22 appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate
23 for administrative processing. If at the end of the deferral period the defendant has met all

1 conditions and has not been determined to have committed another infraction under this Chapter
2 10.79, the court may dismiss the infraction. A person may not receive more than one deferral
3 within a seven-year period.

4 F. If any person issued a notice of infraction:

5 1. Fails to respond to the notice of infraction as provided in subsection 10.79.060.B;

6 or

7 2. Fails to appear at a hearing requested pursuant to subsections 10.79.060.C or
8 10.79.060.D;

9 the court shall enter an appropriate order assessing the monetary penalty prescribed for
10 the infraction and any other penalty authorized by this Chapter 10.79.

11 **10.79.070 Hearing—Contesting determination that infraction committed—Appeal**

12 A. A hearing held for the purpose of contesting the determination that an infraction has
13 been committed shall be without a jury.

14 B. The court may consider the notice of infraction and any other written report made
15 under oath submitted by the officer who issued the notice or whose written statement was the
16 basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The
17 person named in the notice may subpoena witnesses, including the officer, and has the right to
18 present evidence and examine witnesses present in court.

19 C. The burden of proof is upon the City to establish the commission of the infraction
20 by a preponderance of the evidence.

21 D. After consideration of the evidence and argument, the court shall determine whether
22 the infraction was committed. Where it has not been established that the infraction was
23 committed, an order dismissing the notice shall be entered in the court's records. Where it has

1 been established that the infraction was committed, an appropriate order shall be entered in the
2 court's records.

3 E. An appeal from the court's determination or order shall be to the Superior Court.
4 The decision of the Superior Court is subject only to discretionary review pursuant to Rule 2.3 of
5 the Rules of Appellate Procedure.

6 Section 2. The Chief of Police shall promulgate the rules required under subsection
7 10.79.010.D within 30 days of the effective date of this ordinance.

8 Section 3. The City Council requests that, within 90 days of the effective date of this
9 ordinance, the Chief of Police devise a plan to conduct a survey to determine the level of
10 compliance with Sections 10.79.020 and 10.79.030, and that the survey be completed within one
11 year from the effective date of this ordinance.

12 The City Council further requests that the City Auditor within 12 months of the effective
13 date of this ordinance, and annually for the next five years thereafter, assess the impacts of the
14 provisions of this ordinance on gun injuries and deaths in Seattle, including the numbers of
15 overall deaths, youth deaths, overall injuries, youth injuries, overall suicides, and youth suicides.

16 The City Auditor and the Chief of Police shall provide a report of each assessment and
17 survey to the City Council's Gender Equity, Safe Communities, New Americans and Education
18 Committee or its successor within 60 days of each's completion.

19 Section 4. The provisions of this ordinance are declared to be separate and severable. The
20 invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance,
21 or the invalidity of its application to any person or circumstance, does not affect the validity of
22 the remainder of this ordinance or the validity of its application to other persons or
23 circumstances.

1 Section 5. Section 1 of this ordinance shall take effect 180 days after the effective date of
2 this ordinance.

3 Section 6. This ordinance shall take effect and be in force 30 days after its approval by
4 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
5 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

6 Passed by the City Council the _____ day of _____, 2018,
7 and signed by me in open session in authentication of its passage this _____ day of
8 _____, 2018.

9 _____
10 President _____ of the City Council

11 Approved by me this _____ day of _____, 2018.

12 _____
13 Jenny A. Durkan, Mayor

14 Filed by me this _____ day of _____, 2018.

15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to the reporting of lost or stolen firearms; increasing the maximum penalty for failure to report a lost or stolen firearm; adding legal presumptions and defenses regarding compliance or failure to comply with Section 10.78.010 of the Seattle Municipal Code; amending Section 10.78.010 of the Seattle Municipal Code; and adding new Sections 10.78.020, 10.78.030, and 10.78.040 to the Seattle Municipal Code.

..body

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 10.78.010 of the Seattle Municipal Code, enacted by Ordinance

124834, is amended as follows:

10.78.010 Reporting theft or loss of firearm required

A. If a firearm is lost or stolen, the person who owned or was in possession of the firearm shall report the theft or loss to the Seattle Police Department. The report shall be made within 24 hours after the theft or loss is first discovered, and shall include to the extent known:

- 1. The firearm's caliber, make, model, manufacturer, and serial number;
- 2. Any other distinguishing number or identification mark on the firearm; and
- 3. The circumstances of the loss or theft, including the date, place, and manner.

B. On receipt of a report of a stolen or lost firearm under this section, the Seattle Police Department shall enter into the National Crime Information Center Database the following information, to the extent known:

- 1. The firearm's caliber, make, model, manufacturer, and serial number; and
- 2. Any other distinguishing number or identification mark on the firearm.

1 C. The failure to comply with subsection 10.78.010.A shall constitute a civil infraction
2 subject to a civil fine or forfeiture (~~in accordance with Section 12A.02.080~~) not to exceed
3 \$1,000.

4 D. If a lost or stolen firearm is used by a third party to injure or kill another:

5 1. The failure to comply with subsection 10.78.010.A is prima facie evidence of
6 negligence per se; and

7 2. The proper use of measures to safely store or keep a firearm by securing it in a
8 locked container, properly engaged so as to render such weapon inaccessible or unusable to any
9 person other than the owner or other lawfully authorized user, when coupled with timely
10 compliance with subsection 10.78.010.A, is an affirmative defense to a claim of negligence. For
11 purposes of this subsection 10.78.010.D.2, “lawfully authorized user” means any person who:

12 a. Is not in the unlawful possession of a firearm under RCW 9.41.040; and

13 b. Is not prohibited from possessing a firearm under any other state or
14 federal law; and

15 c. Has the express permission of the owner to possess and use the firearm.

16 Section 2. A new Section 10.78.020 is added to the Seattle Municipal Code as follows:

17 **10.78.020 Notice of infraction—Issuance**

18 A. A peace officer has the authority to issue a notice of infraction:

19 1. When an infraction under this Chapter 10.78 is committed in the officer's
20 presence;

21 2. If an officer has reasonable cause to believe that a person has committed an
22 infraction under this Chapter 10.78.

1 B. A court may issue a notice of infraction upon receipt of a written statement of the
2 officer that there is reasonable cause to believe that an infraction was committed.

3 Section 3. A new Section 10.78.030 is added to the Seattle Municipal Code as follows:

4 **10.78.030 Response to notice of infraction—Contesting determination—Hearing—Failure**
5 **to appear**

6 A. Any person who receives a notice of infraction shall respond to such notice as
7 provided in this section within 15 days of the date of the notice.

8 B. If the person determined to have committed the infraction does not contest the
9 determination the person shall respond by completing the appropriate portion of the notice of
10 infraction and submitting it, either by mail or in person, to the Seattle Municipal Court. A check
11 or money order in the amount of the penalty prescribed for the infraction must be submitted with
12 the response. When a response that does not contest the determination is received, an appropriate
13 order shall be entered in the court's records.

14 C. If the person determined to have committed the infraction wishes to contest the
15 determination the person shall respond by completing the portion of the notice of infraction
16 requesting a hearing and submitting it, either by mail or in person, to the Seattle Municipal
17 Court. The court shall notify the person in writing of the time, place, and date of the hearing, and
18 that date shall not be sooner than seven days from the date of the notice, except by agreement.

19 D. If the person determined to have committed the infraction does not contest the
20 determination but wishes to explain mitigating circumstances surrounding the infraction, the
21 person shall respond by completing the portion of the notice of infraction requesting a hearing
22 for that purpose and submitting it, either by mail or in person, to the Seattle Municipal Court.
23 The court shall notify the person in writing of the time, place, and date of the hearing.

1 E. In any hearing conducted pursuant to subsections 10.78.030.C or 10.78.030.D, the
2 court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of
3 its order for up to one year and impose conditions upon the defendant the court deems
4 appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate
5 for administrative processing. If at the end of the deferral period the defendant has met all
6 conditions and has not been determined to have committed another infraction under this Chapter
7 10.78, the court may dismiss the infraction. A person may not receive more than one deferral
8 within a seven-year period.

9 F. If any person issued a notice of infraction:

10 1. Fails to respond to the notice of infraction as provided in subsection 10.78.030.B;
11 or

12 2. Fails to appear at a hearing requested pursuant to subsections 10.78.030.C or
13 10.78.030.D;

14 the court shall enter an appropriate order assessing the monetary penalty prescribed for
15 the infraction and any other penalty authorized by this Chapter 10.78.

16 Section 4. A new Section 10.78.040 is added to the Seattle Municipal Code as follows:

17 **10.78.040 Hearing—Contesting determination that infraction committed—Appeal**

18 A. A hearing held for the purpose of contesting the determination that an infraction has
19 been committed shall be without a jury.

20 B. The court may consider the notice of infraction and any other written report made
21 under oath submitted by the officer who issued the notice or whose written statement was the
22 basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The

1 person named in the notice may subpoena witnesses, including the officer, and has the right to
2 present evidence and examine witnesses present in court.

3 C. The burden of proof is upon the City to establish the commission of the infraction
4 by a preponderance of the evidence.

5 D. After consideration of the evidence and argument, the court shall determine whether
6 the infraction was committed. Where it has not been established that the infraction was
7 committed, an order dismissing the notice shall be entered in the court's records. Where it has
8 been established that the infraction was committed, an appropriate order shall be entered in the
9 court's records.

10 E. An appeal from the court's determination or order shall be to the Superior Court.
11 The decision of the Superior Court is subject only to discretionary review pursuant to Rule 2.3 of
12 the Rules of Appellate Procedure.

1 Section 5. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2018,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2018.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2018.

10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this _____ day of _____, 2018.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)