CITY OF BALTIMORE ORDINANCE _____ Council Bill 17-0056

Introduced by: The Council President

At the request of: The Administration (Law Department)

Introduced and read first time: April 24, 2017

Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: May 8, 2017

AN ORDINANCE CONCERNING

Electronic Control Devices – Authorizing Possession in Most Circumstances

FOR the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

- By repealing and reordaining, with amendments
- 10 Article 19 Police Ordinances
- 11 Section(s) 59-28
- 12 Baltimore City Code
- 13 (Edition 2000)

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14 Recitals

WHEREAS, the Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms.

WHEREAS, in 2008, the Supreme Court of the United States decided in the case of *District of Columbia v. Heller* that the Second Amendment to the United States Constitution protects an individual's right to possess and use a firearm for traditionally lawful purposes, such as self-defense in the home, and that the Second Amendment encompasses weapons that are typically used by law-abiding citizens for lawful purposes.

WHEREAS, in 2010, the Supreme Court of the United States decided in the case of *McDonald* v. City of Chicago that the Second Amendment's right to possess a firearm for self-defense in the home also applies to the states.

EXPLANATION: CAPITALS indicate matter added to existing law.

[Brackets] indicate matter deleted from existing law.

Underlining indicates matter added to the bill by amendment.

Strike out indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

1 2 3 4	WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam opinion in the case of <i>Caetano v. Massachusetts</i> that a state government's categorical ban on the possession and use of electronic control devices had not been sufficiently justified under <i>Heller</i> , and the concurring opinion stated that such a ban clearly violates the Second Amendment.
5 6 7 8	WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons such as electronic control devices are preferable to more lethal self-defense weapons, such as handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control devices for use in self-defense, with reasonable restrictions.
9 10 11	WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an ordinance that provides for reasonable regulation of the sale, possession, and use of electronic control devices, in addition to those regulations already established in Maryland State law.
12 13 14 15	WHEREAS, in response to the Supreme Court's rulings affecting States and their jurisdictions, it is necessary to promptly pass an ordinance that replaces the local ban on electronic control devices and provides for reasonable regulation of the sale, possession, and use of these devices, in addition to those regulations already established in State law.
16 17	SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE , That the Laws of Baltimore City read as follows:
18	Baltimore City Code
19	Article 19. Police Ordinances
20	Subtitle 59. Weapons
21	§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.
22	(A) DEFINITIONS.
23	(1) IN GENERAL.
24	IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.
25	(2) "ELECTRONIC CONTROL DEVICE".
26 27 28	"ELECTRONIC CONTROL DEVICE" MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON CAPABLE OF INJURING, IMMOBILIZING, OR INFLICTING PAIN ON AN INDIVIDUAL BY THE DISCHARGE OF ELECTRICAL CURRENT.
29	(3) "ADJUDICATED AS A MENTAL DEFECTIVE".
30 31 32 33	"ADJUDICATED AS A MENTAL DEFECTIVE" MEANS A DETERMINATION BY A COURT, BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY, THAT, AS A RESULT OF MARKED SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR DISEASE, A PERSON:
34	(I) IS A DANGER TO THEMSELVES OR TO OTHERS; OR

1 2	(II) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN AFFAIRS.
3	(4) "MENTAL DISORDER".
4 5	(I) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT RESULTS FROM A PSYCHIATRIC DISORDER.
6 7 8 9	(II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.
10	(5) "PROTECTIVE ORDER".
11 12 13	"Protective order" means a temporary or final protective order entered under the authority of Maryland Code, Family Law Article, $\S\S$ 4-505 and 4-506.
14	(B) [(a)] Possession or sale, etc., prohibited.
15 16 17 18	IN ADDITION TO ALL STATE LAW PROHIBITIONS AND PENALTIES ON THE SALES OF ELECTRONIC CONTROL DEVICES, INCLUDING NO SALES TO MINORS, NO SALES TO THOSE CONVICTED OF CERTAIN CRIMES, AND NO SALES WITHOUT BACKGROUND CHECKS, IT IS UNLAWFUL IN THE CITY:
19 20	(1) It shall be unlawful FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A:
21	(I) PUBLIC SCHOOL;
22	(II) STATE PUBLIC BUILDING; OR
23 24 25 26 27	(III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore]:
28 29 30	(2) IT SHALL BE UNLAWFUL FOR ANY PERSON TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY <u>OTHER</u> PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE <u>OTHER</u> PERSON HAS BEEN:
31	(I) ADJUDICATED AS A MENTAL DEFECTIVE; OR
32 33 34	(II) COMMITTED TO ANY MENTAL INSTITUTION-: [It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.]

1	(3) IT SHALL BE UNLAWFUL FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL
2	DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF
3	VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER-; AND
4	(4) IT SHALL BE UNLAWFUL FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO
5	POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE
6	ORDER.
7	(C) [(b)] Exceptions.
8	Nothing in this [subsection] SECTION shall be held to apply to any member of the
9	Baltimore City Police Department or any other law enforcement officer while in the
10	performance of his or her official duty.
11	(D) [(c)] Penalties.
12	Any violation of the provisions of this section shall be deemed to be a misdemeanor,
13	subject upon conviction to a fine of not more than \$500 \\$1,000 or to imprisonment for
14	not longer than 60 days 12 MONTHS or to both fine and imprisonment, in the discretion of
15	the Court.
16	SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance
17	are not law and may not be considered to have been enacted as a part of this or any prior
18	Ordinance.
19	SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is
20	enacted.

Certified as duly passed this	day of	, 20
		President, Baltimore City Council
Certified as duly delivered to Her	r Honor, the Mayor	r,
this day of	_, 20	
		Chief Clerk
Approved this day of	, 20	_
		Mayor, Baltimore City