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City Attorney

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ORDINANCE No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS KALB, GALLO, AND KAPLAN

ORDINANCE AMENDING CHAPTER 9.36 "WEAPONS" TO REQUIRE PRIVATELY MADE FIREARMS, COMMONLY REFERRED TO AS "GHOST GUNS," TO COMPLY WITH STATE LAW, PROHIBIT NONEXEMPT PERSONS FROM POSSESSING, SELLING, OFFERING FOR SALE, TRANSFERRING, PURCHASING, TRANSPORTING, RECEIVING OR MANUFACTURING AN UNFINISHED FIREARM FRAME OR RECEIVER THAT HAS NOT BEEN IMPRINTED WITH A SERIAL NUMBER AND PROHIBITING NONEXEMPT PERSONS FROM POSSESSING, MANUFACTURING OR ASSEMBLING A PRIVATELY MADE FIREARM THAT HAS NOT BEEN IMPRINTED WITH A SERIAL NUMBER

WHEREAS, the purpose of the ordinance is to promote the purposes as set forth below and in the accompanying agenda report; and

WHEREAS, Privately Manufactured Firearms, sometimes referred to as "ghost guns," are untraceable and unregulated firearms that are often assembled by unlicensed individuals using build-it-yourself kits; and

WHEREAS, the main precursor part of an assembled firearm is an unfinished "frame" or "receiver," which contains the firing mechanism, to which other parts are attached; unfinished frames and receivers are often referred to as "80%" receivers or frames, because they are manufactured below the percentage of completion that would qualify them as firearms under federal and state law; and

WHEREAS, sellers often package together an unfinished frame or receiver with all other parts needed to assemble a Privately Manufactured Firearm in a build-it-yourself kit, with the purpose of avoiding firearm regulations; and

WHEREAS, assembling the parts into a lethal Privately Manufactured Firearm can readily be done by untrained amateurs using common household tools; and

WHEREAS, Privately Manufactured Firearm precursor parts and kits are typically sold by unregulated sellers online, in retail stores, or at gun shows, without the protections that California and federal law apply to the manufacture, sale, and transfer of firearms, and, presently, with no requirements for background checks, waiting periods, sales records retention, age restrictions, or limits on numbers of purchases; and

WHEREAS, any person with the ability to pay – whether a domestic abuser, teenager, gun trafficker, or a person contemplating suicide – can purchase unfinished frames or receivers, from which many can easily build a working firearm; unfinished frames or receivers and

Privately Manufactured Firearm kits cost far less than firearms produced by licensed manufacturers; and

WHEREAS, unlike guns produced by licensed firearms manufacturers, a gun assembled using an unfinished frame or receiver does not have a unique serial number allowing it to be traced to the manufacturer, dealer, and purchaser – hence the term “ghost gun;” and

WHEREAS, California Penal Code § 29180 requires individuals who assemble firearms, including from unfinished frames and receivers and from polymer plastic used in three-dimensional (3-D) printers, to pass a background check, obtain a serial number for the completed firearm, and affix the serial number to the gun within 10 days of assembly; and

WHEREAS, beginning July 1, 2022, California Penal Code §§ 30395-30495 impose additional regulations, including requiring the sale of a firearm precursor part (i.e., an unfinished frame or receiver) by any person to be conducted or processed through a licensed firearms precursor part vendor; with specified exemptions, and extending the prohibition of certain persons from possessing firearms to the possession of firearm precursor parts; and

WHEREAS, the absence of a background check makes it possible for persons whom the law recognizes as too dangerous to be permitted to purchase or possess a firearm, to nonetheless be able to do so; and the absence of a serial number on Privately Manufactured Firearms inhibits the efforts of law enforcement to identify individuals who have used such guns in the commission of a crime, thereby further endangering public safety; and

WHEREAS, sales of Privately Manufactured Firearm precursor parts and kits present serious safety risks, not only for possible victims of gun violence, but also for those who purchase or otherwise possess Privately Manufactured Firearms because the precursor parts and kits are often able to skirt the critical consumer safety requirements that apply to new models of handguns sold by licensed dealers and manufacturers in California; and

WHEREAS, California’s Unsafe Handgun Act is designed to ensure that firearms sold in the state function properly and are equipped with lifesaving features that protect lawful users, however, Privately Manufactured Firearms assembled from precursor parts and kits typically fail to include essential safety features mandated by the Act; and

WHEREAS, a firearm assembled by an untrained amateur also may be of poor quality and unsafe, and purchasers of precursor parts and build kits typically avoid completing the firearms safety test that California requires of firearms purchasers; and

WHEREAS, the increased availability of Privately Manufactured Firearms poses enormous risks to public safety in Oakland and undermines law enforcement efforts to prevent gun violence because the number of Privately Manufactured Firearms recovered by law enforcement in Oakland, as well as in other cities in California, is rising rapidly; in Oakland, the percentage of firearms seized by local law enforcement that were Privately Manufactured Firearms jumped from 6.7% in 2019 to 16.5% in 2020, and as of March 2021, Privately Manufactured Firearms account for 21.7% of firearms confiscated this year; and

WHEREAS, Oakland’s experience with Privately Manufactured Firearms has paralleled

the experience of other cities in California; for example, the California Bureau of Firearms seized 512% more Privately Manufactured Firearms from persons identified through the Armed Prohibited Persons System database in 2019 than in 2018, and the federal Bureau of Alcohol, Tobacco, and Firearms (ATF) reported in 2019 that 30% of crime guns it recovered in California were Privately Manufactured Firearms; further, in January 2020, the ATF's Los Angeles Field Division reported that over 40% of its cases involved these weapons, and in February 2021, the Los Angeles City Attorney announced that law enforcement had recovered over 700 Polymer80 Privately Manufactured Firearms, one brand of ghost gun parts/kits, in Los Angeles in 2020; and

WHEREAS, Privately Manufactured Firearms have been used in a wide variety of crimes in California, including homicides, robberies, school shootings, mass shootings, killings of law enforcement officers, and domestic violence; and

WHEREAS, Oakland, which has enacted some of the strongest firearms safety laws in California, has a compelling interest in protecting its residents from gun violence; for example, Oakland prohibits possession of large-capacity magazines, unsecured firearms, and ammunition in unattended vehicles and requires the safe storage of firearms in residences (See Oakland Municipal Code Chapters 9.37, 9.38 and 9.39); and

WHEREAS, Oakland's strong gun violence prevention laws are being undermined by the increase in unregulated sales of Privately Manufactured Firearms kits and precursor parts; and

WHEREAS, while presently no licensed gun dealers operate in Oakland, the absence of licensed gun dealers increases the likelihood that residents will seek out Privately Manufactured Firearm precursor parts and kits;

Now therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

The following is added to the Oakland Municipal Code, Chapter 9.36 – Weapons. Article VII.

SECTION 9.36.600. Title

Privately Manufactured Firearms, Unfinished Frames and Receivers

SECTION 9.36.610. Purpose and Intent

The City Council finds:

The purpose of this law is to protect public safety, reduce gun violence, and make the City safer from Privately Manufactured Firearms, and their precursor parts or kits, which are used to injure and kill people.

The proliferation of Privately Manufactured Firearms has contributed to high levels of gun crime and gun violence within the City, where in the past two years homicides have nearly doubled and recorded shootings at homes and vehicles have more than doubled.

These findings, including the Whereas clauses in the passing legislation, the information provided in City Council reports, and the testimony and evidence presented at City Council meetings on this matter, are incorporated herein by reference in support of the City Council's actions.

SECTION 9.36.620. Definitions.

The following definitions shall apply only for the purposes of this Chapter.

“Antique Firearm” has the meaning ascribed to it in 18 U.S.C. § 921(a)(16).

“Assemble” means to fit together component parts.

“Federal Firearms Importer or Manufacturer” means a person licensed to import or manufacture firearms pursuant to 18 U.S.C. Chapter 44.

“Manufacture” means fabricate, make, form, produce, or construct by manual labor or machinery.

“Manufacture a firearm” means to fabricate or construct a firearm, or to fit together the component parts of a firearm to construct a firearm.

“Privately Manufactured Firearm” means any finished firearm that is assembled from (1) unfinished frames or receivers or (2) printed from a 3-dimensional (“3-D”) printer.

“Precursor Parts Vendor” means a person or entity holding a precursor parts vendor license issued under California Penal Code Sections 30400 et seq.

“Unfinished Frame or Receiver” means a piece of any material that does not constitute the finished frame or receiver of a firearm, rifle, or shotgun but that has been shaped or formed in any way to become the frame or receiver of a firearm, rifle, or shotgun, and (1) which may readily be made into a functional frame or receiver through milling, drilling, or other means; or (2) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.

SECTION 9.36.630. Prohibitions on Unfinished Receivers and Frames.

Prohibition. It shall be unlawful for any person to possess, sell, offer to sell, transfer, purchase, transport, receive, or Manufacture an Unfinished Frame or Receiver, unless either (1) the person possessing, transporting, or receiving the Unfinished Frame or Receiver is a Federal Firearms Importer or Manufacturer, or (2) the Unfinished Frame or Receiver is either required by federal law to be and has been imprinted with a serial number issued by a Federal Firearms Importer or Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

Exemptions. The foregoing prohibition shall not apply to or affect any of the following:

- (1) An employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties; or

(2) A person who is on the centralized list of exempted federal firearms licensees maintained by the California Department of Justice pursuant to California Penal Code Sections 28450, et seq.; or

(3) A person whose licensed premises are outside the City and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued under that Chapter; or

(4) A common carrier licensed under state law, or a motor carrier, air carrier, or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property; or

(5) Possession, purchase, transport, or receipt of an Unfinished Frame or Receiver by a Precursor Parts Vendor; or

(6) Sale or transfer of an Unfinished Frame or Receiver processed through a Precursor Parts Vendor pursuant to Penal Code Section 30400, et seq., provided that the Precursor Parts Vendor ensures that prior to the purchaser or transferee taking possession of the Unfinished Frame or Receiver, the purchaser or transferee obtains a serial number from the California Department of Justice pursuant to California Penal Code Sections 29180 and 29182, the serial number is permanently affixed to the Unfinished Frame or Receiver, and the California Department of Justice is provided sufficient information to identify the purchaser or transferee pursuant to those Penal Code sections ; or

(7) Possession of an Unfinished Frame or Receiver by the person who obtained it through a transaction processed by a Precursor Parts Vendor in compliance with subsection 6 above.

SECTION 9.36.640. Prohibition on Privately Manufactured Firearms.

Prohibition. It shall be unlawful for any person to possess, sell, offer to sell, transfer, purchase, transport, receive, or Manufacture a Privately Manufactured Firearm that does not conform to state and federal law, unless either (1) the person possessing, transporting, or receiving the Unfinished Frame or Receiver is a Federal Firearms Importer or Manufacturer, or (2) the Unfinished Frame or Receiver is either required by federal law to be and has been imprinted with a serial number issued by a Federal Firearms Importer or Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

Exemptions. The foregoing prohibition shall not apply to or affect any of the following:

(1) An employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties; or

(2) A person who is on the centralized list of exempted federal firearms licensees

maintained by the California Department of Justice pursuant to California Penal Code Sections 28450, et seq.; or

(3) A person whose licensed premises are outside the City and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued under that Chapter; or

(4) A common carrier licensed under state law, or a motor carrier, air carrier, or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property; or

(5) Possession, purchase, transport, or receipt of an Unfinished Frame or Receiver by a Precursor Parts Vendor; or

(6) Sale or transfer of an Unfinished Frame or Receiver processed through a Precursor Parts Vendor pursuant to Penal Code Section 30400, et seq., provided that the Precursor Parts Vendor ensures that prior to the purchaser or transferee taking possession of the Unfinished Frame or Receiver, the purchaser or transferee obtains a serial number from the California Department of Justice pursuant to California Penal Code Sections 29180 and 29182, the serial number is permanently affixed to the Unfinished Frame or Receiver, and the California Department of Justice is provided sufficient information to identify the purchaser or transferee pursuant to those Penal Code sections ; or

(7) Possession of an Unfinished Frame or Receiver by the person who obtained it through a transaction processed by a Precursor Parts Vendor in compliance with subsection 6 above.

SECTION 9.36.650 Prohibitions on Manufacturing Unfinished Receivers and Frames.

Prohibition. It shall be unlawful for any person to Manufacture, cause to be Manufactured, Assemble, or cause to be Assembled, a firearm that has not been imprinted with a serial number issued by a Federal Firearms Importer or Manufacturer in accordance with federal law or engraved or permanently affixed with a serial number provided by the California Department of Justice.

Exemptions. The foregoing prohibition shall not apply to or affect any of the following:

(1) A firearm that has been rendered permanently inoperable; or

(2) An Antique Firearm; or

(3) A firearm that has been determined to be a collector's item pursuant to 26 U.S.C. Chapter 53 or a curio or relic pursuant to 18 U.S.C. Chapter 44; or

(4) An employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties; or

(5) The Manufacture or Assembly of a firearm with a frame or receiver processed through a Precursor Parts Vendor pursuant to Penal Code Sections 30400, et seq., provided that the Precursor Parts Vendor ensures that prior to the purchaser or transferee taking possession of the Unfinished Frame or Receiver, the purchaser or transferee obtains a serial number from the California Department of Justice pursuant to California Penal Code Section Sections 29180 and 29182, the serial number is permanently affixed to the Unfinished Frame or Receiver, and the Department of Justice is provided sufficient information to identify the purchaser or transferee pursuant to those Penal Code sections.

SECTION 9.36.660. Penalties and Disposal.

A violation of this section shall be subject to enforcement through criminal prosecution and/or civil penalties, as provided herein.

1. Violation a Misdemeanor. A person who violates this chapter shall be guilty of a misdemeanor punishable by imprisonment in the County Jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00), or by both. Each violation shall be deemed a distinct and separate offense.

2. Civil Penalties. The City may assess the following penalties for violations of this chapter: (a) one thousand dollars (\$1,000.00) for the first violation; (b) two thousand five hundred (\$2,500.00) for the second violation; and (c) five thousand dollars (\$5,000.00) for the third violation and for each subsequent violation committed within a calendar year.

A first violation of this section shall be forgiven if the person possesses, transports, or receives three (3) or fewer Unfinished Frames or Receivers or Privately Manufactured Firearms, surrenders those Unfinished Frames or Receivers or Privately Manufactured Firearms to law enforcement, and does not commit any additional violations of this section in the year following the violation.

Anyone may dispose of Unfinished Frames or Receivers or fully assembled Privately Manufactured Firearms that lack serial numbers by contacting the Oakland Police Department without penalty within 90 days after the passage of this ordinance.

SECTION 9.36.670. Severability.

If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

SECTION 9.36.680. Preemption.

Nothing in this Chapter 9.36 shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

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SECTION 9.36.690. Effective Date.

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

FEB 01 2022

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, ~~WANG~~ AND PRESIDENT BAS - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of the
City of Oakland, California

Introduction Date

JAN 18 2022