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CITY OF OAKLAND



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December 15, 2015

PUBLIC SAFETY COMMITTEE
OAKLAND CITY COUNCIL
Oakland, California 94612

**Re: Gun Control Ordinances Scheduled for the Public Safety Committee
on December 15, 2015**

Dear Chairperson Brooks and Members of the Committee:

I. **Purpose of Report:**

This report summarizes the provisions of two ordinances that Vice Mayor Rebecca Kaplan, City Attorney Barbara J. Parker and Councilmembers Dan Kalb and Annie Campbell Washington are sponsoring to reduce the number of injuries, deaths and other devastating impacts of gun violence (hereinafter referred to as the "Sponsors"). The Public Safety Committee ("Committee") will consider the ordinances at its December 15, 2015 meeting. The Sponsors have consulted with Police Chief Whent regarding the measures.

The ordinances are listed below.

- 1) **Ordinance Banning Unsecured Firearms And Ammunition Located In Unattended Vehicles In The Public Right Of Way And "Public Places" As Defined In The Ordinance; and**
- 2) **Ordinance Requiring That City-Issued Firearms In Unattended Vehicles Be Secured**

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II. Recommendations

The Sponsors recommend that the Committee take the following action:

- Pass a motion recommending that the Council adopt Ordinance No., 1 above and forward the Ordinance to the Council for its consideration; and
- Pass a motion recommending that the Council (i) request that the City Administrator conduct the necessary meet and confer process with the union, regarding Ordinance No. 2 above, and (ii) requesting that the City Administrator or City Attorney schedule the Ordinance for Council consideration once the meet and confer process is concluded.

III. Background and Basis for the Legislation:

As the news media recently reported, guns stolen from unattended vehicles (e.g., parked or abandoned vehicles) have been linked to a number of high profile murders in the Bay Area this year, including the tragic death of Oakland artist Antonio Ramos, who was shot and killed in September while he was working on an antiviolence mural on West Street in North Oakland. Mr. Ramos apparently was killed with a gun that was stolen from the rental car of a federal Immigration and Customs Enforcement Officer in San Francisco two weeks before his murder.

Auto burglaries in the City have increased dramatically in the last five years, from about 3,375 in 2010, to 7,283 in 2014. According to OPD statistics, approximately 300 firearms were reported stolen during auto burglaries in Oakland between August 2004 and November 2015. Approximately 91% of the stolen guns were handguns and 9% were "long guns" or rifles.

To prevent tragic shootings and deaths from these deadly weapons, firearms should be supervised and secured at all times. The threat to public safety increases exponentially when firearms are not properly secured in vehicles or residences and vehicles are unattended on city streets and in other public places. As a charter city, Oakland has "home rule" authority to manage its municipal affairs and to use police powers to protect the public from the threat and harm unsecured firearms pose in unattended vehicles. The City also may impose reasonable standards for the care of City-issued firearms and use of city streets regulations in order to protect public safety and welfare.

IV. Summary of Ordinance Provisions

A. Ordinance Banning Unsecured Firearms And Ammunition Located In Unattended Vehicles In The Public Right Of Way And “Public Places” As Defined In The Ordinance

This ordinance requires that individuals, who are licensed to carry concealed handguns in public, secure their weapons inside unattended vehicles in the public right of way or public places within the City of Oakland. The firearm must be secured in a Locked Container, as defined in the Ordinance, or a lock box which must be kept inside the locked trunk, or inside the vehicle in a Container that is not visible outside of the vehicle or which is securely attached or bolted to the vehicle. This requirement would apply to all persons, and not just licensed individuals, to the extent permitted by law. These requirements also apply to long guns and ammunition in unattended vehicles.

The ordinance makes it a nuisance to keep unsecured firearms and ammunition in unattended vehicles in public places. Penal Code section 25700; Government Code sections 3479 et seq.

A violation of the ordinance would be a misdemeanor punishable by up to six months in jail, a \$1,000 fine, or both. Violators also would face civil penalties and fines, and possible civil actions by the City Attorney. Persons licensed to carry concealed weapons also could face suspension or revocation of their permits.

B. Ordinance Requiring That City-Issued Firearms in Unattended Vehicles Be Secured.

This ordinance supports the efforts of the City Administrator and Police Chief to implement more robust safe storage practices for City-issued firearms. The ordinance codifies the Council’s policy intent and directive that the City establish a higher level of safety to protect the general public, City residents, and Oakland police officers from the harm and threats stolen guns pose. The ordinance requires that City-issued firearms in unattended vehicles be secured at all times. The ordinance would apply to police cars and city vehicles that Oakland officers use during their shifts, as well as officers’ private vehicles when the officers use such private vehicles to transport City-issued guns.

The ordinance requires that City-issued firearms be secured in a Locked Container, as defined in the Ordinance, or a lock box that must be kept inside the locked trunk or inside the vehicle in a place that is not visible from the outside, to the extent allowed by law. The ordinance authorizes the City Administrator to exempt police personnel from the requirements or impose more stringent or specific gun storage requirements in City gun purchasing contracts, manufacturers’ specifications, or City/OPD policies based on cost and technological capability of police vehicles, etc.

Before the City Council takes action on this ordinance, the City must complete the meet and confer process with the Oakland Police Officers Association in accordance with requirements of the Meyers Milias Brown Act. During this process, the City Administrator and Police Chief will have time to further evaluate the issue and inform the deliberative process of the Council, the public dialogue, and the ultimate selection of the best safe storage requirements for City-issued guns consistent with Council policy. Due to the meet and confer requirements, we recommend that the Committee pass a motion requesting that Council direct the City Administrator to conduct the meet and confer process.

V. Conclusion:

The Sponsors have respectfully requested that the Public Safety Committee take the actions listed in Section II of this report.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

cc: Mayor Schaaf
Council President Gibson McElhaney and Members of the Council
City Administrator Landreth
Police Chief Sean Whent

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APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY VICE MAYOR REBECCA KAPLAN, CITY ATTORNEY BARBARA J. PARKER,
AND COUNCILMEMBERS DAN KALB AND ANNIE CAMPBELL WASHINGTON

ORDINANCE BANNING UNSECURED FIREARMS AND AMMUNITION LOCATED IN UNATTENDED VEHICLES IN THE PUBLIC RIGHT OF WAY AND "PUBLIC PLACES" AS DEFINED IN THE ORDINANCE

WHEREAS, firearms are deadly weapons and the threat of harm increases exponentially when firearms are not properly secured and are left in unattended vehicles in the public right of way and "public places" as defined in this ordinance; and

WHEREAS, as the news media recently reported, guns stolen from parked or abandoned vehicles ("unattended") have been linked to a number of high profile murders in the Bay Area this year, including the tragic death of 32-year old San Francisco resident Kathryn Steinle who was fatally shot on July 1, 2015, near the Ferry Building with a pistol reported stolen during an auto burglary while a U.S. Bureau of Land Management ranger was traveling on official business in San Francisco; and

WHEREAS, according to news media, on September 29, 2015 muralist Antonio Ramos was working on an antiviolence mural on West Street in North Oakland when he was shot and killed with a gun that had been stolen from the car of a federal Immigration and Customs Enforcement Agent in San Francisco; and

WHEREAS, on July 1, 2015, 32-year old San Francisco resident Kathryn Steinle was fatally shot near the Ferry Building with a pistol that had been reported stolen from a U.S. Bureau of Land Management ranger; the gun was stolen during an auto burglary while the ranger was traveling on official business in San Francisco; and

WHEREAS, the California Department of Justice, Division of Law Enforcement, Bureau of Forensic Services, issued a report titled *Firearms Used in the Commission of Crimes* stating that in 2014, handguns were used in more than 80 percent of crimes involving firearms; and

WHEREAS, according to news reports and information from the Oakland Police Department, between 2010 and 2012 police officers seized 3722 guns in the City which 

averaged about three guns per day and this rate is significantly higher than in San Francisco, a city with twice the population; and

WHEREAS, there is a long standing problem in the City with the high number of automobile burglaries, as confirmed by the Oakland Police Department's End of Year 2014 Crime Report which showed this data:

- 3375 auto burglaries reported in 2010
- 3673 auto burglaries reported in 2011
- 6654 auto burglaries reported in 2012
- 6948 auto burglaries reported in 2013
- 7283 auto burglaries reported in 2014; and

WHEREAS, according to the Oakland Police Department, from August 17, 2004 to November 9, 2015, there were approximately three hundred (300) firearms stolen during auto burglaries, two hundred and seventy three (273) were handguns and twenty seven (27) were long guns; and

WHEREAS, this is a public welfare law intended to supplement California's Control of Deadly Weapons Act, Penal Code Section 16000 et seq. This law is not intended to nor does it create a right of action or liability against the City. It does not assume or impose an affirmative duty or obligation on the City or its employees for which a person may seek liability or money damages for injuries or alleged breach; and

WHEREAS, City Council wants to prevent automobile burglaries, the theft of guns, and the human tragedy and loss of life caused by criminals who use stolen firearms to kill and injure innocent persons; now, therefore

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

SECTION 1. Enactment of Oakland Municipal Code Chapter 9.37

CHAPTER 9.37

ARTICLE I

9.37.010 Title.

This Chapter shall be known as Oakland's Ban on Unsecured Firearms and Ammunition in Unattended Vehicles Act.

ARTICLE II

9.37.020 Findings and Purpose.

The City Council finds:

- A. The purpose of this law is to protect public safety, reduce gun violence and make the City safer from guns and ammunition that are stolen from vehicles and used to kill and injured people.
- B. The high level of gun crimes and violence in Oakland is caused by the proliferation of weapons within the City. As reported by the news media and the Oakland Police Department, about 3722 guns were seized in the City between 2010 and 2012. This averaged about three guns per day which is significantly higher than in San Francisco's, a city with twice the population of Oakland.
- C. People in Oakland also experience a high number of automobile burglaries which increased exponentially between 2010 and 2015. According to OPD's 2014 End of Year Crime Report, 3375 auto burglaries were reported in 2010; 3673 in 2011; 6654 in 2012; 6948 in 2013; and 7283 in 2014.
- D. A high number of the auto burglaries that occur in Oakland result in guns or ammunition being stolen from vehicles. According to the Oakland Police Department, from August 17, 2004 to November 9, 2015, there were approximately three hundred (300) firearms reported stolen during auto burglaries of which 273 were handguns and 27 were long guns.
- E. These findings, the information provided in City Council reports, and on testimony and evidence presented at City Council meetings are incorporated herein by reference in support of the City Council's actions.

ARTICLE III

9.37.030 Definitions

The following terms are defined for use in this Chapter.

"Ammunition" has the same meaning as defined by state law. It does not include fixed ammunition of a caliber greater than .60 caliber (California Penal Code §18735) nor "deactivated ammunition" (California Penal Code § 30335).

"Firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion, as defined by state law.

“Handgun” means a pistol, revolver or firearm capable of being concealed upon the person. A firearm capable of being concealed includes a pistol or revolver, including any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than sixteen inches in length. It includes any device that has a barrel sixteen inches or more in length which is designed to be interchanged with a barrel less than sixteen in inches.

“Licensee” is a person with a valid concealed carry weapons license issued by the appropriate law enforcement authorities, as defined in the Penal Code § Section 26150 et seq.

“Locked Container” means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device, as defined in the Penal Code § 16850. It includes a lock box that is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices. For purposes of this Chapter, it does not include a bag or other container made of fabric or other penetrable material, such as a regular purse, backpack, or gym bag.

“Long Gun” means any firearm except for a handgun, a machine gun, an assault rifle or a .50 BMG rifle as those terms are defined in state law.

“Person” includes a natural person or a legal entity (association, corporation, etc.) with responsibility for the ownership, use, control, or direction of the vehicle.

“Public Place” means a place that is open and accessible to the public, including but not limited to gas stations, public parking lots and garages, driveways, and carports.

“Public Right of Way” means a highway, street, or roadway as those terms are defined in California Vehicle Code §§ 360, 590 and 530 et seq.

“Trunk” means a fully enclosed compartment that is separate from the main cabin of the Motor Vehicle.

“Unattended” means a vehicle that is parked or standing in the public right of way or public place within the City and which is not occupied and/or outside the immediate control or direction of the Person responsible for the vehicle.

“Unsecured” means a handgun, long gun, or ammunition that is not safely stored in a vehicle in accordance with this Chapter.

“Vehicle” means a vehicle as defined in California Vehicle Code § 670, and a motor vehicle as defined in California Vehicle Code § 415.

“Vehicle Owner” means the registered owner of the vehicle, Vehicle Code § 460.

ARTICLE IV

Unsecured Handguns, Long Guns, and Ammunition in Unattended Vehicles are Unlawful and Prohibited.

9.37.40 Prohibitions.

A. Handguns.

1. It is unlawful for a person to leave a Handgun in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the handgun is stored in accordance with the safe storage provisions of this Chapter.

2. It is unlawful for a Licensee to leave a Handgun in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the handgun is stored in accordance with the safe storage provisions this Chapter.

B. Long Guns

It is unlawful for a person to leave a Long Gun in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the Long Gun is stored in accordance with the safe storage provisions this Chapter.

C. Ammunition

It is unlawful for a person to leave Ammunition in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the ammunition is stored in accordance with the safe storage provisions this Chapter.

D. Safe Storage Requirements.

Unless exempted by law, firearms and ammunition inside Unattended Vehicles must be secured (1) in a Locked Container inside the locked Trunk of the vehicle, or (2) in a Locked Container inside the cabin of the Vehicle where the Container cannot be seen from the outside or is permanently attached to the Vehicle.

9.37.50 Public Nuisance.

Unsecured Firearms and Ammunition in Unattended Vehicles in violation of this Chapter constitute a public nuisance subject to abatement, penalties, and remedies provided under this Chapter, other provisions of the Oakland Municipal Code, and state or federal law.

9.37.60 Exemptions.

This Chapter does not apply to persons authorized by state or federal carry or transport firearms or ammunition in Vehicles. To the extent there is a conflict between this Chapter and state or federal, the more stringent requirements shall govern.

ARTICLE V

Remedies, Liabilities, Fines and Penalties

9.37.70 Criminal Penalties.

Violations of this Chapter constitute misdemeanors punishable by imprisonment in the county jail not exceeding six months, a fine not exceeding one thousand dollars (\$1,000) or by both. Each violation shall be deemed a distinct and separate offense in accordance with the law.

9.37.80 A Civil Penalties.

The City may assess civil penalties in accordance with Oakland Municipal Code Chapter 1.08 (Civil Penalties). Alternatively or in conjunction with Chapter 1.08, the City may assess the following penalties for violations of this Chapter: (a) one thousand dollars (\$1,000) for the first violation, (b) two thousand five hundred for the second violation (\$2,500), and (c) five thousand dollars (\$5,000) for the third violation and for each subsequent violation committed within a calendar year.

9.37.90 Authority of City Attorney to Bring a Court Action.

A. The City Attorney may bring a civil action for damages, abatement, injunctive and/or declaratory relief, and to recover City costs as s/he deems appropriate.

B. The City Attorney may bring a civil action to obtain a money judgment against the Defendant for any amount of damages that is not ordered or collected by a criminal court, including, but not limited to, all costs, attorney's fees, court costs, and/or other costs incurred in connection with the civil prosecution of any claim for relief, damages or reimbursement.

C. The City Attorney may bring a criminal action for violations of this Chapter.

9.37.100 Liability of Owner or Operator of Vehicle.

To the extent permitted by law, the registered owner of the vehicle, the driver, and any other person with control or direction over the Vehicle may be liable for violations of this Chapter, and for all costs, penalties and fines.

9.37.110 Remedies not exclusive.

Remedies under this Chapter are cumulative and not exclusive. They are in addition to any other administrative, civil, and/or criminal remedies provided by state, federal or other laws contained in the Oakland Municipal Code. The City may seek an order for award of attorney's fees.

Remedies may be recovered by all appropriate legal means, including but not limited to criminal prosecution, civil action, nuisance abatement or lien proceedings.

Concealed Carry Licensees also may be subject to suspension or revocation of their licenses.

9.37.120 Amendments to State laws adopted.

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, such amendments shall be automatically deemed adopted as part of this Chapter as if fully set forth herein unless the City Council amends this Chapter to provide otherwise.

9.37.130 City Administrator regulations.

The City Administrator directly or through the Oakland Police Department may establish regulations to aid in the administration of this Chapter, but the lack of such regulations shall not delay or otherwise impede enforcement of this law.

SECTION 2. Severability and Validity.

If any provision of this Chapter is held to be invalid or unconstitutional by any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions. The City Council declares that it would have adopted the remaining provisions irrespective of the provisions, sections, sentences, clauses, or words declared invalid or unconstitutional.

SECTION 3. Effective Date.

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____