

2024 FEB 27 PM 1:30

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER DAN KALB AND REBECCA KAPLAN
OFFICE OF THE CITY ATTORNEY
OAKLAND


CITY ATTORNEY'S OFFICE

AS AMENDED BY PUBLIC SAFETY COMMITTEE AT THE 10/24/23 MEETING &
CORRECTED BY THE OFFICE OF THE CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. 13770 C.M.S.

AN ORDINANCE ADDING CHAPTER 2.10 TO THE OAKLAND MUNICIPAL CODE 1) REQUIRING THAT ANY CONTRACT WITH MANUFACTURERS OR RETAIL DEALERS OF FIREARMS OR AMMUNITION INCLUDES PROVISIONS CERTIFYING THEIR COMPLIANCE WITH APPLICABLE LOCAL, STATE, AND FEDERAL LAWS AS DESCRIBED; AND 2) PROHIBITING CONTRACTS WITH MANUFACTURERS OR RETAIL DEALERS OF FIREARMS OR AMMUNITION THAT REFUSE TO SUBMIT OR ARE OTHERWISE UNABLE TO CERTIFY THEIR COMPLIANCE, UNLESS GRANTED A WAIVER BY THE CITY ADMINISTRATOR

WHEREAS, Oakland continues to suffer from gun violence with 120 people killed in 2022; and

WHEREAS, the Oakland Police Department (OPD) reported that they recovered 1,400 crime guns in 2022 and 1,199 recovered crime guns in 2021; and

WHEREAS, research has shown that a small number of gun dealers are disproportionately the source of trafficked firearms and firearms recovered in crimes; research has also shown that gun dealers with disproportionate numbers of crime gun traces are more likely to be found in non-compliance with federal firearms laws, including those intended to reduce gun trafficking and crime and to assist law enforcement in solving gun violence crimes¹; and

WHEREAS, one study conducted by California researchers found that 20% of licensed firearm retailers agreed to assist a potential handgun buyer with a transaction that had many attributes of an illegal straw purchase; conversely, safe business reforms employed by gun dealers have been found to reduce the likelihood of that dealer's guns being recovered in crime,

¹ "The Truth About Gun Dealers In America: Stopping the Small Number of "Bad Apples" That Supply Virtually Every Crime Gun In the U.S." *Brady Campaign and Brady Center to Prevent Gun Violence, October 15, 2015.*

and the overall number of trafficked guns recovered by law enforcement in that dealer's area²; and

WHEREAS, more than 200 firearms were lost or stolen from California licensed gun dealers in 2021³; and

WHEREAS, OPD's spending on firearms and ammunition can influence gun dealers to abide by the laws and act responsibly, thus making our communities safer; and

WHEREAS, OPD's firearms are exempt from California's Unsafe Handgun laws and may lack important safety features needed by civilians, their disposal must be carefully monitored to protect the safety of the public; and

WHEREAS, for the above reasons, it is essential that firearms and ammunition vendors that do business with OPD are intensely vetted in a way that ensures that they are law-abiding and that they employ best practices shown to reduce the likelihood that their guns will be trafficked into communities such as Oakland and recovered in crime; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 2.10 of the Oakland Municipal Code. Oakland Municipal Code Chapter 2.10 is hereby added as set forth below (chapter and section numbers are indicated in **bold type**) as follows:

Chapter 2.10 – Firearms and Ammunition Procurement and Disposal Ordinance

2.10.010 - Title.

This Ordinance shall be known as the Firearms and Ammunition Procurement and Disposal Ordinance.

2.10.020 - Definitions.

“City Administrator” means the City Administrator of the City of Oakland or an officer specifically designated to act for the City Administrator.

“City Vendor” means any manufacturer or retail dealer of firearms and/or ammunition that has entered or seeks to enter or renew a Contract with the City for the Purchase, sale, transfer, return, trade-in, exchange or disposal of firearms, new or used and/or ammunition.

² Wintemute G. “Firearm retailers' willingness to participate in an illegal gun purchase,” *J Urban Health*. 2010 Sep;87(5):865-78. doi: 10.1007/s11524-010-9489-6. PMID: 20803095; PMCID: PMC2937134.

³ “Federal Firearms Licensee Theft/Loss Report,” *Bureau of Alcohol, Tobacco, Firearms, and Explosives*, January 18, 2022.

“Emergency Purchase” means a purchase deemed by the City Administrator to be necessary for the immediate preservation of the public peace, health or safety as described in Subsections 2.04.020.

“Purchase” means and includes rental or lease of supplies, as well as purchase.

“Contract” means any City contracts, including purchase agreements based upon Section 2.04.080 Cooperative Purchase Agreements, with all manufacturer and/or retail dealers of firearms, new or used and/or ammunition for the Purchase, sale, transfer, return, trade-in, exchange or disposal of firearms and/or ammunition.

2.10.030 - Applicability.

This Ordinance shall apply to all City contracts, including purchase agreements based upon Section 2.04.080 Cooperative Purchase Agreements, with all manufacturer and/or retail dealers of firearms, new or used, and/or ammunition for the Purchase, sale, transfer, return, trade-in, exchange or disposal of firearms and/or ammunition.

2.10.040 - General Requirements.

- A. All City Vendors subject to this chapter shall, prior to entering into or renewing a Contract with the City:
1. Be in compliance with all applicable state and federal laws, and, if required by state or federal law, shall have a valid federal firearms license, a valid State Board of Equalization seller’s permit, and a Certificate of Eligibility pursuant to Section 26710 of the California Penal Code;
 2. Adhere to public safety principles relating to firearms and ammunition;
 3. Have no unresolved ATF violations within the last 5 years; and
 4. Have policies to prevent, detect, and screen for the transfer of firearms to straw purchasers or firearm traffickers; to prevent sales to prohibited individuals; to protect against the theft of firearms and ammunition; to train vendor employees and have reasonable employment policies designed to ensure maximum compliance with the law; to assist law enforcement in the investigation and prevention of criminal access to guns; to operate a digital video surveillance system as prescribed in Section 26806 of the California Penal Code or a similar system, if applicable state or local law requires such a system, for vendors outside of California; and to promote public safety. Manufacturers of firearms and/or ammunition shall have standards for retail dealers authorized to sell the manufacturer’s firearms and/or ammunition that induce those dealers to adopt the policies set forth in this paragraph.

5. After certification or at any time during the term of any Contract with the City, City Vendor is required to notify the City of any policy change inconsistent with the requirements above or any new ATF violation against City Vendor within 30 days of such change or violation.

2.10.050 - Required Contract Provisions.

- A. Every Contract subject to this chapter shall contain provisions for City Vendors to certify their compliance with the requirements set forth in Section 2.10.040 A above as of the date the City Vendor enters the Contract with the City or when such Contract is amended or renewed.
- B. The City Administrator may not enter into or renew any Contract with any City Vendor that refuses or is otherwise unable to certify their compliance with the requirements set forth in Section A, above unless granted a waiver by the City Administrator.
- C. The City shall reject bids, quotations, proposals, or other submissions from any City Vendor that refuses or is otherwise unable to certify their compliance with the requirements set forth in Section A, above unless granted a waiver by the City Administrator.

2.10.060 - Waivers and Exemptions.

- A. The City Administrator may, in their discretion and for good cause shown, waive the requirements of this chapter under the following circumstances: 1) the ATF violation is administrative or similarly de minimis; or 2) to make an Emergency Purchase.
- B. Nothing in this section shall limit the right of the City Council to waive the provisions of this chapter.
- C. The requirements of this chapter shall not be applicable to contracts executed or amended prior to the effective date of this chapter, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City prior to the effective date of this chapter, unless and until such contracts are amended after the effective date of this chapter and would otherwise be subject to this chapter.

2.10.070 - Enforcement.

- A. The City Administrator shall have the authority to adopt rules and regulations, in accordance with this chapter establishing standards and procedures for effectively carrying out this chapter.

- B. Upon a finding by the City Administrator that a contractor has violated the requirements of this chapter, the City shall have the rights and remedies described in this section, in addition to any rights and remedies provided by law or in equity:
 - 1. Suspension and/or termination of said contract agreement for cause;
 - 2. The City Administrator may deem the entity ineligible for future City contracts until all penalties and restitution have been paid in full;
 - 3. Seek recovery of reasonable attorney's fees and costs necessary for enforcement of this chapter.
- C. Notwithstanding any provision of the chapter or any other chapter to the contrary, no criminal penalties shall attach for any violation of this chapter.
- D. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a cause of action to enforce any rights hereunder in a court of law.
- E. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

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 2. The City Administrator may deem the entity ineligible for future City contracts until all penalties and restitution have been paid in full;
 3. Seek recovery of reasonable attorney's fees and costs necessary for enforcement of this chapter.
- C. Notwithstanding any provision of the chapter or any other chapter to the contrary, no criminal penalties shall attach for any violation of this chapter.
- D. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a cause of action to enforce any rights hereunder in a court of law.
- E. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

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SECTION 4. 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,

DEC 05 2023

PASSED BY THE FOLLOWING VOTE:

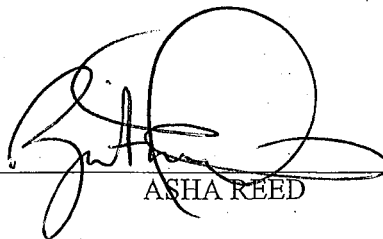
AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 8

NOES
ABSENT
ABSTENTIONS

Introduction Date

NOV 07 2023

ATTEST:


ASHA REED

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

Date of Attestation: 2/27/2024 BCP

NOTICE AND DIGEST

AN ORDINANCE ADDING CHAPTER 2.10 TO THE OAKLAND MUNICIPAL CODE 1) REQUIRING THAT ANY CONTRACT WITH MANUFACTURERS OR RETAIL DEALERS OF FIREARMS OR AMMUNITION INCLUDES PROVISIONS CERTIFYING THEIR COMPLIANCE WITH APPLICABLE LOCAL, STATE, AND FEDERAL LAWS AS DESCRIBED; AND 2) PROHIBITING CONTRACTS WITH MANUFACTURERS OR RETAIL DEALERS OF FIREARMS OR AMMUNITION THAT REFUSE TO SUBMIT OR ARE OTHERWISE UNABLE TO CERTIFY THEIR COMPLIANCE, UNLESS GRANTED A WAIVER BY THE CITY ADMINISTRATOR

This Ordinance adds Chapter 2.10 to the Oakland Municipal Code to ensure that firearm and ammunition manufacturers and retail dealers, including vendors retained solely to dispose of firearms and/or ammunition that do business with the City of Oakland certify compliance with applicable state and federal laws, and employ best practices shown to reduce the likelihood that their guns will be trafficked into communities such as Oakland and recovered in crime investigations, and setting forth the authority of the City Administrator to waive the requirements of this Chapter.