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OFFICE OF THE CITY CLERK  
OAKLAND

2010 FEB -4 PM 6:17

APPROVED AS TO FORM AND LEGALITY

*Rocio V. Quiro*  
City Attorney

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.26, KNOWN AS THE FIREARMS DEALER PERMIT ORDINANCE, TO ENHANCE EXISTING PERMIT REQUIREMENTS PERTAINING TO THE SALE OF FIREARMS AND AMMUNITION IN OAKLAND**

WHEREAS, IN 1992, the City Council approved Ordinance No. 11424 C.M.S., establishing stringent local permit requirements for firearms dealers in Oakland, and

WHEREAS, the original ordinance did not require the licensing and permitting of vendors who sell ammunition, and

WHEREAS, the original ordinance did not require firearms dealers to indemnify and hold harmless the City for any injury resulting from the operation of a firearms business, and

WHEREAS, the original ordinance did not require that the permittee conduct periodic inventory inspections of firearms and ammunition and report the inventory results to the Chief of Police, and

WHEREAS, although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), ATF does not have the resources or authority to properly oversee the more than 100,000 firearms dealers, manufacturers, collectors and others that it licenses ("FFLs"), and

WHEREAS, ATF reported in 2007 that it inspects each FFL, on average, only once every 17 years, and

WHEREAS, during fiscal year 2007, ATF found over 30,000 firearms missing from licensees' inventories with no record of sale, and

Whereas, federal laws are silent regarding many important aspects of the dealer's business, such as its location (leaving dealers free to operate out of their homes and

near schools and other places children frequent) and security requirements during business hours, and

WHEREAS, as of November 24, 2008, there were 2,043 federally licensed firearms dealers and pawnbrokers in California, and

WHEREAS, California is among a minority of states that impose licensing requirements on firearms dealers, but the standards are minimal, and

WHEREAS, the Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 428 (Cal. Ct. App. 1997) held that state law authorizes local governments in California to impose additional licensing requirements on firearms dealers, and

WHEREAS, FFLs are required by federal law to comply with all state and local dealer laws as a condition for retaining their federal licenses, and

WHEREAS, no federal or California law imposes security requirements on firearms dealers during business hours or requires firearms dealers or ammunition sellers to install burglar alarms or surveillance cameras. California law explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law, and

WHEREAS, no federal or California law requires agents and employees of firearms dealers or ammunition sellers to undergo background checks. California law explicitly permits local jurisdictions to require firearms dealers to perform such background checks, and

WHEREAS, no federal or California law requires firearms dealers to obtain liability insurance, prohibits firearms dealers or ammunition sellers from operating in residential neighborhoods or near schools, daycare centers, or parks, or requires firearms dealers or ammunition sellers to obtain a land use permit, and

WHEREAS, California law requires firearms dealers to report the loss or theft of any firearm within 48 hours of discovery to the local law enforcement agency where the dealer's business premises are located, but does not otherwise require dealers to provide inventory reports to local law enforcement agencies, and

WHEREAS, California law requires persons who sell, loan, or transfer firearms within California to obtain a license, but does not require persons who sell, loan, or transfer ammunition to do so.

WHEREAS, law enforcement agencies in jurisdictions that require ammunition sellers to obtain permits and keep records of their ammunition sales have been able to detect illegal possessors of firearms and ammunition by cross-referencing the information in these records with California Department of Justice-maintained information regarding persons prohibited from such possession, and

WHEREAS, on October 11, 2009, Governor Schwarzenegger signed a new law, AB 962 (De Leon), to require handgun ammunition sellers to create and maintain records of handgun ammunition sales and transfers, effective February 1, 2011. No federal or state law, however, requires ammunition sellers to create or maintain records of sales or transfers prior to that date, or requires vendors to create or maintain records of sales or transfers of ammunition that is not principally for use in handguns, and

WHEREAS, AB 962 (De Leon) also requires handgun ammunition sellers to store handgun ammunition so that it is inaccessible to customers without assistance from the seller or an employee, effective January 1, 2010. No federal or state law, however, governs the way sellers store ammunition that is not principally for use in handguns.

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

The Oakland Municipal Code, Chapter 5.26, is amended to read as follows (additions in ***bold italics***, deletions in ~~strike-out~~):

**5.26.010 - Title.**

This chapter shall be known as the firearms dealer ***or ammunition seller*** permit ordinance.

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**5.26.020 - Findings.**

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The City Council of the city finds that:

- A. The number of unlicensed firearms dealers within the city far exceeds the number of legitimate licensed dealers; and
- B. Firearms used in violent crimes have been traced by the police department to firearms dealers operating without permits within the city; and
- C. Firearms are used in nearly eighty (80) percent of the homicides committed in the city; and

- D. A considerable proportion of the firearms used in violent crimes were obtained illegally from unlicensed firearms dealers; and
- E. Since June of 1990, Highland Hospital in Oakland has treated an average of thirty-two Oakland residents a month for gunshot wounds, an average of one a day; and
- F. The average cost for treatment of a gunshot wound is thirty-three thousand dollars (\$33,000.00), most of the cost borne by taxpayers. Nearly four hundred (400) gunshot wounds were treated at Highland Hospital in 1991; and
- G. The widespread availability of illegally obtained firearms has resulted in a rise in the number of shooting incidents involving minors; and
- H. Because of the range and effectiveness of firearms, the use of firearms in violent crimes is more likely to lead to the death or injury of bystanders.

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#### **5.26.030 - Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

***"Ammunition" means projectiles, cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an "antique firearm" as that term is defined in section 921(a)(16) of Title 18 of the United States Code.***

"Engaged in the business" means the conduct of a business by the selling, transferring, or leasing of any firearm ***or ammunition***; or the preparation for such conduct of business as evidenced by the securing of applicable federal or state licenses; or the holding of one's self out as engaged in the business of selling, transferring, or leasing of any firearm ***or ammunition***, or the selling, transferring, or leasing of firearms ***or ammunition*** in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

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

"Firearms dealer" means a person engaged in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm.

***"Permit" means a license to sell or transfer firearms or ammunition under this chapter.***

***"Permittee" means a person or entity licensed to sell or transfer firearms or ammunition under this chapter.***

**"Person" means natural person, association, partnership, firm, or corporation.**

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**5.26.040 - Permit required.**

It is unlawful for any person, partnership, cooperative, corporation, firm, or association to engage in the business of operating or managing any business which sells, transfers, leases, or offers or advertises for sale, transfer, or lease, any firearm ***or ammunition*** without first obtaining a firearms-dealer permit from the Chief of Police of the Oakland Police Department.

**5.26.040.010 – Display of Permit**

***The permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.***

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**5.26.050 - Application—Forms, fees.**

An applicant for a permit under this chapter shall file with the Chief of Police a sworn application in writing, on a form to be furnished by the city. The applicant shall provide all information requested, including proof of compliance with all applicable federal, state, and local laws when required by the Chief of Police, or the application will not be deemed complete. The application shall be accompanied by a nonrefundable fee as set forth in the city municipal license/permit fee schedule. To the extent practicable, the fee amount shall reflect the cost of enforcing the requirements of this chapter.

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**5.26.060 - Application—Investigation.**

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The Chief of Police shall conduct an appropriate investigation to determine for the protection of the public safety whether the permit may be issued. The Chief of Police may require additional information of an applicant deemed necessary to complete the investigation.

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**5.26.070 - Application denial.**

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The Chief of Police shall deny the issuance of a permit, **and has the authority to revoke an existing permit**, when any of the following conditions exist:

- A. The applicant, or an officer, employee, or agent thereof, is under the age of twenty-one (21) years.
- B. The applicant is not licensed as required by all applicable federal, state and local laws.
- C. The applicant, or an officer, employee, or agent thereof, has had a similar type permit previously revoked or denied for good cause within the immediately preceding two years.
- D. The applicant, or an officer, employee, or agent thereof, has made a false or misleading statement of a material fact or omission of a material fact in the application for a permit.
- E. The applicant, or an officer, employee, or agent thereof, has been convicted of:
  - 1. Any offense so as to disqualify the applicant, or an officer, employee, or agent thereof, from owning or possessing a firearm **or ammunition** under applicable federal, state, and local laws;
  - 2. Any offense relating to the manufacturing, sale, possession, use, or registration of any firearm, **ammunition** or dangerous or deadly weapon;
  - 3. Any offense involving the use of force or violence upon the person of another;
  - 4. Any offense involving theft, fraud, dishonesty, or deceit;
  - 5. Any offense involving the manufacture, sale, possession, or use of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read.
- F. The applicant, or an officer, employee, or agent thereof, is an unlawful user of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read, or is an excessive user of

alcohol to the extent that such use would impair his or her fitness ~~to be a dealer in firearms~~ **for a permit under this chapter.**

G. The applicant, or an officer, employee, or agent thereof, has been adjudicated as a mental defective, or has been committed to a mental institution, or suffers from any psychological disturbance which would impair his or her fitness ~~to be a dealer in concealable firearms~~ **for a permit under this chapter.**

H. The operation of the business as proposed will not comply with all applicable federal, state, or local laws.

I. The applicant, or an officer, employee, or agent thereof, proposes to operate in the following locations:

1. Within a zoning district in which general retail sales commercial activities are not a permitted or conditional use;

2. Within a zoning district in which residential use is the principal permitted, or maintained use, or within one thousand (1,000) feet of the exterior limits of any such district;

3. Within one thousand (1,000) feet of a public or private day care center or day care home, or within one thousand (1,000) feet of any elementary, junior high, or high school whether public or private;

4. On or within one thousand five hundred (1,500) feet of the exterior limits of any other premises occupied by a dealer in firearms **or ammunition**, an adult entertainment establishment or a hot tub/sauna establishment.

J. The applicant, or an officer, employee, or agent thereof does not have and or cannot provide evidence of a possessory interest in the property at which the proposed business will be conducted.

K. Any ground for denial exists as specified in this code.

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#### **5.26.080 - Security.**

In order to discourage the theft of firearms **or ammunition** stored on the premises ~~of a firearms dealer~~, any business licensed under this chapter must adhere to security measures ~~as required~~ **regulations promulgated** by the Chief of Police **pursuant to the authority provided by this chapter.** Security measures shall include but not be limited to:

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A. The provision of secure locks, windows and doors, **storage lockers**, adequate lighting, **video surveillance** and alarm **systems installed and maintained by an**

**alarm company operator licensed pursuant to the Alarm Company Act, Business & Professions Code Sections 7590 et seq. with additional requirements as specified by the Chief of Police;**

B. Storing of all firearms **and ammunition not principally used in handguns** on the premises out of the reach of customers in secure, locked facilities, so that access to firearms **and ammunition not principally used in handguns** shall be controlled by the dealer or employees of the dealer, to the exclusion of all others. **Ammunition principally used in handguns shall be stored pursuant to the requirements of Penal Code section 12061(a)(2).**

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**5.26.090 - Permit form.**

All permits issued pursuant to this chapter shall be in the form prescribed by the Attorney General of the state of California.

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**5.26.100 - Permit—Duration, renewal.**

All permits issued pursuant to this chapter shall expire one year after the date of issuance; provided, however, that such permits may be renewed by the Chief of Police for additional periods of one year upon the approval of an application for renewal by the Chief of Police and payment of the renewal fee. Such renewal application must be received by the Chief of Police, in completed form, no later than forty-five (45) days prior to the expiration of the current permit.

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**5.26.110 - Permit—Assignment.**

The assignment or attempt to assign any permit issued pursuant to this chapter is unlawful and any such assignment or attempt to assign a permit shall render the permit null and void.



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**5.26.120 - Permit—Conditions.**

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Any permit issued pursuant to this chapter shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the permit by the Chief of Police. **Any permit issued pursuant to this chapter shall be subject to such additional conditions as the Chief of Police finds are reasonably related to the purpose of this chapter.**

A. The business shall be carried on only in the building located at the street address shown on the license.

B. The Permittee shall comply with ~~Sections 12073, 12074, 12076, 12077 and 12082 and subdivision (b) of Section 12072 of the California Penal Code, to the extent that the provisions remain in effect.~~ **all federal, state, and local laws relating to the sale of firearms or ammunition.** ~~Any permit issued pursuant to this chapter shall be subject to such additional conditions as the Chief of Police finds are reasonably related to the purpose of this chapter.~~

C. ~~The permittee shall not sell, lease or otherwise transfer a firearm without also selling or otherwise providing with each firearm a trigger lock or similar device approved by the Chief of Police that is designed to prevent the unintentional discharge of firearm. The trigger lock or similar device required to be sold pursuant to this subsection must be attached to each firearm prior to completion of the sales transaction.~~

DC. The permittee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height as per Penal Code Section 12071(b)(11):

**IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON**

ED. **Persons Under the Age of Eighteen Excluded from Establishments Displaying Firearms.** No person who maintains or operates any place of business in which firearms are kept, displayed or offered in any manner, sold, furnished or transferred shall permit the entry into the premises of persons under the age of 18 years, unless all firearms and ~~firearms accessories~~ are completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of eighteen years are excluded. Each entrance to such a room or enclosure shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered in such room or enclosure and that persons under the age of eighteen are excluded.

A person who maintains or operates any place of business that openly displays firearms without providing for separate enclosures therefor, must prevent entry into the premises of persons prohibited by age under state law from purchasing firearms. The entrance to the establishment shall be signposted in block letters not less than one inch in height to

the effect that firearms are kept, displayed or offered on the premises and that persons under the age of eighteen are excluded.

The person who maintains or operates any place of business in which firearms are kept, displayed or offered in any manner, sold, furnished or transferred, and his employees, agents, and persons acting under his authority, are each and together separately and jointly responsible for requiring bona fide evidence of identity of persons to prevent the entry of persons not permitted to purchase a firearm under state law by reason of age. Bona fide evidence of identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency therefor, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person.

**FE. Persons Under the age of Twenty-one Excluded from Establishments Displaying Concealable Firearms.** No person who maintains or operates any place of business in which concealable firearms are kept, displayed or offered in any manner, sold, furnished or transferred shall permit the entry into the premises of persons under the age of twenty-one years, unless all concealable firearms and concealable firearms accessories are completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of twenty-one years are excluded. Each entrance to such a room or enclosure shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered in such room or enclosure and that persons under the age of twenty-one (21) are excluded.

A person who maintains or operates any place of business that openly displays concealable firearms without providing for separate enclosures therefor, must prevent entry into the premises of persons prohibited by age under state law from purchasing concealable firearms. The entrance to the establishment shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered on the premises and that persons under the age of twenty-one (21) are excluded.

The person who maintains or operates any place of business in which concealable firearms are kept, displayed or offered in any manner, sold, furnished or transferred, and his employees, agents, and persons acting under his authority, are each and together separately and jointly responsible for requiring bona fide evidence of identity of persons to prevent the entry of persons not permitted to purchase concealable firearms under state law by reason of age. Bona fide evidence of identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency therefor, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person.

**GF. Persons Prohibited from Possessing Firearms *and/or Ammunition* Excluded from Establishments Displaying Firearms *and/or Ammunition*.** Persons prohibited from possessing or purchasing firearms pursuant to California Penal Code Section **12021**

**and 12021.1 or possessing or purchasing ammunition pursuant to Penal Code Section 12316(b), or otherwise prohibited by federal, state or local law from possessing or purchasing firearms**, shall not enter into or loiter about any firearms dealership, defined as a place of business in which firearms are openly kept, displayed or offered in any manner, sold, furnished or transferred pursuant to Penal Code Section 12070. Each entrance to such an establishment shall be signposted in block letters not less than one inch in height to the effect that persons prohibited from possessing firearms pursuant to Penal Code Section 12021 are excluded from the premises.

When a firearms dealer displays or offers for sale firearms within a separate room or enclosure that segregates the firearms, and firearms related accessories (including but not limited to, **ammunition**, ammunition clips, bullets and holsters) from other general merchandise, each entrance to such a separate room or enclosure shall be signposted in block letters not less than one inch in height to the effect that persons prohibited from possessing firearms pursuant to Penal Code Section 12021 are excluded from entering the separate rooms or enclosures.

Any dealer engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm **and/or ammunition** within the city who knowingly violates the provisions of Section 5.26.120G, or fails to adhere to the notice provisions of Section 5.26.120G, shall be subject to the penalty provisions of the Oakland Municipal Code, Chapter 5.26, including but not limited to suspension and/or revocation of his or her permit to sell firearms.

Any person prohibited from possessing firearms pursuant to Penal Code Section 12021 who enters into or loiters about firearms dealership in Oakland that has been properly posted pursuant to this section is guilty of a misdemeanor.

**G. Inventory Reports. Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, and serial number, together with a listing of each firearm the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen that is required to be reported pursuant to Penal Code Section 12071(b)(13). Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Chief of Police, by such means as specified by the Chief of Police. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not**

***less than five years from the date of the inventory and shall make the copy available for inspection by federal, state or local law enforcement upon request.***

***H. Background Investigation and Verification. Employees, agents or supervisors of the applicant or permittee may not have access to or control over workplace firearms or ammunition until those persons have undergone a law enforcement investigation and background verification process as required by the Chief of Police. A new law enforcement investigation and background verification of such persons must be conducted each time the permittee renews his or her permit, or applies for a new permit. The Chief of Police shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee allows any employee, agent or supervisor to have access to or control over workplace firearms or ammunition prior to the completion of the law enforcement investigation and background verification of those persons, or if those persons have not undergone the law enforcement investigation and background verification process within the last 365 days.***

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**5.26.130 - Permit—Grounds for revocation.**

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In addition to any provisions constituting grounds for denial shall also constitute grounds for revocation.

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**5.26.140 - Permit—Hearing.**

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A. Any person whose application for a permit under this chapter has been denied, or whose permit has been revoked pursuant to the provisions of this chapter, shall have the right to a hearing before the Chief of Police or a designee prior to final denial or prior to revocation.

B. The Chief of Police shall give the applicant or permittee written notice of the intent to deny the application or to revoke the permit. The notice shall set forth the ground or grounds for the Chief of Police's intent to deny the application or to revoke the permit, and shall inform the applicant or permittee that he or she has ten days from the date of receipt of the notice to file a written request for a hearing. The application may be denied or the permit revoked if a written hearing request is not received within the ten-day period.

C. If the applicant or permittee files a timely hearing request, the Chief of Police shall set a time and place for the hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be

represented by counsel, and to confront and cross-examine any witnesses against them. The decision of the Chief of Police whether to deny the application or revoke the permit is final and nonappealable.

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**5.26.150 - Permit—Liability insurance and indemnification.**

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No permit shall be issued or continued pursuant to this chapter unless there is in full force and effect a policy of insurance in such form as the City Attorney deems proper, executed by an insurance company approved by the City Attorney whereby the applicant or permittee is insured against liability for damage to property and for injury to or death of any person as a result of the sale, transfer or lease, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm. The minimum liability limits shall not be less than one million dollars (\$1,000,000.00) for damage to or destruction of property in any one incident, and one million dollars (\$1,000,000.00) for the death or injury to any one person; provided, however, that additional amounts may be required by the City Attorney if deemed necessary.

Such policy of insurance shall contain an endorsement providing that the policy will not be canceled until notice in writing has been given to the city, addressed in care of the Chief of Police, 455 - 7th Street, Oakland, California, 94607, at least thirty (30) days immediately prior to the time such cancellation becomes effective. Further, such policy of insurance shall name the city, its officers, agents, and employees as additional insureds. Additionally, applicants and permittees shall indemnify, defend, and hold harmless the city, its officers, agents, and employees, from claims arising from the negligence of the applicant or permittee.

***No permit shall be issued or continued pursuant to this chapter unless the applicant agrees to indemnify, defend and hold harmless the City, its officers, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of the applicant, the applicant's officers, employees, agents and/or supervisors, or if the business is a corporation, partnership or other entity, the officers, directors or partners.***

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**5.26.160 - Permit—Authority to inspect.**

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Any and all investigating officials of the city shall have the right to enter the building designated in the permit from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, mechanical, fire, electrical, plumbing, or health regulations, and provisions of this chapter. A police investigator may conduct compliance inspections **from time to time during regular business hours** to insure conformance to all federal, state, and local law, and all provisions of this chapter.

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**5.26.170 - Compliance.**

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Any person engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm **or ammunition** on the effective date of this chapter shall have a period of sixty (60) days after such effective date to comply with the provisions of this chapter.

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**5.26.180 - Temporary Suspension or Revocation of permit to sell firearms.**

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- A. If the dealer violates any federal, state and **or** local county or city law, the Chief of Police may immediately suspend the right of the dealer to sell firearms **or ammunition**. ~~This temporary suspension will not exceed three days.~~ If the violation results in a criminal charge filed in court by a federal, state, or county District Attorney, such permit to sell firearms **or ammunition** may be suspended until the case is adjudicated in a court of law. **If the person is convicted, such permit must be immediately revoked.**
- B. Notice of suspension shall be mailed to the person(s) who made application for the permit and shall be delivered to the address listed on the permit.
- C. **In addition to any other penalty or remedy, the City Attorney shall report any person or entity whose law enforcement permit is suspended or revoked pursuant to this Article to the Bureau of Firearms of the California Department of Justice and the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice.**

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**5.26.190 Severability**

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This chapter shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

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*(Ord. 12212 § 1, 2000; Ord. 12211 § 1, 2000; Ord. 11947 § 1, 1996; prior code § 2-10.12)*

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IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons

City Clerk and Clerk of the Council

of the City of Oakland, California

**REVISED**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2010 FEB -4 PM 6:17

APPROVED AS TO FORM AND LEGALITY

*Rocio V. Sierra*  
City Attorney

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 9.20, KNOWN AS THE AMMUNITIONS SALES REGISTRY ORDINANCE, TO 1) EFFECTIVE FEBRUARY 1, 2011, REMOVE THE CITY OF OAKLAND REQUIREMENT FOR THE MAINTENANCE OF A REGISTRY OF HANDGUN AMMUNITION SALES TO AVOID DUPLICATING THE REQUIREMENTS OF AB 962, AND 2) REQUIRE AMMUNITION PURCHASERS TO SUBMIT A THUMBPRINT ALONG WITH OTHER REQUIRED PROOF OF IDENTITY AT THE TIME OF AMMUNITION SALE**

~~WHEREAS, California law requires persons who sell, loan or transfer firearms within California to obtain a license, but does not require persons who sell, loan or transfer ammunition to do so, and~~

WHEREAS, The City Council of the City of Oakland has enacted a series of local measures to reduce the widespread availability of firearms and ammunition in Oakland, including passage of Ordinance No. 11848 C.M.S. in 1995 that imposed a requirement that ammunition sales be recorded in a registry maintained by the seller, but did not require thumbprinting of ammunition purchasers, and

WHEREAS, other California jurisdictions, including Sacramento and San Francisco, have found that requiring ammunition purchasers to provide thumbprints at the time of sale is an effective means to verify the identity of ammunition purchasers, and



WHEREAS, effective February 1, 2011, AB 962 will require handgun ammunition sellers in California to create and maintain records of handgun ammunition sales and transfers, but the new law does not require vendors to create or maintain records for sale or transfer of ammunition that is not principally used in handguns, and

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

The Ammunition Sales Registration Ordinance of the City of Oakland is amended to read as follows:

(Additions are in *bold italics*, deletions are in ~~strike-out~~)

9.20.010 – Title.

This chapter shall be known as the ammunition sales registration ordinance.

**9.20.020 - Findings and purpose.**

~~The City Council finds that, the state of California has not preempted the enactment of a municipal ordinance requiring the maintenance of a registry of ammunition sales, and further finds that the availability of such ammunition sales records can aid the police department in investigations of major crimes involving the use of firearms.~~

The intent of the City Council in enacting the ordinance codified in this chapter is to implement a requirement that ammunition vendors within the city record and maintain records with respect to each individual purchase of ammunition *for use by law enforcement in identifying ineligible purchasers of ammunition and removing firearms and ammunition from persons ineligible to possess them* so that the purchaser can be traced in the event the ammunition were used in the commission of criminal activity.

*The City Council further finds that, with the passage of AB 962 imposing statewide requirements for recording handgun ammunition sales, that after February 1, 2011, there will be no need for a local*

**registry to record the purchase of ammunition principally used in handguns.**

**The City Council further finds that, despite the passage of AB 962, there will remain the need to maintain a record of ammunition sales involving ammunition not principally used in handguns that is not covered under AB 962.**

**The City Council further finds that the requirement for ammunition purchasers to submit a thumbprint at the time of sale will allow more effective screening of purchasers who are not eligible to possess firearms.**

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**9.20.030 - Definitions.**

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~~As used in this chapter, "Ammunition" means a projectile designated to be expelled by force of an explosion, and intended for use in any firearm, including pistols, revolvers, rifles, and shotguns.~~

**"As used in this chapter, "Ammunition" means projectiles, cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an "antique firearm" as that term is defined in section 921(a)(16) of Title 18 of the United States Code.**

**As used in this chapter, "ammunition principally used in handguns" means ammunition designed or suited for use in revolvers, pistols or other firearms capable of being concealed upon the person, as that term is defined in Penal Code section 12001(a).**

"Vendor" means any individual, person, gun dealer, store, firm or corporation **engaged in the business of** selling ammunition within the city of Oakland.

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**9.20.040 - Record of ammunition sales.**

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**The requirements of this section shall apply to all ammunition sales in Oakland up until February 1, 2011. Effective February 1, 2011, the requirements of this section shall not apply to the sale or transfer of ammunition that is principally for use in pistols, revolvers,**

**or other firearms capable of being concealed upon the person, as that term is defined in Penal Code section 12001(a).**

Every vendor who sells ammunition in the city shall maintain a record of ammunition sales as prescribed by this chapter. The record shall be maintained on the vendor's premises, on forms supplied by, or approved by, the Oakland Police Department (OPD). **All ammunition sales must be conducted with the actual purchaser present in a face-to-face transaction.** An ammunition purchaser must provide to the vendor and the vendor shall record the following information:

- A. The date of the transaction;
  - B. The purchaser's name, address and date of birth;
  - C. The purchaser's valid driver's license number or other **government issued** identification number from a valid photographic I.D. such as a passport;
  - D. The brand of ammunition purchased;
  - E. The type and amount of ammunition purchased; and
  - F. The purchaser's signature and vendor's initials.
- G. The thumbprint of the purchaser on the above record.**

The information required to be recorded shall be maintained in chronological order by date of sale of the ammunition and shall be retained on the business premises of the vendor for a period not less than ~~two~~ **five** years following the date of the recorded sale of the ammunition. **In addition, the required information in A-G above shall be transmitted electronically within 5 business days of sale to OPD by means determined by the Chief of Police.**

**Federal, state or local law enforcement** Oakland police officers may enter a vendor's premises during regular business hours for the purpose of examining, inspecting or copying records required by this chapter.

**This section shall not apply if the purchaser is a "peace officer" as that term is defined in Penal Code sec. 830 et seq., or a federal law enforcement officer or a person licensed as a dealer or collector in firearms pursuant to Chapter 44 (commencing with Sec. 921) of Title 18 of the United States Code and the regulations pursuant thereto.**

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**9.20.050 - Violation—Penalty.**

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It is unlawful for any vendor engaged in the retail sale of ammunition in Oakland to knowingly make a false entry in, or fail to make appropriate entry, or fail to properly maintain any such record, or refuse to immediately provide the ammunition sales log for inspection to a **federal, state or local law enforcement** police officer upon request.

Violation of any provision of this chapter shall be a misdemeanor, subject to fines and penalties as provided by law. Additionally, failure to abide by the requirements of this chapter shall be grounds for the revocation of a vendor's ~~firearms-dealer license~~ **permit**, pursuant to Chapter 5.26 of this code.

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**9.20.060 - Severability.**

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This chapter shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the remaining sections, subsection, paragraphs, sentences, or words of this chapter shall remain in full force and effect, and to that end the provisions of this shall be deemed severable.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

**LaTonda Simmons**

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

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY  
10 FEB 03 PM 4:42

*Roe V. Quiro*  
City Attorney

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

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ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 9.36, TO REQUIRE REPORTING TO THE OAKLAND POLICE DEPARTMENT THE THEFT OR LOSS OF A FIREARM WHEN THE OWNER KNEW OR SHOULD HAVE KNOWN THAT A FIREARM HAS BEEN LOST OR STOLEN**

WHEREAS, IN 2003 the City Council approved Ordinance No. 12529 C.M.S. establishing penalties for failing to report the loss or theft of a firearm in Oakland; and

WHEREAS, the original language utilized a restrictive standard that might prevent prosecution in cases where a firearm owner did not report the loss or theft of a weapon; and

WHEREAS, a court should be allowed to reasonably infer from the evidence presented when a firearm owner knew or should have known a firearm has been stolen or lost.

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

The Oakland Municipal Code, Chapter 9.32 is amended to read as follows (additions in ***bold italics***, deletions in ~~strike-out~~):

***9.36.131 - Theft or loss of firearms—Reporting of stolen and/or lost firearms required.***

- A. Any person owning a firearm or in possession of a firearm is required to report the theft or loss of such firearm to the Oakland Police Department when:

1. owner resides in Oakland, AND/OR
2. the theft or loss of the firearm occurs in Oakland.

B. A person subject to the reporting requirements in subsection A is required to report the theft or loss of a firearm within forty eight (48) hours of ~~knowing~~ **when he or she knew or reasonably should have known** that the firearm ~~has been~~ **was** stolen or lost.

C. A person who has experienced the theft or loss of a firearm between August 1, 1992 and July 30, 2002 and who otherwise meets the reporting requirements in subsection A is required to report the loss or theft of such firearm to the Oakland Police Department within sixty (60) days of the effective date of the Amendment under which this new section was adopted.

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**9.36.140 - Severability.**

This article shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this article, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this article shall be deemed severable.

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***(Prior code § 2 11.10)***

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**9.36.141 - Penalty—Misdemeanor.**

A. Failure to report within forty-eight (48) hours the theft or loss of a firearm pursuant to this subsection B of Section 9.36.131, when the owner or person in possession knew or **reasonably** should have known of the theft or loss, shall be a misdemeanor subjecting the owner to prosecution.

B. Failure to report firearms theft or loss within the timeframe set forth within subsection C of section 9.36.131 shall be a misdemeanor subjecting the owner to prosecution.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons

City Clerk and Clerk of the Council

of the City of Oakland, California