



AGENDA REPORT

TO: Members on the City Council
and the General Public

FROM: Councilmember **Dan Kalb**
Councilmember **Noel Gallo**
Vice-mayor **Rebecca Kaplan**

SUBJECT: GHOST GUN ORDINANCE

DATE: December 30, 2021

RECOMMENDATION

ADOPT AN 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

EXECUTIVE SUMMARY

This Ordinance will prohibit the possession, sale, transfer and manufacturing of an unfinished frame or receiver in Oakland that has not been imprinted with a serial number, and prohibit the manufacturing, assembling, and possession of an unserialized “ghost gun” in Oakland.

BACKGROUND

Privately Manufactured Firearms, often referred to as “ghost guns,” are untraceable and unregulated firearms that are often assembled by unlicensed individuals using build-it-yourself kits. 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 make them be legally considered as firearms under federal and state law.

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. 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.

Assembling the parts into a lethal Privately Manufactured Firearm can be done by untrained amateurs using common household tools. 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.”

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

The increased availability of Privately Manufactured Firearms poses enormous risks to public safety in Oakland and undermines law enforcement and community-based efforts to reduce and prevent gun violence. 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. As of March 2021, Privately Manufactured Firearms account for 21.7% of firearms confiscated this year.

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. 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.

The BRADY Campaign points out that California law currently requires anyone who builds a ghost gun to apply to the CA Department of Justice (DOJ) for a serial number to be affixed to the gun and undergo a background check, and that data show there has been minimal compliance with that law.

Further, Brady reminds us that in 2019, the California Legislature and Governor enacted AB 879 to strengthen ghost gun regulations and bring needed accountability, transparency, and regulation to the sale and transfer of firearm precursor parts. Once in effect, the new law will treat the sale of firearm precursor parts in a manner similar to the sale of ammunition under California law by requiring sellers to obtain a vendor license to sell more than one precursor part in any 30-day period. It will also require sales of precursor parts by any party to be conducted in person, through licensed precursor part vendors, pursuant to a background check and sale record. Licensed vendors will also be required to comply with additional public safety laws similar to those governing firearm dealers and ammunition vendors under California law, including ensuring employees who handle firearm precursor parts regularly pass background checks and restrictions on trafficking of firearm precursor parts or delivery of such products to minors under 21 and other people ineligible to receive them.

However, even when that important new law takes effect on July 1, 2022, it will not require vendors to sell precursor parts with serial numbers already affixed and instead will still rely on purchasers to apply for and affix serial numbers themselves a—process that is currently rife with non-compliance. Moreover, the new law does not treat sales of precursor parts the same as sales of firearms. The background check will not check entries in the national database that is used for firearms purchases and there are no limits on the number of precursor parts that can be purchased, as there are for firearms.

Brady also reminds us that on the federal level, Congress is deadlocked, so a federal law banning ghost guns is not in the cards in the foreseeable future. President Biden issued an executive order in June directing the Attorney General to address the issue, and the AG has now issued proposed federal regulations that will treat unfinished frames/receivers as firearms. This is an important step forward but it will take months until a final regulation is published and even further delay if the regulation is challenged by the gun industry. And executive orders are subject to change when there is a change in administration.

We need to act now at the local level, as other cities in California have done, which could not only help protect our residents, but also may help spur additional action in nearby jurisdictions and at the state level.

ANALYSIS

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 a working firearm can easily be built. Unfinished frames or receivers and Privately Manufactured Firearm kits cost less than firearms produced by licensed manufacturers.

While presently no licensed gun dealers operate in Oakland, residents can and have sought out Privately Manufactured Firearm precursor parts and kits.

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.

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 include the possession of firearm precursor parts.

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.

Sales of Privately Manufactured Firearm precursor parts and kits present very 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.

Oakland, which has enacted strong firearms safety laws, 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).

Oakland’s gun violence prevention laws and efforts are being undermined by the increase in unregulated sales of Privately Manufactured Firearms kits and precursor parts.

COORDINATION & PUBLIC OUTREACH

Councilmember Kalb worked with gun safety advocates including the Brady Campaign, City staff and the City Attorney’s office regarding this legislation. We have reviewed publicly available information regarding the spread of ghost guns. We have and will continue to engage with stakeholders—including the citizens of Oakland, to move this forward.

ACTION REQUESTED BY THE CITY COUNCIL

We respectfully request that the City Council: Adopt an Ordinance prohibiting the possession, sale, transferring and manufacturing of an unfinished frame or receiver that has not been imprinted with a serial number and the manufacturing and assembling of a unserialized “ghost gun” in Oakland.

--- --- ---
For questions regarding this report, please contact Seth Steward, Chief of Staff to Councilmember Kalb, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Councilmember, District 1



Noel Gallo
Councilmember, District 5



Rebecca Kaplan
Vice-mayor, At-Large Councilmember