



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: October 12, 2021

Item Number: 21

Item Description: Ghost Gun Ordinance

Supplemental/Revision Submitted By: Farimah Brown, City Attorney's Office

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The City Attorney's Office submits these revisions to the proposed Ordinance to clarify its scope and improve legal defensibility. These revisions do not fundamentally alter the purpose or effect of the Ordinance but do address technical legal concerns.

Revisions:

1. Edits a sentence in the Findings for clarity.
2. Amends the definition of “unfinished frame or receiver” and makes corresponding minor edits throughout, to avoid conflict with a proposed federal rule.
3. Addresses applicability, in light of federal and/or state law, for (1) licensed firearm precursor part vendors, (2) Federal Firearms Importers, (3) Federal Firearms Manufacturers, (4) sworn peace officers acting within the scope of official duties, and (5) licensed and regulated common carriers.
4. Deletes a subsection that is descriptive of existing law.
5. Provides that Subsections A and C shall take effect 6 months after the other provisions go into effect, rather than 90 days, allowing the City more time to inform residents of the provisions.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

ORDINANCE NO. #,###-N.S.

ADDING CHAPTER 13.73 OF THE BERKELEY MUNICIPAL CODE, PROHIBITION OF POSSESSION OR SALE OF NON-SERIALIZED, UNFINISHED FIREARM FRAMES OR RECEIVERS AND NON-SERIALIZED FIREARMS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

The Council of the City of Berkeley hereby finds and determines as follows:

- A. Berkeley is experiencing a rise in detection and seizure of firearms lacking serial numbers or other identifying markings, commonly known as “ghost guns”
- B. A ghost gun is a firearm constructed using unfinished firearm parts, including unfinished frames or receivers, which house the operating parts of the firing mechanism.
- D. Ghost gun kits contain all necessary parts to complete assembly and turn an unfinished frame or receiver into a functional firearm. Numerous online videos illustrate how to easily assemble a ghost gun.
- E. A firearm assembled from a ghost gun kit is non-serialized and untraceable through law enforcement databases.
- F. Ghost gun kits are widely available for purchase, circumventing the background check process, allowing individuals who are prohibited from possessing or purchasing firearms due to criminal history, restraining orders, age, or mental illness to easily obtain them.
- G. The majority of ghost guns recovered by the Berkeley Police Department (“BPD”) are seized from individuals prohibited from legally possessing or purchasing firearms.
- H. The increased availability of ghost guns threatens the public safety and welfare of the residents of Berkeley.
- I. As of September 24, 2021, 22 of the 77 guns seized by BPD to date in 2021 were ghost guns--both handguns and ~~or~~ rifles. There have been 34 shootings in the City so far this year, up from 25 at this time last year.
- J. Ghost guns have been linked to multiple shootings in Berkeley in recent years.
- K. The increase of ghost guns in Berkeley is consistent with national trends. Between 2016 and 2020, law enforcement agencies across the country reported approximately 23,906 ghost guns to the Bureau of Alcohol, Tobacco, Firearms, and

Explosives as having been recovered from crime scenes, including 325 homicides or attempted homicides.

L. Federal law does not fully regulate ghost gun kits or parts. The Congress of the United States has not, expressly or by implication, preempted additional regulation of firearms by state and local authorities. State law regulates some, but not all, aspects of ghost gun kits or parts.

M. State law provisions regulating the sale and purchase of firearm precursor parts do not become effective until July 1, 2022.

N. The Legislature of the State of California has not, expressly or by implication, preempted the entire field of firearms regulation not in conflict with state law; and

O. The Council of the City of Berkeley ("Council") intends this Ordinance to be applied and interpreted consistent with federal and state law.

P. Council finds and declares this Ordinance necessary in order to eliminate non-serialized, untraceable firearms, thereby promoting and protecting the public health, safety, and general welfare of the residents of the City of Berkeley.

Q. Council finds and declares this Ordinance will promote effective law enforcement by providing reasonable measures to address the dangers posed to the community by ghost guns.

R. Council further finds it is within its police powers to implement and enforce the provisions of this Ordinance.

Section 2. Berkeley Municipal Code Chapter 13.73 is added to read as follows:

Chapter 13.73
BANNING NON-SERIALIZED PRECURSOR PARTS AND NON-SERIALIZED FIREARMS

13.73.010. Purpose

Purpose and Intent. It is the purpose and intent of this section that possession, purchase, sale, receipt, and transportation of non-serialized, unfinished frames and unfinished receivers, and non-serialized firearms within the City of Berkeley be prohibited for the protection, health, and welfare of the public, to further effective law enforcement, and to provide the City with reasonable measures to address the dangers to the community posed by non-serialized firearms, commonly known as "ghost guns." This section is intended to be applied and interpreted consistent with state and federal law.

13.73.020 Definitions

Except as where context otherwise requires, the following definitions apply in this chapter:

- A. "Federal Firearms Importer" means a licensed firearm importer as defined in 18 U.S.C. § 921(a)(9) (2019), as may be amended.
- B. "Federal Firearms Manufacturer" means a licensed firearm manufacturer as defined in 18 U.S.C. § 921(a)(10) (2019), as may be amended.
- C. "Firearm" has the same meaning as in California Penal Code section 16520(a), as may be amended. As used in this section, firearm shall include a handgun, rifle, or shotgun.
- D. "Frame" means the primary structural component of a firearm to which the fire control components are attached.
- E. "Handgun" has the same meaning as in California Penal Code section 16640, as may be amended.
- F. "Non-serialized firearm" means a firearm that is not either imprinted with a serial number issued to that firearm by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with federal law or engraved or permanently affixed with a serial number provided by the California Department of Justice for that firearm.
- G. "Person" has the same meaning as in Berkeley Municipal Code section 1.04.010.
- H. "Receiver" means the primary structural component of a firearm to which the fire control components are attached.
- I. "Rifle" has the same meaning as in California Penal Code section 17090, as may be amended.
- J. "Shotgun" has the same meaning as in California Penal Code section 17190, as may be amended.
- K. "Unfinished frame or receiver" means any forging, casting, printing, extrusion, machined body or similar article that: (1) has reached a stage in manufacture where it may readily be completed, assembled or converted to be a functional frame or receiver when combined with other parts; or (2) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once finished or complete.
~~"Unfinished frame" means a piece of any material that does not constitute the completed frame of a firearm, but that has been shaped or formed in any way for the purpose of becoming the frame of a firearm, and which may be made into a functional frame of a firearm through milling, drilling, or other means.~~
- L. ~~"Unfinished receiver" means a piece of any material that does not constitute the completed receiver of a firearm, but that has been shaped or formed in any way for the purpose of becoming the receiver of a firearm, and which may be made into a functional receiver of a firearm through milling, drilling, or other means.~~

13.73.030 Prohibition—non-serialized unfinished frames, ~~non-serialized unfinished~~ or receivers, non-serialized firearms

It is unlawful for any person to:

A. Possess, purchase, transport, or receive an unfinished frame or ~~unfinished~~ receiver, unless the unfinished frame or ~~unfinished~~ receiver is imprinted with a serial number issued to that unfinished frame or ~~unfinished~~ receiver by a Federal Firearms Importer or Federal Firearms Manufacturer, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that unfinished frame or ~~unfinished~~ receiver.

1. This subsection shall not apply to a Federal Firearms Importer or Federal Firearms Manufacturer, or a party who holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485.
2. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
3. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

B. Sell, offer to sell, transfer, or offer to transfer an unfinished frame or ~~unfinished~~ receiver, unless the unfinished frame or ~~unfinished~~ receiver is imprinted with a serial number issued to that unfinished frame or ~~unfinished~~ receiver by a Federal Firearms Importer or Federal Firearms Manufacturer, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that unfinished frame or ~~unfinished~~ receiver.

1. This subsection shall not apply where the party purchasing or receiving the unfinished frame or receiver is a Federal Firearms Importer or Federal Firearms Manufacturer, or holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485.
2. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
3. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

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C. Possess, purchase, transport, or receive a non-serialized firearm.

1. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
2. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.
3. This subsection shall not apply to a non-serialized firearm if any of the following conditions apply:
 - (i) The non-serialized firearm has been rendered permanently inoperable.
 - (ii) The non-serialized firearm is an antique firearm as defined in California Penal Code section 16170, as may be amended.
 - (iii) The non-serialized firearm was manufactured or assembled prior to 1968.
 - (iv) The non-serialized firearm has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including § 5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44, including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.
 - (v) The non-serialized firearm has been entered into the centralized registry set forth in California Penal Code section 11106, as may be amended, prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification.
4. It shall be an affirmative defense to a violation of this subsection that the person is in compliance with California Penal Code section 29180, as may be amended.

~~D. — Sell, offer to sell, transfer, or offer to transfer a non-serialized firearm. This subsection shall not apply to a non-serialized firearm if any of the following conditions apply:~~

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~~1. — The non-serialized firearm has been rendered permanently inoperable.~~

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~~2. — The non-serialized firearm is an antique firearm as defined in California Penal Code section 16170, as may be amended.~~

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~~3. — The non-serialized firearm was manufactured or assembled prior to 1968.~~

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4. ~~The non-serialized firearm has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including §5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44, including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.~~

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13.73.040 Outreach, enforcement

A. Upon enactment of this ordinance, the City ~~{city/county agency}~~ shall promptly take reasonable efforts to inform all residents of its terms. The information shall include notice that all residents who possess any unfinished frame or receiver or any assembled or manufactured firearm that lacks a serial number required under subsections A, B, or C, ~~or D~~ of section 13.73.030 will not be penalized under this section if they surrender the non-complying unfinished frame or receiver or assembled firearm to a law enforcement agent or agency.

B. A violation of subsection B of section 13.73.030, or a violation stemming from the same transaction, is punishable as a Class 1 Misdemeanor.

C. Every violation of subsections A, or C, ~~or D~~ of section 13.73.030 shall constitute a misdemeanor and upon conviction shall be punishable as set forth in Chapter 1.20 of this code. The first violation will not be penalized if the violator possesses, transports or receives three (3) or fewer firearms or unfinished frames or receivers, surrenders those firearms or unfinished frames or receivers to law enforcement, and does not commit additional violations of this chapter in the year following the violation.

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. Effective date. Except for subsections A, and C, ~~and D~~ of section 13.73.030, this ordinance shall take effect thirty (30) days after its adoption. Subsections A, and C, ~~and D~~ of this section will take effect ninety-six (690) months~~days~~ after the other provisions of the ordinance take effect.