



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
 DISTRICT 2

CONSENT CALENDAR  
 July 27, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-sponsor), Councilmember Hahn (co-sponsor), Vice Mayor Droste (co-sponsor)

Subject: Ghost Gun Ordinance

RECOMMENDATION

Adopt an ordinance amending the Berkeley Municipal Code to prohibit any person other than a licensed manufacturer or importer 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, subject to certain exceptions pursuant to state law; and prohibiting any person from possessing, manufacturing or assembling a firearm that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law.

POLICY COMMITTEE RECOMMENDATION

On September 27, 2021, the Public Safety policy committee took the following action:

M/S/C (Wengraf/Kesarwani) to send the item, with a positive recommendation, to Council and directed the author to work with the City Attorney's office to finalize a draft Ordinance and to submit the item as a time critical item for inclusion in the October 12, 2021 Council agenda.

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Prohibiting the sale, distribution, and possession of precursor parts for Privately Manufactured Firearms (PMFs), commonly known as "ghost guns," is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

"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. Federal law regulates firearm frames and receivers, but not *unfinished* (or sometimes referred to as "80 percent") receivers and frames. These unfinished parts, commonly known as "precursor parts," are not considered "firearms" under the Gun Control Act, so manufacturers and importers are

not required to engrave them with serial numbers, record the identities of their purchasers, or run background checks on customers. (18 U.S.C 921, 27 CFR 478.92.) Privately Manufactured Firearms (PMFs) are known as “ghost guns” because they are assembled using an unfinished frame or receiver that does not have a unique serial number allowing it to be traced to the manufacturer, dealer, and purchaser.

When an end user assembles the gun, California law mandates that they first apply for a serial number from the California Department of Justice, engrave the number on the gun within 10 days of assembly, and then provide information about the gun and the identity of its owner to the DOJ. (Penal Code 29180.) However, this requirement is trivially easy to evade. The lack of background checks makes it possible for persons whom the law recognizes as too dangerous to be permitted to purchase a firearm to still acquire them at a lower cost. The absence of a serial number on ghost guns hinders criminal investigations, endangering public safety.

City law does not regulate the possession, sale, transfer, or manufacture of unfinished firearm parts including frames and receivers. Pursuant to AB-857 (2016), state law as of July 1, 2022 will require that the sale or transfer of precursor parts to be processed by a licensed vendor in a face to face transaction with a background check. City law also does not regulate the manufacture or assembly of firearms that lack serial numbers. State law requires a person who wishes to self-manufacture or assemble a firearm to obtain a serial number from the California Department of Justice pursuant to Penal Code Section 30400 and affix it to the firearm within 10 days of manufacturing or assembling the firearm, and submit to a background check pursuant to Penal Code Section 30400. Possession of an un-serialized PMF is a misdemeanor violation of California Penal Code Section 29180, but even under the new California law, the onus to provide a serial number is on the assembler of the parts rather than the vendor, making the law much easier to evade.

### BACKGROUND

Currently, anyone in California with cash on hand can purchase the parts to make a PMF from the Internet. For example, the Polymer80 website<sup>1</sup> has “80%” kits that are completely legal for California residents to purchase online and ship to their house. As of July 2021, no background checks, waiting periods, sale records, age restrictions, or limits on numbers of purchases apply to purchases of precursor parts or kits.

The California Bureau of Firearms seized 512% more ghost guns 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 ghost guns. In 2020, California far outpaced any other state in PMF seizures at 4,642. Overall, California accounted for 65% of all PMF seizures in the country. In January 2020, the ATF’s Los Angeles Field Division reported that over 40% of its cases involved these weapons. In February 2021, the Los Angeles City Attorney announced that law enforcement had recovered over 700 Polymer80 ghost guns, one brand of ghost gun parts/kits, in Los Angeles in 2020.

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<sup>1</sup> <https://www.polymer80.com/>

Ghost guns have been used in a wide variety of crimes in California, including homicides, robberies, school shootings, mass shootings, killings of law enforcement officers, and domestic violence. According to Berkeley's Interim Police Chief Jennifer Louis, 11 of the 49 guns recovered by the Berkeley Police Department<sup>2</sup> were "ghost guns," including a fully automatic firearm used at an April 22 shooting<sup>3</sup> at Fairview and Harper streets.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin      Council District 2      510-981-7120

ATTACHMENTS

1. Model Ordinance
2. City of San Diego Ordinance
3. Ordinance

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<sup>2</sup> Community Safety Town Hall. (2021, June 24). Vice Mayor Droste et al.

<sup>3</sup> Raguso, E. (2021, May 17). Felon charged with stalking, gunfire in Berkeley. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/05/17/alvin-monroe-shooting-stalking-investigation-berkeley>

**MODEL ORDINANCE BANNING POSSESSION, SALE, AND MANUFACTURE OF UNFINISHED FRAMES AND RECEIVERS AND UNSERIALIZED FIREARMS**

**WHY LOCAL LAWS ARE NEEDED**

1. The increasing availability of ghost guns and the components to assemble them threatens to undermine the effectiveness of gun safety laws critical to public health and safety.
2. Ghost guns are untraceable 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 just below the percentage of completion that would qualify them as firearms under federal and state law. Sellers often package together an unfinished frame or receiver with all the other parts needed to assemble a ghost gun in a build-it-yourself kit, with the specific purpose of avoiding firearms regulations. Assembling the parts into a lethal ghost gun can readily be done by untrained amateurs using common household tools and has been described as “ridiculously easy.”<sup>1</sup>
3. Ghost gun precursor parts and kits are typically sold by unregulated sellers online, in store fronts, or at gun shows, without the protections that California and federal law apply to the manufacture, sale, and transfer of firearms. No background checks, waiting periods, sale records, age restrictions, or limits on numbers of purchases apply to purchases of precursor parts or kits. In addition, 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.” Although current California law requires individuals who assemble firearms to apply for and affix a serial number, which requires a background check, those requirements are not enforced and it is all too easy for prohibited individuals to evade them.
4. Sales of ghost gun precursor parts and kits present serious safety risks. They are able to skirt the critical consumer safety requirements that apply to new models of handguns sold by licensed dealers and manufacturers in California. California’s Unsafe Handgun Act (UHA) is designed to ensure that firearms sold in the state function properly and are equipped with lifesaving features that protect lawful users and aid law enforcement in identifying individuals who have criminally misused firearms to endanger the public. However, ghost guns assembled from precursor parts and kits typically fail to include essential safety features mandated by the Act, such as passing drop safety tests and

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<sup>1</sup> A police officer who built a Glock-replica handgun from parts said it was “ridiculously easy” to do it. Stefanie Dazio, “Teen used ‘ghost gun’ in California high school shooting,” abcnews.go.com, Nov. 21, 2019, <https://abcnews.go.com/US/wireStory/teen-ghost-gun-california-high-school-shooting-67201760>.

including chamber loaded indicators (which show whether a gun is loaded) and microstamping technology (which allows bullets to be traced to the gun that fired them). A firearm assembled by an untrained amateur also may be of poor quality and unsafe. And purchasers of precursor parts and build kits typically avoid completing the firearms safety test that California requires of firearms purchasers.

5. As ghost gun precursor parts and kits become increasingly available throughout California, the threat to public safety also increases. California police records show that ghost guns have been recovered in a variety of crimes, including homicides, robberies, active shooter incidents, and domestic violence cases. In many instances, the perpetrators sought out ghost guns precisely because they knew they could not pass a background check.<sup>2</sup> The California Bureau of Firearms seized 512% more ghost guns from persons identified through the Armed Prohibited Persons System database in 2019 than in 2018.<sup>3</sup> The ATF recently reported that 30% of crime guns it recovered in California were ghost guns.<sup>4</sup> In January 2020, the ATF's Los Angeles Field Division reported that over 40% of its cases involved these weapons.<sup>5</sup>
6. California law currently requires anyone who builds a ghost gun to apply to the state Department of Justice (DOJ) for a serial number to be affixed to the gun and undergo a background check.<sup>6</sup> Data show there has been minimal compliance with the law.<sup>7</sup>
7. In 2019, the California Legislature enacted AB 879 to strengthen its 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

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<sup>2</sup> Alain Stephens, "Ghost Guns Are Everywhere in California," thetrace.org, May 17, 2019, <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

<sup>3</sup> California Office of the Attorney General, Department of Justice, APPS 2019, Annual Report to the Legislature 18, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/apps-2019.pdf>.

<sup>4</sup> Alain Stephens, "Ghost Guns Are Everywhere in California," thetrace.org, May 17, 2019, <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

<sup>5</sup> Brandi Hitt, "'Ghost guns' investigation: Law enforcement seeing unserialized firearms on daily basis in SoCal," abc7.com, January 20, 2020, <https://abc7.com/5893043/>.

<sup>6</sup> Cal. Penal Code § 29180(b): "[P]rior to manufacturing or assembling a firearm, a person manufacturing or assembling the firearm shall ... (1) [a]pply to the Department of Justice for a unique serial number ... pursuant to section 29182 [,] (2) ... [w]ithin 10 days of manufacturing or assembling [the] firearm ... [cause] the unique serial number ... [to] be engraved or permanently affixed to the firearm in a manner that meets or exceeds the requirements imposed ... [on firearms manufacturers by federal law] ... [and] (3) [a]fter the serial number provided by the department is engraved or otherwise permanently affixed to the firearm, ... shall notify the department of that fact ... with sufficient information to identify the owner of the firearm, the unique serial number ... provided by the department, and the firearm ...." Section 29180(c) applies the identical requirement to any person who, as of July 1, 2018, owned a firearm that had not previously been serialized voluntarily under state law or by federal requirement.

<sup>7</sup> Alain Stephens, "Ghost Guns Are Everywhere in California," thetrace.org, May 17, 2019, <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

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.

8. However, even when the 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.
9. 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.
10. The bottom line is that we can't wait until we get strong state and federal laws in place. We must act now on the local level, which will not only protect local jurisdictions but also will help spur action at the state level.

### **MODEL ORDINANCE**

#### **Prohibition on unfinished frames or receivers and unserialized firearms; penalty.**

A. As used in this section, “Unfinished Frame or Receiver” means a piece of any material that does not constitute the frame or receiver of a firearm, rifle, or shotgun but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm, rifle, or shotgun, and which may readily be made into a functional frame or receiver through milling, drilling, or other means. The term shall not include a piece of material that has had its size or external shape altered to facilitate transportation or storage or has had its chemical composition altered.

B. As used in this section, “Manufacture” means to fabricate, make, form, produce or construct, by manual labor or by machinery.

C. As used in this section, “Assemble” means to fit together component parts.

D. As used in this section, “Federal Firearms Importer” means a licensed importer pursuant to 18 U.S. Code § 921(a)(9).

E. As used in this section, “Federal Firearms Manufacturer” means a licensed manufacturer pursuant to 18 U.S. Code § 921(a)(10).

F. It shall be unlawful for any person to possess, transport, purchase, or receive an unfinished frame or receiver, unless either (1) the party possessing, transporting, or receiving the unfinished frame or receiver is a Federal Firearms Importer, a Federal Firearms Manufacturer, or holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485, or (2) the unfinished frame or receiver is either required by federal law to be, and has been, imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

G. It shall be unlawful for any person to sell, offer to sell, transfer, an unfinished frame or receiver, unless either (1) the party receiving the unfinished frame or receiver is a Federal Firearms Importer, a Federal Firearms Manufacturer, or holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485, or (2) the unfinished frame or receiver is either required by federal law to be, and has been, imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

H. It shall be unlawful for any person to manufacture, cause to be manufactured, assemble, or cause to be assembled a firearm unless the firearm is either (1) imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with all federal laws and regulations regulating the manufacture and import of firearms or (2) engraved or permanently affixed with a serial number provided by the California Department of Justice and the person who manufactured, assembled, or caused to be assembled the firearm has provided the Department with sufficient information to identify the owner of the firearm, the unique serial number or mark of identification provided by the Department, and the firearm in a manner prescribed by the department.

I. It shall be unlawful for any person to possess, offer to sell, transfer, purchase, transport or receive a firearm that is not either imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with all federal laws and regulations regulating the manufacture and import of firearms, or engraved or permanently affixed with a serial number provided by the California Department of Justice, unless the party possessing or receiving the firearm is a law-enforcement agency or a Federal Firearms Importer or Federal Firearms Manufacturer.

J. Sections F and G shall not apply to an unfinished frame or receiver that is in possession of:

1. an employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties; or
2. a common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code

Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

K. Section H shall not apply to a firearm that:

1. is in possession of an employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties;
2. has been rendered permanently inoperable; or
3. Is in possession of a common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

L. Section I shall not apply to a firearm that:

1. is in possession of an employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties;
2. has been rendered permanently inoperable;
3. is in possession of a common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.
4. is an antique firearm as defined in California Penal Code § 16170;
5. predates 1968;
6. has been determined to be a collector's item pursuant to 26 U.S.C. Chapter 53 or a curio or relic pursuant to 18 U.S.C. Chapter 44; or
7. has been entered into the centralized registry set forth in Section 11106 of the Penal Code 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.

M. Upon enactment of this ordinance, the [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 F, G, H, or I of this section 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.

N. Violations of subsections G of this section, or violations stemming from the same transaction, is punishable as a Class 1 Misdemeanor.

O. The first violation of subsections F, H, I of this section is punishable as a [Class 1] Misdemeanor, unless the violator possesses, transports or receives 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 section in the year following the violation, in which case the first violation will not be penalized. Any and all other or subsequent violations of subsections F, H or I of this section are punishable as a Class 4 Felony.

P. Except for Subsections F, H and I of this section, this ordinance will take effect [earliest possible date under city/county law]. Subsections F, H and I of this section will take effect [90 days] after the other provisions of the ordinance take effect.

Q. If any provision of this article is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions that can be implemented without the invalid provision, and to this end, the provisions of this article are declared to be severable.

### **CRIMINAL JUSTICE CONCERNS**

The primary purpose of these ordinances is to prevent the proliferation of ghost guns into our communities. It is imperative that we be mindful of how the ordinances can and will be applied, and that we work to ensure they do not further criminal justice disparities. The Model Ordinance contains three key provisions that we believe are key to addressing these concerns:

1. Delayed enactment on the prohibition of possession, to ensure that those who are currently in possession of precursor parts and/or ghost guns have time to either dispose of these items or get them properly serialized.
2. A strong education campaign, working with community based organizations, to ensure that people in the community are well aware of the new requirements concerning precursor parts and ghost guns.
3. Reasonable and escalating penalties that focus primarily on penalizing those who are profiting by selling and trafficking precursor parts and ghost guns, and that allow opportunities for individuals to comply with the law without penalties.

### **PREEMPTION ISSUES AND RELEVANT CASES**

California has been extremely active in enacting gun safety legislation but there is no indication the state ever intended to prevent local governments from enacting their own laws addressing this issue. To the contrary, many of the state's gun-safety laws have been enacted after local governments took action. On the specific issue of regulating precursor parts or ghost guns, there is no state law that would preclude city or county ordinances.

We believe that Penal Code § 29180, which requires individuals to obtain serial numbers from the Department of Justice before assembling a firearm and to affix the serial number to the assembled weapon, does not fully and completely cover the subject matter of the statute or meet either of the other tests for implied preemption. The state simply has set up a process for

purchasing precursor parts and applying serial numbers to assembled firearms but does not establish a right to purchase the parts that would preclude local action. Similarly, AB 879 creates additional procedures for the sales of firearm precursor parts and does not address or preclude local laws making it illegal for end users to buy, own, or sell unserialized frames, receivers, or firearms.

Finally, no part of the proposed ordinance—including the provision that would ban possession or sale of existing unserialized firearms—is a total ban on the possession of firearms, as was held preempted in *Fiscal v. City and County of San Francisco* (Ct.App. 2008) 158 Cal.App.4th 895. The proposed ordinance would permit local residents to own precursor parts and assembled firearms, so long as they were serialized. In addition, the portion of *Fiscal* that addressed the total ban on firearm possession relied on Penal Code section 12026, as clarified by Government Code section 53071, which declares the legislature’s intent “to occupy the field of registration and licensing of *commercially manufactured* firearms,” not self-assembled firearms (emphasis added). Similarly, the *Fiscal* court’s holding that the Unsafe Handgun Act preempted a local ordinance banning sales of *handguns* does not apply to the portion of the proposed ordinance that addresses the sale of *precursor parts*. As to the proposed ordinance’s provisions banning the manufacture and sale of unserialized firearms, although the language of the UHA appears broad enough to encompass the manufacture and sale of unserialized handguns,<sup>8</sup> in practice, it appears that standards under the UHA are not being applied to unserialized handguns. Even if the UHA standards were applied, the UHA addresses only firearms capable of being concealed on a person and does not cover long guns.

#### Case law:

- *Cal. Rifle & Pistol Ass'n v. City of W. Hollywood* (1998) 66 Cal.App.4th 1302
- *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109
- *Fiscal v. CCSF* (2008) 158 Cal.App.4th 895
- *Doe v. CCSF* (1982) 136 Cal.App.3d 509
- *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853
- *Nordyke v. King* (Cal. 2002) 44 P.3d 133
- *Calguns Foundation, Inc. v. County of San Mateo* (2013) 218 Cal.App.4th 661
- *Sherwin-Williams Co. v. City of Los Angeles* (Cal. 1993) 844 P.2d 534
- *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644
- *Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283
- *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725
- *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729

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<sup>8</sup> The UHA defines an unsafe handgun as “any pistol, revolver, or other firearm capable of being concealed upon the person“ that lacks specified safety features, Penal Code 31910, and sets penalties for a person “who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun, Penal Code 3200(a)(1).

- *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252–1257
- *T-Mobile West LLC v. City and County of San Francisco* 6 Cal.5th 1107

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 3,  
DIVISION 00, OF THE SAN DIEGO MUNICIPAL CODE BY  
ADDING SECTION 53.18, RELATING TO NON-SERIALIZED,  
UNFINISHED FIREARM FRAMES OR RECEIVERS AND  
NON-SERIALIZED FIREARMS.

WHEREAS, San Diego is experiencing a rise in detection and seizure of firearms lacking serial numbers or other identifying markings, commonly known as “ghost guns”; and

WHEREAS, 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; and

WHEREAS, ghost gun kits contain all necessary parts to complete assembly and turn an unfinished frame or receiver into a functional firearm; and

WHEREAS, numerous online videos illustrate how to easily assemble a ghost gun; and

WHEREAS, a firearm assembled from a ghost gun kit is non-serialized and untraceable through law enforcement databases; and

WHEREAS, 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, or mental illness to easily obtain them; and

WHEREAS, the majority of ghost guns recovered by the San Diego Police Department (SDPD) are seized from individuals prohibited from legally possessing or purchasing firearms; and

WHEREAS, evidence suggests that ghost gun kits and parts are often sold through the internet; and

WHEREAS, the increased availability of ghost guns threatens the public safety and welfare of the residents of San Diego; and

WHEREAS, SDPD recovered 211 ghost guns in calendar year 2020, and has recovered 233 ghost guns through mid-July 2021, an increase from 77 ghost guns in 2019, and 58 in the second half of 2018; and

WHEREAS, ghost guns have been linked to multiple shootings in San Diego between 2018 and 2021; and

WHEREAS, the increase of ghost guns in San Diego 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; and

WHEREAS, federal law does not fully regulate ghost gun kits or parts; and

WHEREAS, the Congress of the United States has not, expressly or by implication, preempted additional regulation of firearms by state and local authorities; and

WHEREAS, state law regulates some, but not all, aspects of ghost gun kits or parts; and

WHEREAS, state law provisions regulating the sale and purchase of firearm precursor parts do not become effective until July 1, 2022; and

WHEREAS, 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

WHEREAS, the Council of the City of San Diego (Council) intends this Ordinance to be applied and interpreted consistent with federal and state law; and

WHEREAS, this Ordinance may be enforced by any remedy available in Chapter 1 of the San Diego Municipal Code; and

WHEREAS, the 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 San Diego; and

WHEREAS, the 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; and

WHEREAS, the Council further finds it is within its police powers to implement and enforce the provisions of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 3, Division 00 of the San Diego Municipal Code is amended by adding section 53.18, to read as follows:

**§53.18 Prohibition of Possession or Sale of Non-Serialized, Unfinished Firearm Frames or Receivers and Non-Serialized Firearms**

- (a) 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 San Diego 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.

- (b) Definitions. For the purposes of this section, defined terms appear in italics. The following definitions apply in this section:
- (1) *Federal Firearms Importer* means a licensed *firearm* importer as defined in 18 U.S.C. § 921(a)(9) (2019), as may be amended.
  - (2) *Federal Firearms Manufacturer* means a licensed *firearm* manufacturer as defined in 18 U.S.C. § 921(a)(10) (2019), as may be amended.
  - (3) *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*.
  - (4) *Frame* means the primary structural component of a *firearm* to which the fire control components are attached.
  - (5) *Handgun* has the same meaning as in California Penal Code section 16640, as may be amended.
  - (6) *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*.

- (7) *Person* has the same meaning as in San Diego Municipal Code section 11.0210.
  - (8) *Receiver* means the primary structural component of a *firearm* to which the fire control components are attached.
  - (9) *Rifle* has the same meaning as in California Penal Code section 17090, as may be amended.
  - (10) *Shotgun* has the same meaning as in California Penal Code section 17190, as may be amended.
  - (11) *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.
  - (12) *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.
- (c) Prohibition. It is unlawful for any *person* to:
- (1) 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*.

(A) This subsection shall not apply to a *Federal Firearms Importer* or *Federal Firearms Manufacturer*.

(B) 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.

(C) 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.

(2) 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*.

- (3) Possess, purchase, transport, or receive *a non-serialized firearm*.
  - (A) 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.
  - (B) 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.
  - (C) 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.
- (D) 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.
- (4) 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:
  - (A) The *non-serialized firearm* has been rendered permanently inoperable.
  - (B) The *non-serialized firearm* is an antique firearm as defined in California Penal Code section 16170, as may be amended.
  - (C) The *non-serialized firearm* was manufactured or assembled prior to 1968.
  - (D) 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.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_  
Michelle A. Garland  
Deputy City Attorney

MAG:hm  
July 26, 2021  
Or.Dept:CD5  
Doc. No.: 2710879

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

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 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” 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 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.
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.

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:

1. The non-serialized firearm has been rendered permanently inoperable.
2. The non-serialized firearm is an antique firearm as defined in California Penal Code section 16170, as may be amended.
3. The non-serialized firearm was manufactured or assembled prior to 1968.
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.

#### **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, 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, 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, C, and D of section 13.73.030, this ordinance shall take effect thirty (30) days after its adoption. Subsections A, C, and D of this section will take effect ninety (90) days after the other provisions of the ordinance take effect.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.