



CONSENT CALENDAR
July 27, 2021
Public Safety Committee

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 ~~Precursor Parts~~ Ordinance

RECOMMENDATION

~~Refer to the City Manager the development of~~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; ~~and return such an ordinance to the City Council.~~

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 website¹ 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.

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 Department² were "ghost

¹ <https://www.polymer80.com/>

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

guns," including a fully automatic firearm used at an April 22 shooting³ 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](#)

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Aligned at: 0.25" + Indent at: 0.5"

³ 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>

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