

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