

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
REPEALING PART 3 OF CHAPTER 10.32 OF TITLE 10
OF THE SAN JOSE MUNICIPAL CODE AND AMENDING
TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO ADD
CHAPTER 6.90 TO REGULATE THE SALE, LEASE AND
TRANSFER OF FIREARMS AND FIREARMS
AMMUNITION IN SAN JOSE AT RETAIL**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Part 3 of Chapter 10.32 of Title 10 of the San José Municipal Code is hereby repealed.

SECTION 2. Title 6 of the San José Municipal Code is hereby amended to add a new Chapter to be numbered, entitled and to read as follows:

Chapter 6.90
RETAIL FIREARMS AND AMMUNITION DEALERS REGULATIONS

Part 1
General Provisions

6.90.010 Purpose

- A. The City of San José is authorized to impose licensing requirements on the business of selling, leasing and transferring firearms and firearms ammunition at retail in addition to those required by state law.

- B. It is the purpose and intent of the City Council to regulate the retail sale of firearms and ammunition in the City in the interest of public health, safety and welfare. These provisions will include the following license requirements that were not part of Part 3 of Chapter 10.3 of the San José Municipal Code: video and audio recording of all firearm and ammunition transactions to deter the sale, lease, or transfer of firearms and ammunition to “straw purchasers” and related video surveillance to enhance premises security and deter straw transactions from occurring on or near the business premises; training for staff who are conducting the transactions; an annual inventory; display of suicide prevention, domestic violence, and local gun law information; and a prohibition on the sale of firearms and firearm ammunition within or from a residence.

6.90.020 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

6.90.030 Chief of Police

“Chief of Police” means the Chief of Police of the City of San José or his or her authorized designee.

6.90.040 Firearm

“Firearm” means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. Firearm does not include antique firearms as defined by 18 U.S.C. Section 921(a).

6.90.050 Firearm Ammunition

“Firearm Ammunition” means:

1. One or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles; or
2. Any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a Firearm with a deadly consequence.
3. Ammunition includes any component of Firearm Ammunition referenced in paragraphs (1) and (2) above.
4. Ammunition does not include blanks.

6.90.060 Firearm Business License

“Firearm Business License” means a license to engage in the business of selling, leasing, or otherwise transferring any Firearm or Firearm Ammunition at retail. For purposes of this Chapter, the sale, lease or otherwise transferring any Firearm or Firearm Ammunition shall include the offering or exposing for sale, lease, or otherwise transferring any Firearm or Firearm Ammunition at retail.

6.90.070 Licensee

“Licensee” means the holder of a Firearm Business License issued by the Chief of Police.

6.90.080 State Firearm Law

State Firearm Law means Part 6 of the California Penal Code, Control of Deadly Weapons, Penal Code Sections 16000, et seq.; the regulations promulgated thereunder by the California Department of Justice; and the actions, orders and decisions of the California Department of Justice pertaining to the control of deadly weapons.

Any reference to the California statutory law and regulations promulgated thereunder, including, but not limited to Part 6 of the California Penal Code, is deemed to include any successor or amended version of the referenced statute or regulatory provision.

6.90.090 Firearm Business License Required

No person shall engage in the business of selling, leasing or otherwise transferring any Firearm or Firearm Ammunition at retail without first having obtained a Firearm Business License from the Chief of Police. A Firearm Business License shall be

required for each location where selling, leasing or otherwise transferring such Firearm or Firearm Ammunition at retail takes place.

6.90.100 Exemptions

The provisions of this Chapter shall not apply to those sales, leases, or other transfers of firearms at retail that are exempt from state license requirements under State Firearm Law.

6.90.110 Compliance by Existing Dealers

- A. Except as set forth below, any person engaging in the business of selling, leasing or transferring any Firearm or Firearm Ammunition on the effective date of this Chapter, or any amendments thereto, shall have a period of ninety (90) days after such effective date to comply with the provisions of this Chapter, or any amendments thereto.

- B. A valid concealable firearms dealer permit issued pursuant to Part 3 of Chapter 10.32 of the San José Municipal Code prior to the effective date of this ordinance shall remain in effect for one (1) year from the date of its issuance. Such Licensees shall apply for a Firearm Business License at least ninety (90) days prior to the expiration of the concealable firearms dealer permit.

Part 2

Firearm Business License Procedures

6.90.200 Procedures and Determinations

The procedures set forth in Chapter 6.02 for permits and licenses shall govern the application for, investigation, approval, denial, suspension, revocation, and renewal of any Firearm Business License, except as specifically provided in this Part. Each application shall specify only one (1) location where the retail sale, lease or transfer of Firearms or Firearm Ammunition should take place. If a Licensee changes his or her place or business, Licensee shall apply for a new Firearm Business License for the different location.

6.90.210 Additional Requirements for Licenses

- A. In addition to the procedures set forth in Chapter 6.02, a person applying for a Firearm Business License under this Chapter shall provide or demonstrate the following to the Chief of Police:
1. Proof the business location complies with City of San José zoning codes and regulations. In addition, the business location shall not be in a residence and a Licensee shall not sell any firearms or firearms ammunition within or from a residence.
 2. The site of the business premises shall be a permanent building having four (4) solid walls and a roof; constructed of wood, metal, cement or like materials and resting on a foundation of cement, stone, brick or metal or similar materials commonly used in the construction of foundations for permanent buildings. Business premises shall be in compliance with all State of California and City of San José building, fire, health, and safety codes.

3. Building doors and windows shall be alarmed with a system of any manufacture which will cause an audible alarm to sound on the exterior of the building or a silent alarm to a centralized monitored facility signaling unauthorized entry during nonbusiness hours.
4. Business inventory of an explosive or flammable nature shall be stored in compliance with federal, State of California and City of San José fire and safety codes.
5. Proof of a valid and current federal firearms license, state firearm dealer's license and certificate of eligibility.

B. A person applying for a Firearm Business License shall also comply with the following requirements:

1. Complete personal history questionnaire on a form provided by the San José Police Department;
2. Be fingerprinted at a location approved by the San José Police Department;
3. Be photographed at the Police Department;
4. Be interviewed at Police Department by an officer assigned to the permits unit;
5. Sign authorization for release of records and information that the Chief of Police considers necessary for a complete investigation; and

6. Licensee shall be at least twenty-one (21) years of age.

6.90.220 Inspection to Determine Compliance

The City officials charged with investigating and enforcing this Chapter and the San José Municipal Code, including, but not limited to, the Police Department and the Planning, Building and Code Enforcement Department, are authorized to inspect the licensed business premises, including all firearms and ammunition, and all business records of the Licensee during business hours for the purposes of determining compliance with the provisions of this Chapter and the San José Municipal Code.

6.90.230 Firearm Business License Fees

Fees for the Firearm Business License and renewal applications shall be as set forth in the Schedule of Fees and Charges established by Resolution of the City Council.

6.90.240 Term of Firearm Business License; Transfer; and Renewal

- A. Each Firearm Business License issued pursuant to this Chapter shall expire one (1) year after the date of issuance.
- B. No Firearm Business License issued by the Chief of Police pursuant to this Chapter may be sold, transferred or assigned by the Licensee, or by operation of law, to any other person or persons; any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute voluntary surrender of such license and such license shall be thereafter be deemed terminated and void.

- C. Licensees shall submit an application for renewal in person at least ninety (90) days before the expiration of the license. Licensees who apply for renewal shall be required to meet the requirements specified in this Chapter.

6.90.250 Denial, Suspension and Revocation of Firearm Business License

In addition to the provisions set forth in Chapter 6.02 of the San José Municipal Code, a Firearm Business License may be denied, suspended or revoked on any of the following grounds:

- A. The Licensee has violated any federal or state firearms sales laws.
- B. Licensee is not licensed as a firearms dealer in accordance with all federal, state and local laws.
- C. The Licensee's federal or state firearms sales license has been suspended or revoked. For purposes of this provision, revocation of a license shall include forfeiture of the license.

Part 3

Operating Regulations and Conditions

6.90.300 Operating Regulations and Firearm Business License Conditions

- A. The provisions of this Part shall constitute business license terms and conditions applicable to each Firearm Business License issued by the Chief of Police. Any Firearm Business License issued pursuant to this Chapter shall be subject to such additional conditions as the Chief of Police finds are reasonably related to the purpose of this Chapter.

- B. In addition, the provisions of this Part shall constitute operating regulations. It shall be unlawful for any person to violate these provisions.

6.90.310 Display of License

Every license issued under this Part shall be displayed on the business premises where the Firearms or Firearm Ammunition are sold, leased, or transferred, in such a fashion that it can be easily read by patrons.

6.90.320 Business Premises Conditions

- A. The business shall be carried on only in the building located at the street address shown on the license, except as otherwise authorized under the State Firearm Law.
- B. The Licensee shall comply with the applicable provisions of State Firearm Law. The Licensee shall not deliver any pistol or revolver to a purchaser earlier than ten (10) days after the application for the purchase, lease or transfer, unless otherwise provided by State or federal law.
- C. The Licensee shall not deliver any Firearm to a purchaser, lessee or other transferee unless the Firearm is unloaded and securely wrapped or unloaded in a locked container.
- D. The Licensee shall not deliver any Firearm or Firearm Ammunition to a purchaser, lessee or other transferee unless the purchaser, lessee or other transferee presents clear evidence of his or her identity and age to the seller. As used in this Section, "clear evidence of his or her identity and age" includes, but

is not limited to, a motor vehicle operator's license, a State identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the purchaser.

- E. The Licensee shall not display in any part of the premises where it can be readily seen from outside the premises, any Firearm, Firearm Ammunition, or imitation thereof, or placard advertising the sale or other transfer thereof, other than a sign identifying the name of the business.
- F. The Licensee shall notify the Chief of Police of the name, age and address of, and submit a certificate of eligibility from the State Department of Justice for, any person not listed on the Licensee's application Firearm Business License who will be given access to, or control of, workplace Firearms or Firearm Ammunition. The Licensee shall submit the required information and certificate to the San José Police Department Permits Unit within ten (10) days of such person being employed or otherwise being given access to, or control over workplace Firearms or Firearm Ammunition.
- G. The Business location shall be in compliance with City of San José zoning codes and regulations. In addition, the business location shall not be in a residence and a Licensee shall not sell any firearms or firearms ammunition within or from a residence.
- H. Business premises shall be a permanent building having four (4) solid walls and a roof; constructed of wood, metal, cement or like materials and resting on a foundation of cement, stone, brick or metal or similar materials commonly used in the construction of foundations for permanent buildings. Business premises shall

be in compliance with State of California and City of San José building, fire, health, and safety codes.

- I. The building doors and windows shall be alarmed with a system of any manufacture which will cause an audible alarm to sound on the exterior of the building or a silent alarm to a centralized monitored facility signaling unauthorized entry during nonbusiness hours.
- J. Business inventory of an explosive or flammable nature shall be stored in compliance with federal, State of California and City of San José fire and safety codes.
- K. Inventory of Firearms shall conform to the type of federal firearm license issued to the Licensee.

6.90.330 Notice Requirements

- A. The Licensee shall post all warnings and notices required by the State Firearm Law, including but not limited to Penal Code Section 26835 within the Licensee's premises.
- B. In addition to state law requirements, Licensee shall post a notice regarding suicide prevention as approved by the Chief of Police and display Santa Clara County approved resources for suicide prevention, domestic violence, and local gun laws such as pamphlets or other printed materials for patrons.
- C. All posted notices shall be in a conspicuous location, shall be block letters in black ink on a white background, not less than one (1) inch in height and shall be located so that the notice can clearly be seen by all patrons and prospective purchasers of Firearms and Firearm Ammunition.

6.90.340 Maintenance and Submission of Records

Each Licensee shall maintain records of importation, shipment, receipt, sale or other disposition of firearms and firearm ammunition, and shall make such records available at all reasonable times, and shall submit to the Chief of Police such reports and information upon reasonable request. The Police Department may enter during business hours the premises (including places of storage) of any licensed firearm business for the purpose of inspecting or examining (1) any records or documents required to be kept; (2) any firearms or firearm ammunition kept or stored at such premises.

6.90.350 Inventory Requirements

Within the first five (5) business days of October of each year, Licensees shall cause a physical inventory to be taken that includes a listing of each Firearm held by the Licensee by type, make, model, caliber or gauge, and serial number, together with a listing of each Firearm the Licensee has sold since the last inventory period. The Licensees shall also cause a physical inventory to be taken of Firearm Ammunition that includes a listing of all ammunition held by the Licensee by brand, type and amount of ammunition, together with a listing of all Firearm Ammunition the Licensee has sold since the last inventory period. In addition, the inventory shall include a listing of each Firearm and any Firearm Ammunition lost or stolen that is required to be reported pursuant to State Firearm Law. Any Firearm or Firearm Ammunition that is discovered to be lost or stolen during the inventory that has not previously been reported to the Chief of Police pursuant to State Firearm Law shall be immediately reported to the Chief of Police. Licensees shall maintain a copy of the inventory report on the business premises for which the license was issued for a period of not less than five (5) years from the date of the inventory and shall make the inventory report available to the Chief

of Police immediately upon request for review and copying, without the need for a search warrant, subpoena or court order. Licensees shall include with the report an affidavit signed by the Licensee (or, if the Licensee is not a natural person, by an officer, general manager, or other principal of the Licensee) stating under penalty of perjury that within the first five (5) business days of that October, the signer personally confirmed the presence of the Firearms and Firearm Ammunition reported on the inventory.

6.90.360 Video and Audio Surveillance Requirements

- A. Licensee shall ensure that its business location is monitored by a video surveillance system and audio recording system that meets the following requirements:
1. The system shall include cameras, monitors, digital video recorders, audio recorders, and cabling, if necessary, to meet any of the requirements of this section.
 2. The number and location of the cameras are subject to the approval of the Chief of Police or his or her designee. At a minimum, the cameras shall be sufficient in number and location to monitor all areas in or on the business premises where Firearms or ammunition are stored, handled, sold, transferred, or carried, including, but not limited to, counters, safes, vaults, cabinets, shelves, cases, entryways and parking lots. The video surveillance system shall operate continuously, without interruption, whenever the Licensee is open for business. Whenever the Licensee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area.

3. The sale or transfer of a Firearm or of Firearm Ammunition to persons who are not sworn peace officers shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible. The sale or transfer of a Firearm or of Firearm Ammunition to persons who are not sworn peace officers shall be recorded by the audio recording system in such a way that the voices of the purchaser or transferee and the Licensee or manager or employee authorized to conduct the sale or transfer on behalf of the Licensee will be clearly audible when replayed.
4. When recording, the video surveillance system shall record continuously and store color images of the monitored area at a frequency of not less than fifteen (15) frames per second. The system shall produce retrievable and identifiable images and video recordings on media approved by the Chief of Police that can be enlarged through projection or other means and can be made a permanent record for use in a criminal investigation. The system shall be capable of delineating on playback the activity and physical features of persons or areas where guns and ammunition are stored and handled within the business premises.
5. The stored images and audio recordings shall be maintained on the business premises of the Licensee for a period not less than thirty (30) days from the date of recordation and shall be made available and accessible to the Chief of Police or other law enforcement agency designated by the City Manager immediately upon request for review and copying, without the need for a search warrant, subpoena or court order.
6. The video surveillance system and audio recording system shall always be maintained in proper working order. If the system becomes inoperable,

it shall be repaired or replaced within fifteen (15) calendar days. The Licensee shall inspect the system at least weekly to ensure that it is operational, and images and voices are being recorded and retained as required. The Licensee shall notify the Chief of Police or his or her designee that the system has become inoperable as soon as practicable after discovering inoperability. The Licensee shall allow the Chief of Police or his or her designee to inspect the video surveillance system and audio recorder to ensure operability.

7. The Licensee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch (1") in height:

THESE PREMISES ARE UNDER VIDEO AND AUDIO SURVEILLANCE.
YOUR IMAGE AND VOICE MAY BE RECORDED.

6.90.370 Training Requirements

Within one (1) year of the effective date of this ordinance, Licensee shall train all employees to question and determine whether each potential customer who is not a sworn peace officer seeks to buy or lease a Firearm or Firearm Ammunition for themselves or for another person in accordance with a checklist or protocol published by the San José Police Department, in consultation with the City Attorney. All potential customers who are not sworn peace officers shall be questioned in such a manner and in a location that ensure an audio recording device clearly records the transaction. The Licensee shall train any employee hired more than one (1) year after the effective date of this ordinance within thirty (30) days of the new employee's hire date.

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk