

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 10.32 OF TITLE 10 (PUBLIC PEACE, MORALS AND WELFARE) OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW PART 7 TO REQUIRE PRIVATELY MADE FIREARMS, COMMONLY REFERRED TO AS “GHOST GUNS,” TO COMPLY WITH STATE LAW, PROHIBIT NONEXEMPT PERSONS 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 AND PROHIBITING NONEXEMPT PERSONS FROM POSSESSING, MANUFACTURING OR ASSEMBLING A PRIVATELY MADE FIREARM THAT HAS NOT BEEN IMPRINTED WITH A SERIAL NUMBER

WHEREAS, Privately Manufactured Firearms, sometimes referred to as “ghost guns,” are untraceable and unregulated firearms that are often assembled by unlicensed individuals using build-it-yourself kits; and

WHEREAS, 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 below the percentage of completion that would qualify them as firearms under federal and state law; and

WHEREAS, sellers often package together an unfinished frame or receiver with all other parts needed to assemble a Privately Manufactured Firearm in a build-it-yourself kit, with the purpose of avoiding firearm regulations; and

WHEREAS, assembling the parts into a lethal Privately Manufactured Firearm can readily be done by untrained persons using common household tools; and

WHEREAS, Privately Manufactured Firearm precursor parts and kits are typically sold by unregulated sellers online, in retail stores, or at gun shows, without the protections that California and federal law apply to the manufacture, sale, and transfer of firearms, and, presently, with no requirements for background checks, waiting periods, sales records retention, age restrictions, or limits on numbers of purchases; and

WHEREAS, Privately Manufactured Firearm precursor parts can be 3D printed by persons with relatively little expertise or expense; and

WHEREAS, according to the Santa Clara County Crime Lab, the number of Privately Manufactured Firearms seized by the San Jose Police during criminal investigations has increased dramatically over the last five years, jumping from 9 in 2017 to 221 in 2021; and

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 & 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. A new Part 7 of Chapter 10.32 of Title 10 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

Chapter 10.32 Weapons

Part 7 Privately Manufactured Firearms, Unfinished Frames and Receivers

10.32.260 Purpose and Intent

The purpose of this law is to protect public safety, reduce gun violence, and make the City safer from Privately Manufactured Firearms, and their precursor parts or kits.

10.32.270 Definitions

The following definitions shall apply only for the purposes of this Chapter.

“Antique Firearm” has the meaning ascribed to it in 18 U.S.C. § 921(a)(16).

“Assemble” means to fit together component parts.

“Federal Firearms Importer or Manufacturer” means a person licensed to import or manufacture firearms pursuant to 18 U.S.C. Chapter 44.

“Manufacture” means fabricate, make, form, produce, or construct by manual labor or machinery.

“Manufacture a firearm” means to fabricate or construct a firearm, or to fit together the component parts of a firearm to construct a firearm.

“Privately Manufactured Firearm” means any finished firearm that is assembled from (1) unfinished frames or receivers or (2) printed from a 3-dimensional (“3-D”) printer.

“Precursor Parts Vendor” means a person or entity holding a precursor parts vendor license issued under California Penal Code Sections 30400 et seq.

“Unfinished Frame or Receiver” means a piece of any material that does not constitute the finished frame or receiver of a firearm, rifle, or shotgun but that has been shaped or formed in any way to become the frame or receiver of a firearm, rifle, or shotgun, and

(1) which may readily be made into a functional frame or receiver through milling, drilling, or other means; or

(2) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.

10.32.280 Prohibitions on Unfinished Receivers and Frames

Prohibition. It shall be unlawful for any person to possess, sell, offer to sell, transfer, purchase, transport, receive, or Manufacture an Unfinished Frame or Receiver, unless either (1) the person possessing, transporting, or receiving the Unfinished Frame or Receiver is a Federal Firearms Importer or Manufacturer, 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 Manufacturer, or has been engraved

or permanently affixed with a serial number provided by the California Department of Justice.

Exemptions. The foregoing prohibition shall not apply to or affect any of the following:

- (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 person who is on the centralized list of exempted federal firearms licensees maintained by the California Department of Justice pursuant to California Penal Code Sections 28450, et seq.; or
- (3) A person whose licensed premises are outside the City and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued under that Chapter; or
- (4) 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; or
- (5) Possession, purchase, transport, or receipt of an Unfinished Frame or Receiver by a Precursor Parts Vendor; or
- (6) Sale or transfer of an Unfinished Frame or Receiver processed through a Precursor Parts Vendor pursuant to Penal Code Section 30400, et seq., provided that the Precursor Parts Vendor ensures that prior to the purchaser or transferee

taking possession of the Unfinished Frame or Receiver, the purchaser or transferee obtains a serial number from the California Department of Justice pursuant to California Penal Code Sections 29180 and 29182, the serial number is permanently affixed to the Unfinished Frame or Receiver, and the California Department of Justice is provided sufficient information to identify the purchaser or transferee pursuant to those Penal Code sections ; or

(7) Possession of an Unfinished Frame or Receiver by the person who obtained it through a transaction processed by a Precursor Parts Vendor in compliance with subsection 6 above.

10.32.290 Prohibition on Privately Manufactured Firearms

Prohibition. It shall be unlawful for any person to possess, sell, offer to sell, transfer, purchase, transport, receive, or Manufacture a Privately Manufactured Firearm that does not conform to state and federal law, unless either (1) the person possessing, transporting, or receiving the Unfinished Frame or Receiver is a Federal Firearms Importer or Manufacturer, 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 Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

Exemptions. The foregoing prohibition shall not apply to or affect any of the following:

(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 person who is on the centralized list of exempted federal firearms licensees maintained by the California Department of Justice pursuant to California Penal Code Sections 28450, et seq.; or

(3) A person whose licensed premises are outside the City and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued under that Chapter; or

(4) 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; or

(5) Possession, purchase, transport, or receipt of an Unfinished Frame or Receiver by a Precursor Parts Vendor; or

(6) Sale or transfer of an Unfinished Frame or Receiver processed through a Precursor Parts Vendor pursuant to Penal Code Section 30400, et seq., provided that the Precursor Parts Vendor ensures that prior to the purchaser or transferee taking possession of the Unfinished Frame or Receiver, the purchaser or transferee obtains a serial number from the California Department of Justice pursuant to California Penal Code Sections 29180 and 29182, the serial number is permanently affixed to the Unfinished Frame or Receiver, and the California Department of Justice is provided sufficient information to identify the purchaser or transferee pursuant to those Penal Code sections ; or

(7) Possession of an Unfinished Frame or Receiver by the person who obtained it through a transaction processed by a Precursor Parts Vendor in compliance with subsection 6 above.

10.32.300 Prohibition on Manufacturing Non-Serialized Firearms

Prohibition. It shall be unlawful for any person to Manufacture, cause to be Manufactured, Assemble, or cause to be Assembled, a firearm that has not been imprinted with a serial number issued by a Federal Firearms Importer or Manufacturer in accordance with federal law or engraved or permanently affixed with a serial number provided by the California Department of Justice.

Exemptions. The foregoing prohibition shall not apply to or affect any of the following:

- (1) A firearm that has been rendered permanently inoperable; or
- (2) An Antique Firearm; or
- (3) A firearm that 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
- (4) 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
- (5) The Manufacture or Assembly of a firearm with a frame or receiver processed through a Precursor Parts Vendor pursuant to Penal Code Sections 30400, et seq., provided that the Precursor Parts Vendor ensures that prior to the purchaser or transferee taking possession of the Unfinished Frame or Receiver, the purchaser or transferee obtains a serial number from the California

Department of Justice pursuant to California Penal Code Section Sections 29180 and 29182, the serial number is permanently affixed to the Unfinished Frame or Receiver, and the Department of Justice is provided sufficient information to identify the purchaser or transferee pursuant to those Penal Code sections.

SECTION 2. Consistent with Section 1.04.160 of the San José Municipal Code, 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 3. Nothing in this Part 7 of Chapter 10.32 shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 4. The City Council of the City of San José takes action on this Ordinance based upon the totality of the administrative record including the facts stated above, the facts stated in the memorandums to the City Council for the May 10, 2022 City Council Meeting, as well as any oral or written testimony at the May 10, 2022 City Council meeting.

PASSED FOR PUBLICATION of title this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk