



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer A. Maguire
Nora Frimann

**SUBJECT: PRIVATELY MADE FIREARM
ORDINANCE**

DATE: April 20, 2022

RECOMMENDATION

Approve an ordinance amending Chapter 10.32 of Title 10 of the San José Municipal Code to add Part 7 to reduce gun harm by prohibiting the possession, manufacturing, sale, assembly, transfer, receiving, and distribution of un-serialized firearms, frames, and receivers within San José, subject to certain exceptions.

OUTCOME

Approval of the recommended action will establish an ordinance prohibiting the possession, manufacturing, sale, assembly, transfer, receiving, and distribution of un-serialized firearms, frames, and receivers within the San José, subject to certain exceptions.

BACKGROUND

On January 25, 2022, as part of the direction given by the City Council related to the [Gun Harm Reduction Ordinance](#), staff was directed to return to City Council with a “ghost gun” ban further restricting and prohibiting the possession, manufacture, or assembly of ghost guns in San José as previously directed by [City Council on June 29, 2021](#).¹

A ghost gun is an un-serialized privately made firearm (PMF) that is typically assembled by the end user from purchased or homemade components.² Firearm parts kits are widely available and

¹ Direction on Ghost Guns from June 2021: Direct the City Attorney to craft a prohibition on the possession, assembly, and manufacturing of any untraceable gun lacking a serial number, in collaboration with partner organizations such as Brady United and Gifford Law Center, to cover gaps in California state prohibitions, most of which do not take effect until July 2022.

² The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, referred to as ATF, established a rule on April 11, 2022 updating the regulatory definition of a firearm to better reflect the changes in technology that have occurred in the decades since the Gun Control Act (CGA). The “Frame or Receiver” Final Rule makes clear that weapon parts kits that can be readily converted into a fully assembled firearm will be subject to the same regulations that apply to commercially manufactured, fully assembled firearms. The term does not include a National Firearms Registration and Transfer Record registered firearm, or one made before October 22, 1968 (unless remanufactured after that date).

can be purchased by anyone without a background check. Once the end user assembles the firearm, it is untraceable. The sale of PMFs has increased significantly as has the recovery of these guns at crime scenes.

In California, PMFs accounted for 25 to 50 percent of firearms recovered at crime scenes over an 18-month period during years 2020 and 2021.³ The acceleration in PMF use and production can be attributed to a lack of background checks and the fact that they are untraceable by law enforcement. More directly, PMFs have been designed to evade gun control regulations. Following a series of mass shootings, the discovery of PMF factories, and criminal incidents, many cities throughout California initiated legislative responses to address gun harm and PMFs.

According to the County of Santa Clara Crime Laboratory, there was an increase of almost 72% of PMF recoveries at crime scenes between 2015 to 2021.⁴ In 2021 and 2022, the City of San José amended Chapter 6.90 of Title 6 of the San José Municipal Code “[Retail Firearms and Ammunition Dealers Regulations](#)” and [initiated ordinances](#) to address firearm sales and gun liability insurance to address gun harm more broadly. These policies are part of a larger package of gun harm reduction strategies. Concurrently, several cities throughout California as well as the State of California have passed legislation to address gun harm and to close regulatory loopholes categorizing un-serialized firearms as traditional firearms. Importantly, on [April 11, 2022, the Biden Administration announced](#) the U.S. Department of Justice had issued a final rule to rein in the proliferation of un-serialized PMFs.

ANALYSIS

Over the last several years, governmental entities at the federal and state level have passed laws or promulgated rules regulating the sale and distribution of PMFs that collectively address the possession, manufacturing, sale, assembly, transfer, receiving, and distribution of un-serialized firearms, frames, and receivers. However, in some instances, these laws and rules do not address the existing inventory of firearm precursor parts that exist in our community without serial numbers and which may not be immediately on the market for private purchase. The proposed ordinance recognizes and complies with state and federal law, and further prohibits any possession of unfinished frames or receivers without the parts having a California Department of Justice Unique Serial Number or a federal Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) required identification, with certain exemptions. The recitals within the draft ordinance contain the data and other information that supports the proposed ordinance, including clear definitions and exemptions.

The following provides a summary of existing efforts at the various governmental levels.

³ <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html>

⁴ <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=223740>

Privately Made Firearm Legislation in Federal Policy

Since 1968, ATF had defined “firearms” as operable weapons, their related parts, and the frame or receiver.⁵ This narrow definition does not include partially complete weapons such as those assembled from privately made firearm components which can easily be converted into operable guns.

On March 1, 2021, [House Bill 1454 – Ghost Guns are Guns Act](#) was introduced and referred to the Subcommittee on Crime, Terrorism, and Homeland Security. Following the House’s introduction, on May 7, 2021, as part of President Biden’s executive actions to address gun violence, both the ATF and the federal Department of Justice (DOJ) proposed adopting a new regulation to update the definition of firearms to better reflect the changes in technology that have occurred in the decades since the Gun Control Act was enacted, thus seeking to close the “ghost gun” definition loophole.⁶ On April 11, 2022, the Biden Administration announced the finalization of the rule which requires makers of gun kits to include a serial number on firearm parts and for sellers to follow the same standard as with other guns, including requiring background checks for purchase. The rule goes into effect 120 days from the date of publication in the Federal Register, and once implemented, will address the proliferation of these unserialized firearms in several ways.

The rule clarifies that firearm parts kits are considered firearms, codifying a set of criteria used to determine what is an operable firearm. The rule definition changes make explicit that manufacturers and sellers of firearm parts kits are subject to the same regulatory requirements applicable to the manufacture or sale of fully completed and assembled firearms.⁷

Specifically, the [rule includes the following updates](#)⁸:

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics. The term shall include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive. The term shall not include a weapon, including a weapon parts kit, in which the frame or receiver of such weapon is destroyed as described in the definition “frame or receiver.”

⁵ <https://www.justice.gov/opa/pr/justice-department-proposes-new-regulation-update-firearm-definitions>

⁶ IBID

⁷ The final rule and full summary can be found on the ATF website: <https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver>

⁸ Definitions begin on page 291/364.

Frame or receiver. The term “frame or receiver” shall have the same meaning as in 27 CFR § 478.12.⁹

Privately made firearm. A firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced. The term shall not include a firearm identified and registered in the National Firearms Registration and Transfer Record pursuant to chapter 53, title 26, United States Code, or any firearm manufactured or made before October 22, 1968 (unless remanufactured after that date).

The rule helps to address the proliferation of un-serialized firearms in four ways: a) to keep guns from being sold to convicted felons and other prohibited purchasers, it clarifies that retailers must perform background checks before selling kits and parts for the production of PMFs; b) to help law enforcement trace guns used in crime, it requires manufacturers to include serial numbers on the firearm “frame or receiver” in firearm parts kits; c) to reduce the number of un-serialized PMFs, it requires federally licensed firearm dealers and gunsmiths to add serial numbers to any firearms without serial numbers in their inventory; and d) to better support tracing efforts, firearms licensees, including gun retailers, are required to retain records for the length of time they are licensed, thereby expanding records retention beyond the prior requirement of 20 years.¹⁰

Privately Made Firearm Legislation in California Policy

California state law defines the unfinished frame or receiver of a weapon that can easily be converted to an operable gun as a “firearm.” If federally licensed manufacturers produce 50 or more unfinished firearms per year, they are required to obtain a state license, comply with employee background checks, and add serial numbers to frame and receivers.

In 2016, California adopted [Assembly Bill 857](#), which became effective in 2018, requiring anyone who manufactures or assembles a firearm or possesses an un-serialized firearm to obtain a valid manufacturer’s license. This law requires that a person apply for a unique California Department of Justice serial number or mark of identification unique to that firearm, which needs to meet the following requirements: 1) have a firearm certificate, 2) have completed a firearms eligibility background check to verify that the firearm meets state and federal law, 3) present proof of age and identity of at least being 21 years of age, and 4) provide a description of the firearm to be assembled. The rule specifies how, when, and who can affix the serial number on the firearm and requires a series of background checks and certification requirements to assemble or manufacture.¹¹

⁹ The term “firearm frame or receiver” is further defined in current [ATF regulations](#) as, “that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.”

¹⁰ Summary of Final Rule, DOJ Fact Sheet: <https://www.justice.gov/opa/press-release/file/1493431/download>

¹¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB857

In 2019, California initiated a series of gun regulating laws including Senate Bill [376](#) and Assembly Bills [879](#), [1669](#), and [1297](#); gun violence restraining order laws under Assembly Bills [12](#), [61](#), [339](#), and [164](#); as well as gun violence intervention programs and grant funding under Assembly Bill [1603](#) and [521](#).¹²

In 2019, [Assembly Bill 879](#) required, commencing July 1, 2023, the sale of firearms precursor parts be conducted through licensed firearms precursor part vendors. Then, in 2020, the Legislature passed [Senate Bill 118](#) which expedited implementation of these new requirements to July 1, 2022.¹³

More recently, on February 18, 2022, Governor Newsom announced a set of gun harm legislation, including [Assembly Bill 1594](#) that allows citizens, individuals, and the Attorney General to sue firearm manufacturers and sellers; [Assembly Bill 2571](#) which proposes to restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors and limit the marketing of certain firearms to children; and [Assembly Bill 1621](#) which further prohibits un-serialized firearms in the state.¹⁴

Other California Cities – Privately Made Firearm Prohibitions

California cities are initiating local policies further banning the possession, sale, and transfer of un-licensed and un-serialized firearms. Below is a brief description of these policies from four major cities:

- City and County of San Francisco – On September 8, 2021, the City and County of San Francisco approved legislation to prohibit the sale or possession of unfinished firearm frames and receivers without serial numbers in San Francisco, as well as the manufacturing or assembly of a firearm that has not been imprinted with a serial number, with certain exceptions ([File # 210540](#)).
- City of Los Angeles – On November 30, 2021, the Los Angeles City Council approved an ordinance to prohibit the possession, purchase, sale, receipt, and transportation of non-serialized, unfinished firearm frames or receivers, or non-serialized firearms in Los Angeles, with certain exceptions ([Ordinance No. 187310](#)).
- City of San Diego – On January 11, 2022, the San Diego Board of Supervisors updated an ordinance of the definition of firearms to include non-serialized firearms to include unfinished frame and receiver, as well as 3D printed materials to be constructed into a firearm and require safe storage of firearms ([Chapter 3. SEC. 33.301](#)).
- County of San Diego – On September 23, 2021, the San Diego City Council approved an ordinance updating the definition of firearms to include non-serialized firearms, restrict

¹² <https://www.gov.ca.gov/2019/10/11/governor-gavin-newsom-signs-gun-violence-prevention-legislation/>

¹³ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB879

¹⁴ <https://www.gov.ca.gov/2022/02/18/governor-newsom-takes-action-to-hold-the-gun-industry-accountable-and-advance-californias-nation-leading-protections/>

the possession or distribution of parts without serial numbers, prohibit 3D printing of firearms or parts and require safe storage of firearms ([Ordinance No. 21367](#)).

- City of Oakland – On January 18, 2022, the City of Oakland City Council amended an ordinance to require that privately made firearms, otherwise known as ghost guns, 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 does not have a serial number; and prohibit nonexempt persons from possessing, manufacturing or assembling a privately made firearm that does not have a serial number ([Ordinance Amending Chapter 9.36](#)).

Recent Actions Taken by the City of San José to Reduce Gun Harm

On June 8, 2021, the City of San José announced a series of actions to reduce gun harm. Some of these actions included:

- The City of San José passed an ordinance on June 9, 2021, amending the municipal code to regulate the sale, lease, and transfer of firearms and firearms ammunition in San José as retail. The ordinance requires gun stores to video- and audio-record all gun sale transactions and stores to post information about suicide prevention and access to mental health services ([Ordinance No. 30617](#)).
- The City of San José aimed to reduce gun harm by requiring gun owners to obtain and maintain liability insurance and establish of an annual gun harm reduction fee on February 3, 2022 ([Ordinance No. 30716](#)).

In addition to these ordinance changes, Council members have advanced other efforts to better understand, respond to, and address gun violence. An [information memorandum](#) released by staff on February 10, 2022 provides an update on those issues.

Proposed Changes in the Privately Made Firearm Ordinance

As described above, recent federal and state legislation provide the regulatory framework for the prohibition of the transfer, use, sale, manufacture, and assembly of un-serialized precursor parts for unlicensed vendors and persons prohibited from possessing firearms, as well as regulating when serial numbers must be added to firearms and firearm parts at the point of manufacturing, assembly, or sale. Some of the recent federal and state actions, however, are not yet in effect. The City's proposed ordinance would establish prohibitions that are pending at the state and federal level, and which will take effect in July of 2022, and require that a person, not prohibited from possessing a firearm and who is in possession of an un-serialized frame or receiver, obtain state or federal serial numbers for these components. In regard to the latter, although the proposed ordinance would become effective 30 days following its adoption at the second reading (potentially in early June 2022), the City Manager's Office and San José Police Department will provide 120 days for residents of San José who are in possession of un-serialized frames or receivers to become compliant with the ordinance.

CONCLUSION

Gun violence and the manufacturing, assembly, transfer, and sales of un-serialized firearms are a threat to public health and safety in the City of San José. If approved, the proposed ordinance would prohibit, with certain exceptions, San José residents to manufacture, assemble, possess, transfer, or sell unfinished frames or receivers unless they are 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.

EVALUATION AND FOLLOW-UP

If approved, the ordinance amending Chapter 10.32 of Title 10 of the San José Municipal Code to add Part 7 will be scheduled for its second reading at the May 17, 2022 City Council meeting. The amendments will be effective after 30 days following its adoption at the second reading.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the May 10, 2022 Council meeting. Staff also met members of the Silicon Valley Public Accountability Foundation to discuss the potential ordinance.

COORDINATION

This memorandum was coordinated with the San José Police Department and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/
JENNIFER A. MAGUIRE
City Manager

/s/
NORA FRIMANN
City Attorney

For questions, please contact Sarah Zarate, Director, Office of Administration, Policy, and Intergovernmental Relations, at sarah.zarate@sanjoseca.gov, or Lieutenant Steve Donohue, San José Police Department, Research & Development Unit, at (408) 277-5200.

Attachment:

Department of Justice Fact Sheet ATF Final Rule 2021R-05F



FACT SHEET: Privately Made Firearms (PMFs), aka “Ghost Guns,” “Buy-Build-Shoot” kits, and the “Frame or Receiver” Final Rule

Q: What is a “ghost gun?”

A privately made firearm (PMF) is often called a “ghost gun” because it is not marked with a serial number and is therefore far more difficult for law enforcement to trace if it is used to commit a crime. Individuals can make PMFs from scratch or they can buy weapon parts kits, including “buy-build-shoot” kits. “Buy-build-shoot” kits are essentially pre-manufactured, dissembled, complete firearms. The “Frame or Receiver” Final Rule updates the regulatory definitions of “firearm” and “frame or receiver,” clarifying that weapon parts kits that permit someone to readily make a gun are regulated in the same way as commercially manufactured firearms.

Q: What Does the Rule Do?

This rule updates the regulatory definition of a firearm to better reflect the changes in technology that have occurred in the decades since the Gun Control Act (GCA) was enacted, and the original regulatory definition of “firearm” was issued. The GCA requires commercial manufacturers to mark firearms with serial numbers; requires all federal firearms licensees to keep records regarding the acquisition and disposition of firearms, and requires individuals buying firearms from FFLs to undergo a background check. In many instances sellers of kits that can be readily converted into a fully assembled firearm have not been serializing those firearms or conducting background checks. The “Frame or Receiver” Final Rule updates the regulatory definition and makes clear that weapon parts kits that can be readily converted into a fully assembled firearm will be subject to the same regulations that apply to commercially manufactured, fully assembled firearms.

Specifically, the rule requires:

- 1) **Background Checks:** The rule makes clear that background checks must be conducted before kits that contain the parts necessary for someone to readily make a gun are commercially sold. Background checks are an essential tool in preventing convicted felons, domestic abusers, and other prohibited persons from acquiring firearms.
- 2) **Serial Numbers:**
 - a. The rule requires that manufacturers of kits that can be readily converted into a fully assembled firearm include a serial number on the firearm frame or receiver in the same manner as any other firearm. This will help ensure that the completed gun can be traced if used in a crime.
 - b. If a federally licensed firearms dealer or gunsmith has or takes a firearm without a serial number into inventory, the rule requires them to add a serial number and other markings.
- 3) **Recordkeeping:** To better support tracing efforts, the rule requires federal firearms licensees to retain records for the length of time they are licensed to sell firearms, thereby extending the previous minimum retention period of 20-years. Over the past decade the ATF has been unable to trace thousands of firearms – many reportedly used in homicides or other violent crimes – because the records had already been destroyed.



Q: What is a “buy-build-shoot” kit?

“Buy-build-shoot” kits are weapon parts kits that are essentially pre-manufactured, disassembled, complete firearms (a firearm in a box). Prior to the rule, many sellers of “buy-build-shoot kits” were not serializing those firearms or conducting background checks. By updating the regulatory definition of a “firearm” and clarifying that these kits are regulated in the same way as commercially manufactured firearms, the regulation ensures that relevant parts will be marked with a serial number and the kits will require a background check before being transferred by a licensed dealer. By regulating “buy-build-shoot” kits the same as other firearms, law enforcement will be better able to keep these firearms out of the hands of criminals and individuals who are not lawfully permitted to possess a gun. And, if a gun created by a kit is used in a crime, the fact that it will have a serial number means law enforcement will be able to trace the gun more effectively.

Q: Can “ghost guns” be traced?

Unserialized firearms are incredibly difficult to trace. For instance, over the past five-year period, ATF reports that it was only able to successfully trace to an individual purchaser 0.98% of the suspected “ghost guns” submitted by law enforcement around the country.

Q: Why are serial numbers important?

When a firearm is recovered at a crime scene, the serial number allows law enforcement to trace where the firearm originated and identify the original purchaser. Trace information provides vital leads to law enforcement in determining how a firearm recovered in a criminal investigation was obtained by the offender and leads that can help identify straw purchasers and firearm trafficking organizations.

Q: Does this rule ban privately made firearms/ghost guns?

No, privately made firearms are not illegal. The rule does not restrict an individual’s ability to make their own firearms from parts for self-defense or other lawful purposes provided the individual is not prohibited from possessing or receiving firearms, engaged in the business of dealing or manufacturing firearms without a license, or other unlawful activity. Of course, private makers must abide by the Undetectable Firearms Act, National Firearms Act, and Gun Control Act requirements, and any applicable state and local laws that govern privately made firearms.

Q: What is the effect of the extended record retention requirement?

Extending record retention is important for law enforcement tracing and for public safety. Over the past decade, ATF has been unable to trace thousands of firearms – many reportedly used in homicides or other violent crimes – because the records were more than 20 years old and were destroyed by licensed businesses. ATF estimates that preservation of these records will facilitate the completion of more than a 1,000 additional traces per year. These records will be maintained by federal firearms licensees, not ATF, until the licensed activity ends – at which time the records will be transferred to ATF, consistent with current requirements. To ease the burden on FFLs, the final rule allows records to be maintained electronically and permits licensees to store records that are more than 20 years old at offsite premises.



“Frame or Receiver” Final Rule Quick Facts:

When was the rule submitted to the Federal Register for publication?

April 11, 2022

When was the rule proposed?

May 7, 2021

How many comments did the public submit?

Approximately 290,000.

When does the rule take effect?

120 days after the Federal Register publishes the rule.

How many privately made firearms, aka “ghost guns,” are used in crimes?

From January 2016 to December 2021, ATF received approximately 45,000 reports of suspected privately made firearms (PMFs) recovered by law enforcement in criminal investigations — including 692 homicides or attempted homicides.

Can I buy a “buy-build-shoot” kit online?

Once the rule is implemented, the same rules will apply to “buy-build-shoot” kits offered for sale online as apply to other firearms offered for sale online.

What is the estimated result of expanding mandatory record retention beyond 20 years?

ATF estimates the ability to trace more than 1,000 additional guns recovered in criminal investigations per year.