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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13351 C.M.S.

INTRODUCED BY VICE MAYOR REBECCA KAPLAN, CITY ATTORNEY BARBARA J. PARKER,
AND COUNCILMEMBERS DAN KALB AND ANNIE CAMPBELL WASHINGTON

ORDINANCE BANNING UNSECURED FIREARMS AND AMMUNITION LOCATED IN UNATTENDED VEHICLES IN THE PUBLIC RIGHT OF WAY AND "PUBLIC PLACES" AS DEFINED IN THE ORDINANCE

WHEREAS, firearms are deadly weapons and the threat of harm increases exponentially when firearms are not properly secured and are left in unattended vehicles in the public right of way and "public places" as defined in this ordinance; and

WHEREAS, as the news media recently reported, guns stolen from parked or abandoned vehicles ("unattended") have been linked to a number of high profile murders in the Bay Area this year, including the tragic death of 32-year old San Francisco resident Kathryn Steinle, who was fatally shot on July 1, 2015 near the Ferry Building with a pistol reported stolen during an auto burglary while a U.S. Bureau of Land Management ranger was traveling on official business in San Francisco; and

WHEREAS, according to news media, on September 29, 2015 muralist Antonio Ramos was working on an antiviolence mural on West Street in North Oakland when he was shot and killed with a gun that had been stolen from the car of a federal Immigration and Customs Enforcement Agent in San Francisco; and

WHEREAS, on July 1, 2015, 32-year old San Francisco resident Kathryn Steinle was fatally shot near the Ferry Building with a pistol that had been reported stolen from a U.S. Bureau of Land Management ranger; the gun was stolen during an auto burglary while the ranger was traveling on official business in San Francisco; and

WHEREAS, the California Department of Justice, Division of Law Enforcement, Bureau of Forensic Services, issued a report titled *Firearms Used in the Commission of Crimes* stating that in 2014, handguns were used in more than 80 percent of crimes involving firearms; and

WHEREAS, according to news reports and information from the Oakland Police Department, between 2010 and 2012 police officers seized 3722 guns in the City which averaged about three guns per day and this rate is significantly higher than in San Francisco, a city with twice the population; and

WHEREAS, there is a long standing problem in the City with the high number of automobile burglaries, as confirmed by the Oakland Police Department's End of Year 2014 Crime Report which showed this data:

- 3375 auto burglaries reported in 2010
- 3673 auto burglaries reported in 2011
- 6654 auto burglaries reported in 2012
- 6948 auto burglaries reported in 2013
- 7283 auto burglaries reported in 2014; and

WHEREAS, according to the Oakland Police Department, from August 17, 2004 to November 9, 2015, there were approximately three hundred (300) firearms stolen during auto burglaries, two hundred and seventy three (273) were handguns and twenty seven (27) were long guns; and

WHEREAS, this is a public welfare law intended to supplement California's Control of Deadly Weapons Act, Penal Code Section 16000 et seq. This law is not intended to nor does it create a right of action or liability against the City. It does not assume or impose an affirmative duty or obligation on the City or its employees for which a person may seek liability or money damages for injuries or alleged breach; and

WHEREAS, City Council wants to prevent automobile burglaries, the theft of guns, and the human tragedy and loss of life caused by criminals who use stolen firearms to kill and injure innocent persons; now, therefore

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Enactment of Oakland Municipal Code Chapter 9.37

CHAPTER 9.37

ARTICLE I

9.37.010 Title.

This Chapter shall be known as Oakland's Ban on Unsecured Firearms and Ammunition in Unattended Vehicles Act.

ARTICLE II

9.37.020 Findings and Purpose.

The City Council finds:

- A. The purposes of this law is to protect public safety, reduce gun violence, and make the City safer from *unsecured* guns and ammunition stolen from *unattended* vehicles and used to kill and injured people.
- B. The high levels of gun crimes and gun violence in the City is caused by the proliferation of weapons within the City. As reported by the news media and the Oakland Police Department, about 3722 guns were seized in the City between 2010 and 2012. This averaged about three guns per day, which is significantly higher than in San Francisco, a city with twice the population of Oakland.
- C. People in Oakland experience a high number of automobile burglaries. Auto burglaries increased exponentially between 2010 and 2015. According to the *Oakland Police Department's* 2014 End of Year Crime Report, *there were* 3375 auto burglaries reported in 2010; 3673 in 2011; 6654 in 2012; 6948 in 2013; and 7283 in 2014.
- D. A *significant* number of the auto burglaries that occur in Oakland result in guns or ammunition being stolen from vehicles. According to the Oakland Police Department, from August 17, 2004 to November 9, 2015, there were approximately three hundred (300) firearms reported stolen during auto burglaries: 273 handguns and 27 long guns.
- E. These findings, the information provided in City Council reports, and the testimony and evidence presented at City Council meetings *on this matter*, are incorporated herein by reference in support of the City Council's actions.

ARTICLE III

9.37.030 Definitions

The following terms are defined for use in this Chapter.

"Ammunition" has the same meaning as defined by state law. It does not include fixed ammunition of a caliber greater than .60 caliber (California Penal Code §18735) nor "deactivated ammunition" (California Penal Code § 30335).

"Firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion, as defined by state law.

“Handgun” means a pistol, a revolver, or a firearm capable of being concealed upon the person. A firearm capable of being concealed includes a pistol or revolver, including any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than sixteen inches in length. It includes any device that has a barrel sixteen inches or more in length which is designed to be interchanged with a barrel less than sixteen in inches.

“Licensee” is a person with a valid concealed carry weapons license issued by the appropriate law enforcement authorities, as defined in the Penal Code § Section 26150 et seq.

“Locked Container” means a lock box that is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices and that is locked and secured from entry by an unauthorized user.

“Long Gun” means any firearm except for a handgun, a machine gun, an assault rifle or a .50 BMG rifle as those terms are defined in state law.

“Person” includes a natural person or a legal entity (association, corporation, etc.) with responsibility for the ownership, use, control, or direction of the vehicle.

“Public Place” means a place that is open and accessible to the public, including but not limited to gas stations, public parking lots and garages, driveways, and carports.

“Public Right of Way” means a highway, street, or roadway as those terms are defined in California Vehicle Code §§ 360, 590 and 530 et seq.

“Trunk” means a fully enclosed compartment that is separate from the main cabin of the Motor Vehicle.

“Unattended” means a vehicle that is parked or standing in the public right of way or public place within the City and which is not occupied and/or is outside the immediate control of the Person responsible for the vehicle.

“Unsecured” means a handgun, long gun, or ammunition that is not safely stored in a vehicle in accordance with this Chapter.

“Vehicle” means a vehicle as defined in California Vehicle Code § 670, and a motor vehicle as defined in California Vehicle Code § 415.

“Vehicle Owner” means the registered owner of the vehicle, Vehicle Code § 460.

ARTICLE IV

Unsecured Handguns, Long Guns, and Ammunition in Unattended Vehicles are Unlawful and Prohibited.

9.37.40 Prohibitions.

A. Handguns.

1. It is unlawful for a Person to leave a Handgun in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the handgun is stored in accordance with the safe storage provisions of this Chapter.

2. It is unlawful for a Licensee to leave a Handgun in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the handgun is stored in accordance with the safe storage provisions of this Chapter.

B. Long Guns

It is unlawful for a person to leave a Long Gun in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the Long Gun is stored in accordance with the safe storage provisions of this Chapter.

C. Ammunition

It is unlawful for a person to leave Ammunition in an Unattended Vehicle within the City of Oakland in a Public Right of Way or Public Place unless the ammunition is stored in accordance with the safe storage provisions of this Chapter.

D. Safe Storage Requirements.

Unless exempted by law, firearms and ammunition inside Unattended Vehicles must be secured as follows:

- (1) In a Lock Box; and
- (2) The Lock Box must be stored
 - (a) in the locked Trunk of the vehicle; or
 - (b) the Lock Box must be stored inside the Vehicle in a place where the Lock Box cannot be seen from the outside or the Lock Box must be placed in a container that is permanently attached to the inside of the Vehicle; and
- (3) The key or other disabling device to the Lock Box is not left in the Unattended Vehicle.

9.37.50 Public Nuisance.

Unsecured Firearms and Ammunition in Unattended Vehicles in violation of this Chapter constitute a public nuisance subject to abatement, penalties, and remedies provided under this Chapter, other provisions of the Oakland Municipal Code, and state or federal law.

9.37.60 Exemptions.

This Chapter does not apply to persons authorized by state or federal law to carry or transport firearms or ammunition in Vehicles. To the extent there is a conflict between this Chapter and state or federal, the more stringent requirements shall govern.

ARTICLE V

Remedies, Liabilities, Fines and Penalties

9.37.70 Criminal Penalties.

Violations of this Chapter constitute misdemeanors punishable by imprisonment in the county jail not exceeding six months, a fine not exceeding one thousand dollars (\$1,000), or by both. Each violation shall be deemed a distinct and separate offense in accordance with the law.

9.37.80 Civil Penalties.

The City may assess civil penalties in accordance with Oakland Municipal Code Chapter 1.08 (Civil Penalties). Alternatively or in conjunction with Chapter 1.08, the City may assess the following penalties for violations of this Chapter: (a) one thousand dollars (\$1,000) for the first violation; (b) two thousand five hundred (\$2,500) for the second violation; and (c) five thousand dollars (\$5,000) for the third violation and for each subsequent violation committed within a calendar year.

9.37.90 Authority of City Attorney to Bring a Court Action.

A. The City Attorney may bring a civil action for damages, abatement, injunctive and/or declaratory relief, and to recover City costs as s/he deems appropriate.

B. The City Attorney may bring a civil action to obtain a money judgment against the Defendant for any amount of damages that is not ordered or collected by a criminal court, including but not limited to costs, attorney's fees, court costs, and/or other costs incurred in connection with the civil prosecution of any claim for relief, damages or reimbursement.

C. The City Attorney may bring a criminal action for violations of this Chapter.

9.37.100 Liability of Owner or Operator of Vehicle.

To the extent permitted by law, the registered owner, the driver, and any other person with control of the Vehicle may be subject to civil liability, penalties, and other remedies provided by this Chapter and other law, including but not limited to costs, penalties and fines based on negligence.

9.37.110 Remedies not exclusive.

Remedies under this Chapter are cumulative and not exclusive. They are in addition to any other administrative, civil, and/or criminal remedies provided by state, federal or other laws contained in the Oakland Municipal Code. The City may seek an order for award of attorney's fees.

Remedies may be recovered by all appropriate legal means including but not limited to criminal prosecution, civil action, nuisance abatement, or lien proceedings.

Concealed Carry Licensees also may be subject to suspension or revocation of their licenses for violations of this Chapter.

9.37.120 Amendments to State laws adopted.

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, such amendments shall be automatically deemed adopted as part of this Chapter as if fully set forth herein unless the City Council amends this Chapter to provide otherwise.

9.37.130 City Administrator regulations.

The City Administrator directly or through the Oakland Police Department may establish regulations to aid in the administration of this Chapter, but the lack of such regulations shall not delay or otherwise impede enforcement of this law.

SECTION 2. Severability and Validity.

If any provision of this Chapter is held to be invalid or unconstitutional by any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions. The City Council declares that it would have adopted the remaining provisions irrespective of the provisions, sections, sentences, clauses, or words declared invalid or unconstitutional.

SECTION 3. Effective Date.

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, **JAN 19 2016**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~ AND PRESIDENT GIBSON MCELHANEY **- 7**

NOES - **0**

ABSENT - **0**

ABSTENTION - **0**

Excused - Reid - 1

ATTEST: *L. Simmons for*
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: **2/18/2016**

Introduction Date

JAN 05 2016