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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

December 15, 2015

PUBLIC SAFETY COMMITTEE
OAKLAND CITY COUNCIL
Oakland, California 94612

**Re: Gun Control Ordinances Scheduled for the Public Safety Committee
on December 15, 2015**

Dear Chairperson Brooks and Members of the Committee:

I. **Purpose of Report:**

This report summarizes the provisions of two ordinances that Vice Mayor Rebecca Kaplan, City Attorney Barbara J. Parker and Councilmembers Dan Kalb and Annie Campbell Washington are sponsoring to reduce the number of injuries, deaths and other devastating impacts of gun violence (hereinafter referred to as the "Sponsors"). The Public Safety Committee ("Committee") will consider the ordinances at its December 15, 2015 meeting. The Sponsors have consulted with Police Chief Whent regarding the measures.

The ordinances are listed below.

- 1) **Ordinance Banning Unsecured Firearms And Ammunition Located In Unattended Vehicles In The Public Right Of Way And "Public Places" As Defined In The Ordinance; and**
- 2) **Ordinance Requiring That City-Issued Firearms In Unattended Vehicles Be Secured**

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II. Recommendations

The Sponsors recommend that the Committee take the following action:

- Pass a motion recommending that the Council adopt Ordinance No., 1 above and forward the Ordinance to the Council for its consideration; and
- Pass a motion recommending that the Council (i) request that the City Administrator conduct the necessary meet and confer process with the union, regarding Ordinance No. 2 above, and (ii) requesting that the City Administrator or City Attorney schedule the Ordinance for Council consideration once the meet and confer process is concluded.

III. Background and Basis for the Legislation:

As the news media recently reported, guns stolen from unattended vehicles (e.g., parked or abandoned vehicles) have been linked to a number of high profile murders in the Bay Area this year, including the tragic death of Oakland artist Antonio Ramos, who was shot and killed in September while he was working on an antiviolence mural on West Street in North Oakland. Mr. Ramos apparently was killed with a gun that was stolen from the rental car of a federal Immigration and Customs Enforcement Officer in San Francisco two weeks before his murder.

Auto burglaries in the City have increased dramatically in the last five years, from about 3,375 in 2010, to 7,283 in 2014. According to OPD statistics, approximately 300 firearms were reported stolen during auto burglaries in Oakland between August 2004 and November 2015. Approximately 91% of the stolen guns were handguns and 9% were "long guns" or rifles.

To prevent tragic shootings and deaths from these deadly weapons, firearms should be supervised and secured at all times. The threat to public safety increases exponentially when firearms are not properly secured in vehicles or residences and vehicles are unattended on city streets and in other public places. As a charter city, Oakland has "home rule" authority to manage its municipal affairs and to use police powers to protect the public from the threat and harm unsecured firearms pose in unattended vehicles. The City also may impose reasonable standards for the care of City-issued firearms and use of city streets regulations in order to protect public safety and welfare.

IV. Summary of Ordinance Provisions

A. Ordinance Banning Unsecured Firearms And Ammunition Located In Unattended Vehicles In The Public Right Of Way And “Public Places” As Defined In The Ordinance

This ordinance requires that individuals, who are licensed to carry concealed handguns in public, secure their weapons inside unattended vehicles in the public right of way or public places within the City of Oakland. The firearm must be secured in a Locked Container, as defined in the Ordinance, or a lock box which must be kept inside the locked trunk, or inside the vehicle in a Container that is not visible outside of the vehicle or which is securely attached or bolted to the vehicle. This requirement would apply to all persons, and not just licensed individuals, to the extent permitted by law. These requirements also apply to long guns and ammunition in unattended vehicles.

The ordinance makes it a nuisance to keep unsecured firearms and ammunition in unattended vehicles in public places. Penal Code section 25700; Government Code sections 3479 et seq.

A violation of the ordinance would be a misdemeanor punishable by up to six months in jail, a \$1,000 fine, or both. Violators also would face civil penalties and fines, and possible civil actions by the City Attorney. Persons licensed to carry concealed weapons also could face suspension or revocation of their permits.

B. Ordinance Requiring That City-Issued Firearms in Unattended Vehicles Be Secured.

This ordinance supports the efforts of the City Administrator and Police Chief to implement more robust safe storage practices for City-issued firearms. The ordinance codifies the Council's policy intent and directive that the City establish a higher level of safety to protect the general public, City residents, and Oakland police officers from the harm and threats stolen guns pose. The ordinance requires that City-issued firearms in unattended vehicles be secured at all times. The ordinance would apply to police cars and city vehicles that Oakland officers use during their shifts, as well as officers' private vehicles when the officers use such private vehicles to transport City-issued guns.

The ordinance requires that City-issued firearms be secured in a Locked Container, as defined in the Ordinance, or a lock box that must be kept inside the locked trunk or inside the vehicle in a place that is not visible from the outside, to the extent allowed by law. The ordinance authorizes the City Administrator to exempt police personnel from the requirements or impose more stringent or specific gun storage requirements in City gun purchasing contracts, manufacturers' specifications, or City/OPD policies based on cost and technological capability of police vehicles, etc.

Before the City Council takes action on this ordinance, the City must complete the meet and confer process with the Oakland Police Officers Association in accordance with requirements of the Meyers Milias Brown Act. During this process, the City Administrator and Police Chief will have time to further evaluate the issue and inform the deliberative process of the Council, the public dialogue, and the ultimate selection of the best safe storage requirements for City-issued guns consistent with Council policy. Due to the meet and confer requirements, we recommend that the Committee pass a motion requesting that Council direct the City Administrator to conduct the meet and confer process.

V. Conclusion:

The Sponsors have respectfully requested that the Public Safety Committee take the actions listed in Section II of this report.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

cc: Mayor Schaaf
Council President Gibson McElhaney and Members of the Council
City Administrator Landreth
Police Chief Sean Whent

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APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

ORDINANCE REQUIRING THAT CITY-ISSUED FIREARMS IN UNATTENDED VEHICLES BE SECURED

WHEREAS, firearms are deadly weapons and threaten public health and safety when they are left unlocked and unsecured in unattended vehicles on city streets and other public places; and

WHEREAS, as the news media recently reported, guns belonging to law enforcement have been stolen in a rash of auto burglaries around the Bay Area this year and have been linked to a number of high profile murders; 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, on October 18, 2015, an off-duty California Highway Patrol officer's firearm was stolen out of a bag he left inside his vehicle in San Francisco's South of Market neighborhood; and

WHEREAS, another incident occurred in August 2015, when a gun belonging to a Hayward police officer was stolen from a car in Oakland parked near a shopping plaza a few blocks from the Fruitvale BART station; and

WHEREAS, earlier in August 2015, it was reported that UC Police Chief Margo Bennett's gun and other items were stolen from her car as she jogged at Point Isabel in Richmond, California; and

WHEREAS, the Commission on Peace Officer Standards and Training (“POST”) does not have a standing policy or recommendation for securing duty weapons of law enforcement, and defers to the discretion of local authorities; and

WHEREAS, the Oakland Police Department (“OPD”) requires that peace officers care for department issued property and secure their firearms (Manual of Rules, Section 342), but does not have a specific policy on the storage of city-issued firearms in private vehicles; and

WHEREAS, the City Council wants to prevent automobile burglaries, theft of City-issued Firearms, and avoid 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. Article VIII is added to the Oakland Municipal Code, Chapter 9.36 – WEAPONS.

ARTICLE VIII.

Securing City-Issued Firearms in Unattended Private Vehicles.

9.36.800 Title.

This Article shall be known as Oakland’s Safe Storage of City-Issued Firearms in Unattended Vehicles Act.

9.36.810 Findings and Purpose.

The City Council finds:

- A. The purpose of this law is to protect public safety, reduce gun violence and make the City safer from guns and ammunition that are stolen from vehicles and used to kill and injured people.
- B. There is a high level of gun crimes and violence in the City which is caused by the proliferation of firearms. Oakland Police Department data shows that about 3722 guns were seized in the City between 2010 and 2012. On average, about three guns per day are seized in Oakland, which represents a significantly higher number than San Francisco’s, even though San Francisco has close to twice the population of Oakland.
- C. The people of Oakland also experience a high number of automobile burglaries compared to other parts of the state, including the Bay Area. Auto burglaries increased exponentially between 2010 and 2015. According to OPD’s 2014 End of Year Crime Report, there were 3375 auto burglaries reported in 2010; 3673

reported in 2011; 6654 reported in 2012; 6948 reported in 2013; and, 7283 were reported in 2014.

- D. A high 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, approximately three hundred (300) firearms were reported stolen during automobile burglaries. Of the 300 stolen guns, 273 were handguns and 27 were long guns.
- E. The purpose of this law is to protect public safety and make the City safer. It requires that City-issued Firearms be locked and secured when placed, stored, or left in Unattended Vehicles. It seeks to lower the risk that criminals will steal police firearms and use them to harm others. This Article is not intended to nor does it create a right of action against the City by third parties. It does not assume or impose an affirmative duty or obligation on City officers or employees for which a person may seek liability or money damages for injuries or alleged breach.
- F. These findings, the information provided in City Council reports, and the testimony and evidence introduced at City Council meetings on this item are incorporated herein by reference in support of the City Council's actions.

9.36.820 Definitions.

“City-Issued Firearms” are purchased by the City and provided to Oakland peace officers for law enforcement activities.

“Firearm” means a Firearm as defined in California Penal Code section 12001, as amended from time to time.

“Locked Container” means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device, as defined in California Penal Code section 16850. It includes a Lock Box that is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices. It does not include a bag or other container made of fabric or other penetrable material, such as a regular purse, backpack, or gym bag.

“Motor Vehicle” means a vehicle as defined in California Vehicle Code section 415, as amended from time to time.

“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 and which is not occupied and/or is outside the presence, control, or direction of the OPD officer responsible for the vehicle.

“Unsecured” means a City-issued firearm that is not secured in accordance with this Article.

9.36.830 Securing City-Issued Firearms in Unattended Vehicles.

- A. A peace officer employed by the City of Oakland may not place, store, or leave Unattended City-issued firearms in any Vehicle, unless the firearm is secured (1) in a Locked Container inside the locked Trunk of the vehicle, or (2) in a Locked Container inside the cabin of the Vehicle where the Container cannot be seen from the outside or is permanently attached to the Vehicle.
- B. These requirements are not intended to conflict with applicable City department's rules governing the storage of firearms in City-owned vehicles or vehicles under their control. To the extent there is a conflict between the laws or rules, the more stringent requirement shall govern.
- C. The City Administrator is authorized to exempt police personnel from certain requirements, or to impose more specific gun storage rules in accordance with law, or as required by city contracts, manufacturers' warranty, or to meet vehicle specifications or technological capabilities.

9.36.840 Exemptions.

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

9.36.50 Penalty.

Violations will be addressed in accordance with the Oakland Police Department's Manual of Rules and applicable General Order.

SECTION 2. Severability.

If a court determines that this Article or any portion thereof may not be applied to peace officers in particular situations, it is the intention of the City of Oakland that applicability of the Article or portion thereof to the specific circumstances challenged shall be severed and that the remainder of the Article or other portions thereof shall continue to apply to all other circumstances. If any part of this Article is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

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, _____, 2015

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____