


INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
CITY ATTORNEY**ORDINANCE No. 11424 C. M. S.**

CORRECTION COPY

3/31/92

JPT:cmf

**AN ORDINANCE AMENDING THE OAKLAND  
MUNICIPAL CODE, ADDING CHAPTER 2,  
ARTICLE 10, TO ESTABLISH ADDITIONAL  
REQUIREMENTS FOR FIREARM'S DEALERS  
IN THE CITY OF OAKLAND**

**WHEREAS**, the homicide rate for the City of Oakland in 1991 exceeded all previous yearly totals; and

**WHEREAS**, firearms were used in nearly 80% of the homicides committed in the City in 1991; and

**WHEREAS**, the average age of gunshot victims is declining, so that over half of the gunshot victims in Oakland in 1991 were under 25 years of age; and

**WHEREAS**, between January 1990 and August 1991, thirty two firearms related homicides involved youths under age 17; and

**WHEREAS**, the police department has found that firearms used in violent crimes are often obtained from dealers operating without proper permits or through illegal sales within the City; and

**WHEREAS**, of the total number of firearms dealers in the City of Oakland that possess federal firearms licenses, as of January 1992, less than ten percent had applied for and obtained a local permit pursuant to City of Oakland requirements; and

**WHEREAS**, the majority of unlicensed firearms dealers operate from residential areas of the City; and

**WHEREAS**, the current firearms permitting procedure has not been effective in limiting or controlling the number of unscrupulous firearms dealers who sell firearms illegally to minors or to individuals with criminal records; and

**WHEREAS**, the continuing increase in the number of deaths and injuries attributable to firearms is an unacceptable trend that warrants stricter control over the availability of firearms within the City of Oakland; and

**WHEREAS**, Section 12071 of the California Penal Code provides that municipalities may exercise discretion to grant or

deny applications for permits to sell firearms; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970 and the provisions of the Statement of Objectives, Criteria and Procedure for Implementation of CEQA, have been satisfied and the City Review Officer has determined that, in accordance with Section 15061(b)(3) of the CEQA Guidelines, this Ordinance is exempt from CEQA.

**The Council of the City of Oakland does ordain as follows:**

Section 1. The Oakland Municipal Code, Chapter 2, is amended to add Article 10 as follows:

"ARTICLE 10  
PERMIT REQUIREMENTS FOR FIREARMS DEALERS

SEC. 2-10.01 TITLE. This Article shall be known as the Firearms Dealer Permit Ordinance.

SEC. 2-10.02 FINDINGS. The City Council of the City of Oakland hereby finds that:

- A. The number of unlicensed firearms dealers within the City of Oakland far exceeds the number of legitimate licensed dealers; and
- B. Firearms used in violent crimes have been traced by the police department to firearms dealers operating without permits within the City; and
- C. Firearms are used in nearly 80% of the homicides committed in the City; and
- D. A considerable proportion of the firearms used in violent crimes were obtained illegally from unlicensed firearms dealers; and
- E. Since June of 1990, Highland Hospital in Oakland has treated an average of thirty two Oakland residents a month for gunshot wounds, an average of one a day; and
- F. The average cost for treatment of a gunshot wound is \$33,000.00, most of the cost borne by taxpayers. Nearly four hundred gunshot wounds were treated at Highland Hospital in 1991.
- G. The widespread availability of illegally obtained firearms has resulted in a rise in the number of shooting incidents involving minors; and

- H. Because of the range and effectiveness of firearms, the use of firearms in violent crimes is more likely to lead to the death or injury of bystanders.

SEC. 2-10.03 DEFINITIONS. The following words and phrases, whenever used in this Article, shall be construed as defined in this section:

- A. "Firearm" means any device, designed to be used as a weapon or modified 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.
- B. "Firearms dealer" means a person engaged in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm.
- C. "Engaged in the business" means the conduct of a business by the selling, transferring, or leasing of any firearm; or the preparation for such conduct of business as evidenced by the securing of applicable federal or state licenses; or the holding of one's self out as engaged in the business of selling, transferring, or leasing of any firearm, or the selling, transferring, or leasing of firearms in quantity, in series, or in individual transactions, or in any other manner indicative of trade.
- D. "Person" means natural person, association, partnership, firm, or corporation.

SEC. 2-10.04 PERMIT REQUIRED. It shall be unlawful for any person, partnership, cooperative, corporation, firm, or association to engage in the business of operating or managing any business which sells, transfers, leases, or offers or advertises for sale, transfer, or lease, any firearm without first obtaining a firearms dealer permit from the Chief of Police of the Oakland Police Department.

SEC. 2-10.05 APPLICATION-FORMS; FEES. An applicant for a Permit under this Article shall file with the Chief of Police a sworn application in writing, on a form to be furnished by the City. The applicant shall provide all information requested, including proof of compliance with all applicable Federal, State, and local laws when required by the Chief of Police, or the application will not be deemed complete. The application shall be accompanied by a non-refundable fee as set forth in the City of

Oakland Municipal license/permit fee schedule. To the extent practicable, the fee amount shall reflect the cost of enforcing the requirements of this Article.

SEC. 2-10.06 APPLICATION-INVESTIGATION. The Chief of Police shall conduct an appropriate investigation to determine for the protection of the public safety whether the permit may be issued. The Chief of Police may require additional information of an applicant deemed necessary to complete the investigation.

SEC. 2-10.07 APPLICATION DENIAL. The Chief of Police shall deny the issuance of a permit when any of the following conditions exist:

- A. The applicant, or an officer, employee, or agent thereof, is under the age of twenty-one years.
- B. The applicant is not licensed as required by all applicable Federal, State and local laws.
- C. The applicant, or an officer, employee, or agent thereof, has had a similar type permit previously revoked or denied for good cause within the immediately preceding two (2) years.
- D. The applicant, or an officer, employee, or agent thereof, has made a false or misleading statement of a material fact or omission of a material fact in the application for a permit.
- E. The applicant, or an officer, employee, or agent thereof, has been convicted of:
  - (1) Any offense so as to disqualify the applicant, or an officer, employee, or agent thereof, from owning or possessing a firearm under applicable Federal, State, and local laws.
  - (2) Any offense relating to the manufacturing, sale, possession, use, or registration of any firearm or dangerous or deadly weapon.
  - (3) Any offense involving the use of force or violence upon the person of another.
  - (4) Any offense involving theft, fraud, dishonesty, or deceit.
  - (5) Any offense involving the manufacture, sale, possession, or use of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may

hereafter be amended to read.

- F. The applicant, or an officer, employee, or agent thereof, is an unlawful user of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read, or is an excessive user of alcohol to the extent that such use would impair his or her fitness to be a dealer in firearms.
- G. The applicant, or an officer, employee, or agent thereof, has been adjudicated as a mental defective, or has been committed to a mental institution, or suffers from any psychological disturbance which would impair his or her fitness to be a dealer in concealable firearms.
- H. The operation of the business as proposed will not comply with all applicable Federal, State, and local laws.
- I. The applicant, or an officer, employee, or agent thereof, proposes to operate in the following locations:
  - (1) Within a zoning district in which general retail sales commercial activities are not a permitted or conditional use.
  - (2) Within a zoning district in which residential use is the principal permitted or maintained use, or within one thousand feet of the exterior limits of any such district.
  - (3) Within one thousand feet of a public or private day care center or day care home, or within one thousand feet of any elementary, junior high, or high school whether public or private.
  - (4) On or within one thousand five hundred feet of the exterior limits of any other premises occupied by a dealer in firearms, an adult entertainment establishment or a hot tub/sauna establishment.
- J. The applicant, or an officer, employee, or agent thereof does not have, and or cannot provide evidence of a possessory interest in the property at which the proposed business will be conducted.

- K. Any ground for denial exists as specified in the Oakland Municipal Code.

SEC. 2-10.08 SECURITY. In order to discourage the theft of firearms stored on the premises of a firearms dealer, any business licensed under this Article must adhere to security measures as required by the Chief of Police. Security measures shall include but not be limited to:

- A. the provision of secure locks, windows and doors, adequate lighting, and alarms as specified by the Chief of Police.
- B. storing of all firearms on the premises out of the reach of customers in secure, locked facilities, so that access to firearms shall be controlled by the dealer or employees of the dealer, to the exclusion of all others.

SEC. 2-10.09 PERMIT FORM. All permits issued pursuant to this Article shall be in the form prescribed by the Attorney General of the State of California.

SEC. 2-10.10 PERMIT-DURATION; RENEWAL. All permits issued pursuant to this Article shall expire one year after the date of issuance; provided, however, that such permits may be renewed by the Chief of Police for additional periods of one year upon the approval of an application for renewal by the Chief of Police and payment of the renewal fee. Such renewal application must be received by the Chief of Police, in completed form, no later than forty-five days prior to the expiration of the current permit.

SEC. 2-10.11 PERMIT-ASSIGNMENT. The assignment or attempt to assign any permit issued pursuant to this Article is unlawful and any such assignment or attempt to assign a permit shall render the permit null and void.

SEC. 2-10.12 PERMIT-CONDITIONS. Any permit issued pursuant to this Article shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the permit by the Chief of Police:

- A. The business shall be carried on only in the building located at the street address shown on the license.
- B. The Permittee shall comply with Sections 12073, 12074, 12076, 12077 and 12082 and subdivision (b) of Section 12072 of the California Penal Code, to the extent that the provisions remain in effect.

Any permit pursuant to this Article shall be subject to such additional conditions as the Chief of Police finds are reasonably

related to the purpose of this Article.

SEC 2-10.13 PERMIT-GROUNDS FOR REVOCATION. In addition to any provisions contained in this Article, any circumstances constituting grounds for denial shall also constitute grounds for revocation.

SEC. 2-10.14 PERMIT-HEARING.

- A. Any person whose application for a permit under this Article has been denied, or whose permit has been revoked pursuant to the provisions of this Article, shall have the right to a hearing before the Chief of Police or a designee prior to final denial or prior to revocation.
- B. The Chief of Police shall give the applicant or permittee written notice of the intent to deny the application or to revoke the permit. The notice shall set forth the ground or grounds for the Chief of Police's intent to deny the application or to revoke the permit, and shall inform the applicant or permittee that he or she has ten days from the date of receipt of the notice to file a written request for a hearing. The application may be denied or the permit revoked if a written hearing request is not received within the ten-day period.
- C. If the applicant or permittee files a timely hearing request, the Chief of Police shall set a time and place for the hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross examine any witnesses against them. The decision of the Chief of Police whether to deny the application or revoke the permit is final and nonappealable.

SEC. 2-10.15 PERMIT-LIABILITY INSURANCE. No permit shall be issued or continued pursuant to this Article unless there is in full force and effect a policy of insurance in such form as the City Attorney deems proper, executed by an insurance company approved by the City Attorney whereby the applicant or permittee is insured against liability for damage to property and for injury to or death of any person as a result of the sale, transfer or lease, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm. The minimum liability limits shall not be less than one million dollars (\$1,000,000) for damage to or destruction of property in any one incident, and one million dollars (\$1,000,000) for the death or injury to any one person; provided, however, that additional

amounts may be required by the City Attorney if deemed necessary.

Such policy of insurance shall contain an endorsement providing that the policy will not be canceled until notice in writing has been given to the City, addressed in care of the Chief of Police, 455 - 7th Street, Oakland, California, 94607, at least thirty days immediately prior to the time such cancellation becomes effective. Further, such policy of insurance shall name the City, its officers, agents, and employees as additional insurers. Additionally, applicants and permittees shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from claims arising from the negligence of the applicant or permittee.

SEC. 2-10.16 PERMIT-AUTHORITY TO INSPECT. Any and all investigating officials of the City shall have the right to enter the building designated in the permit from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, mechanical, fire, electrical, plumbing, or health regulations, and provisions of this Article. A police investigator may conduct compliance inspections to insure conformance to all Federal, State, and local law, and all provisions of this Article.

SEC. 2-10.17 COMPLIANCE. Any person engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm on the effective date of this Article shall have a period of 60 days after such effective date to comply with the provisions of this Article.

SEC. 2-10.18 TEMPORARY SUSPENSION OF PERMIT TO SELL FIREARMS.

- A. If the dealer violates any Federal, State and local County or City law, the Chief of Police may immediately suspend the right of the dealer to sell firearms. This temporary suspension will not exceed 3 days, if the violation results in a criminal charge filed in court by a Federal, State, or County District Attorney such permit to sell firearm may be suspended until the case is adjudicated in a court of law.
- B. Notice of suspension shall be mailed to the person(s) who made application for the permit and shall be delivered to the address listed on the permit.

SEC. 2-10.19 SEVERABILITY. This Article shall be enforced to the full extent of the authority of the City of Oakland. if any section, subsection, paragraph, sentence or word

of this Article is deemed to be invalid or beyond the authority of the City of Oakland, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this Article, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this Article shall be deemed severable."

Section 2. The City Council makes the following findings in support of adoption of this Ordinance:

- A. This Ordinance is necessary to protect the public health, safety and welfare; and,
- B. The findings set forth in Section 2-9.02 are true and correct and provide a further basis for this Ordinance.

Section 3. The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act and all local CEQA implementing regulations. The City's Review Officer is directed to file a Notice of Exemption with the Alameda County Clerk.

Section 4. This Ordinance shall be effective 60 days from date of passage.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 24 1992, 19 \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES— BAZILE, CANNON, GIBSON HASKELL, MILEY, MOORE, OGAWA, RILES, SPEES, and PRESIDENT HARRIS. - 9

NOES— NONE

ABSENT— NONE

ABSTENTION— NONE

ATTEST:

  
ARRECE JAMESON

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