



Office of the City Manager

CONSENT CALENDAR
July 15, 2003

To: Honorable Mayor and
Members of the City Council
From: Weldon Rucker, City Manager
Subject: Repeal of Trigger Lock Provision In Firearms Dealers Ordinance

RECOMMENDATION

Adopt the first reading of an ordinance amending Berkeley Municipal Code Section 9.72.080 of the Firearms Dealers Ordinance by repealing Subsection G regulating trigger locks due to passage of a comprehensive state law making the local law duplicative.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Firearms Dealers ordinance requires licensed firearms dealers to sell or provide a trigger lock or similar firearm safety device designed to prevent accidental discharge with every firearm sold or transferred. BMC § 9.72.080(G) (hereafter "trigger lock ordinance"). Since 2000, a state law (The Aroner-Scott-Hayden Firearms Safety Act of 1999) has imposed the exact same regulation on firearms dealers on a state-wide basis. Thus, the local law is now preempted as duplicative of state law.

BACKGROUND

In 1999, the California Legislature enacted The Aroner-Scott-Hayden Firearms Safety Act (hereafter "Firearms Safety Act"), which was codified as Penal Code sections 12087 to 12088.9. Penal Code section 12088.1 requires licensed firearm dealers to include a state-approved trigger lock or similar "firearm safety device" with every firearm sold or transferred. The Firearms Safety Act's "trigger lock" requirement applies state-wide, and it includes private transfers that now must be made through licensed dealers under state law.

In the legislative findings, Penal Code section 12087.5 notes that "(s)ome currently available trigger locks and other similar devices are inadequate to prevent the accidental discharge of the firearms to which they are attached, or to prevent children from gaining access to the firearm." Accordingly, Section 12088.1 provides that the California Department of Justice will publish a roster of approved firearm safety devices and will identify which device is appropriate for each make and model of firearm. Section 12088 notes that the California Department of Justice will also do testing of the trigger locks and firearms safety devices to ensure compliance with state law safety standards. The City Attorney has advised that the new state law preempts the local ordinance.

RATIONALE FOR RECOMMENDATION

To bring the City's Firearms Dealers ordinance into conformity with state law.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Manuela Albuquerque, City Attorney 981-6950

Matthew J. Orebic, Deputy City Attorney 981-6950

Approved:

A handwritten signature in cursive script, appearing to read 'Manuela Albuquerque', is written over a horizontal line.

MANUELA ALBUQUERQUE, City Attorney

ORDINANCE - N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 9.72.080 BY REPEALING SUBSECTION (G), WHICH HAS BEEN PREEMPTED AND MADE DUPLICATIVE BY PASSAGE OF STATE LAW.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 9.72.080 of the Berkeley Municipal Code is amended as follows:

9.72.080 Permit issuance, conditions—Terms—Right to inspect premises and records.

Any permit issued pursuant to this chapter 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 and denial of any application to renew a permit or to obtain a future permit:

A. The business shall be carried on only in the building located at the street address shown on the City of Berkeley permit;

B. The permittee shall observe all federal, state and local constraints on the operation of the permitted business including but not limited to California Penal Code Sections 12072(b), 12073, 12074, 12077, and 12082, to the extent that the provisions remain in effect;

C. The permittee shall keep complete and current records of all firearms transactions. In addition to the requirements in California Penal Code Sections 12073, 12076, and 12077, permittee must also keep a complete current inventory of all firearms in stock. This inventory shall include an entry for each weapon, with the classification, serial numbers, and any other information that is necessary or helpful in tracking the weapon;

D. Whenever prospective purchasers of firearms or supplies conduct themselves in a manner which would lead a reasonable person to conclude that the purchasers may be intending to use the firearms to harm themselves or others, the permittee, or any officer, employee, or agent thereof who will have access and control over firearms, shall inquire further into the reasons for such purchases. If the inquiry provides evidence which would confirm to a reasonable person, under similar circumstances, that the purchasers intend to use the firearms to harm themselves or others, the permittee, officer, agent or employee thereof shall decline to sell such prospective purchasers the firearms or supplies;

E. The permittee consents to the City's inspection of the business premises and records in order for the City to establish continued compliance with the terms of the permit;

F. The permit shall not become effective until the permittee has obtained all other permits required by federal, state or local law including but not limited to a business license and zoning and building permits;

~~G. The permittee shall not sell, lease or otherwise transfer a firearm without selling or otherwise providing with such firearm a trigger lock or similar device designed to prevent the accidental discharge of the firearm. Such devices shall be of a type approved by the Chief of Police.~~

~~H G.~~ The law enforcement permit, or a certified copy of it, shall be displayed on the premises where it can be easily seen;

~~I H.~~ The permittee shall not permit any person under 18 years of age to enter or remain within the premises without being accompanied by his or her parent or legal guardian where firearm sales activity is the primary business performed at the site;

~~J I.~~ The permittee shall mail or deliver a copy of each Dealer Record of Sale (DROS) form to the Chief of Police within seven days of the transfer of any firearm. (Ord. 6519-NS, 1999)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way.

Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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D. Whenever prospective purchasers of firearms or supplies conduct themselves in a manner which would lead a reasonable person to conclude that the purchasers may be intending to use the firearms to harm themselves or others, the permittee, or any officer, employee, or agent thereof who will have access and control over firearms, shall inquire further into the reasons for such purchases. If the inquiry provides evidence which would confirm to a reasonable person, under similar circumstances, that the purchasers intend to use the firearms to harm themselves or others, the permittee, officer, agent or employee thereof shall decline to sell such prospective purchasers the firearms or supplies;

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