

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_  
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING PROVISIONS TO SECTION 4-36 (LICENSE REQUIREMENTS FOR FIREARMS AND MUNITIONS DEALERS) OF ARTICLE V (FIREARMS AND EXPLOSIVES) OF CHAPTER IV (OFFENSES AND PUBLIC SAFETY), REQUIRING FIREARMS DEALERS TO PROVIDE VIDEO SURVEILLANCE AND ENHANCING ENFORCEMENT PROVISIONS

WHEREAS, gun violence and gun injuries have a significant adverse effect on public health and safety; and

WHEREAS, gun violence is frequently facilitated by gun traffickers and individuals who are not legally permitted to possess a firearm; and

WHEREAS, straw purchases of firearms raise the risk of crime and gun violence by putting firearms in unsafe hands; and

WHEREAS, missing firearms with no records of sales make it difficult for law enforcement to track and solve illegal activity; and

WHEREAS, video security surveillance of firearm sales provides law enforcement with critical tools to solve certain crimes, including but not limited to straw purchases; and

WHEREAS, video security surveillance on the premises of firearms and munitions dealers may deter and help solve theft and other crimes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1. Section 4-36 (LICENSE REQUIREMENTS FOR FIREARMS AND MUNITIONS DEALERS) of Article V (FIREARMS AND EXPLOSIVE) of Chapter IV (OFFENSES AND PUBLIC SAFETY) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

**4-36.1 - Title for Citation.**

This section shall be known as Firearms Dealer License Requirements.

**4-36.2 - Purpose.**

It is the purpose of this section to establish, as authorized by State of California Penal Code section 12071, a local licensing process for persons engaged in the business of selling, transferring or leasing firearms and munitions and in related activities.

#### **4-36.3 - Definitions.**

The following words and phrases, whenever used in this section, 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.~~ *Firearms* means as defined in Section 4.32.1.

b. *Munitions* means any projectile or explosive substance for use with any firearm.

c. *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 or munitions and who holds a federal firearms license ~~Type 1, 2, 6, 7, 8, 9, 10 or 11~~ under Title 18 U.S. Code, Chapter 44.

d. *Engaged in the business* means the conduct of a business by the selling, transferring or leasing of any firearm or munitions; 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 munitions, or the selling, transferring or leasing of firearms or munitions in quantity, in series or in individual transactions, or in any other manner indicative of trade including a pawnbroker.

e. *Pawnbroker* means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm or munitions as security for the payment or repayment of money.

f. *Person* means natural person, association, partnership, firm, cooperative or corporation.

#### **4-36.4 - License Required.**

It is unlawful for any person 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 or munitions without first obtaining a firearms dealer license from the Chief of Police of the Alameda Police Department. The license required by this section shall be in addition to any other permits or licenses required by law.

#### **4-36.5 - Application—Forms; Fees.**

An applicant for a license under this section 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 nonrefundable

fee as set forth in the City of Alameda Master Fee Resolution. To the extent practicable, the fee amount shall reflect the cost of enforcing the requirements of this section.

#### **4-36.6 - Application—Investigation.**

The Chief of Police shall conduct an appropriate investigation to determine for the protection of the public safety whether the license may be issued. The Chief of Police may require additional information of an applicant deemed necessary to complete the investigation. The investigation shall be completed within thirty (30) days unless unusual circumstances exist justifying an extension of time. A written determination of the circumstances and an estimate of the additional time needed shall be provided to the applicant.

#### **4-36.7 - Application Denial.**

The Chief of Police shall deny the issuance of a license when any of the following conditions exist:

- a. The applicant 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 has had a similar type license previously revoked or denied for good cause within the immediately preceding two (2) years;
- d. The applicant has made a false or misleading statement of a material fact or omission of a material fact in the application for a license;
- e. The applicant has been convicted of:
  1. Any offenses 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 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 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 or local laws, including zoning ordinances;

i. The applicant does not have, and/or cannot provide evidence of possessory interest in the property at which the proposed business will be conducted. When the property is leased or rented, the applicant shall provide written consent from the owner of record of the property to conduct such business at the property.

#### **4-36.8 - Security.**

In order to discourage the theft of firearms or munitions stored in the premises of a firearms or munitions dealer, any person licensed under this section 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 or munitions on the premises out of the reach of customers in a secure manner, so that access to firearms or munitions shall be controlled by the dealer or employees of the dealer, to the exclusion of all others; and

c. The provision of a video surveillance security system that meets the following requirements:

1. The system shall include cameras, monitors, digital video recorders, and cabling, if necessary.

2. The number and location of the cameras shall at a minimum, as determined by the Chief of Police, be sufficient in number and location to monitor the critical areas of the business premises, including, but not limited to, all places where firearms, firearm components or ammunition are stored, handled, sold, transferred, or carried, including, but not limited to, all counters, safes, vaults, cabinets, cases, entryways, and parking lots. The video surveillance system shall operate continuously, without interruption, whenever the licensee is open for business. Whenever the licensee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area.

3. In addition, the sale or transfer of a firearm, firearm component or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible.

4. When recording, the video surveillance system shall record continuously and store color images of the monitored area at a frequency of not less than fifteen frames per second. The system must produce retrievable and identifiable images and video recordings on media determined by the Chief of Police to be able to be enlarged through projection or other means, and can be made a permanent record for use in a criminal investigation. The system must be capable of delineating on playback the activity and physical features of persons or areas within the premises.

5. The stored images shall be maintained on the business premises of the licensee for a period not less than one year from the date of recordation and shall be made available for inspection by federal, state or local law enforcement upon request.

6. The video surveillance system must be maintained in proper working order at all times. If the system becomes inoperable, it must be repaired or replaced within

seven calendar days. The licensee must inspect the system at least weekly to ensure that it is operational and images are being recorded and retained as required.

7. The licensee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height: THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.

#### **4-36.9 - License Form.**

All licenses issued pursuant to this section shall be in the form prescribed by the Attorney General of the State of California.

#### **4-36.10 - License—Duration; Renewal.**

All licenses issued pursuant to this section shall expire one year after the date of issuance or automatically upon the revocation or expiration of the licensee's federal firearms license, whichever is earlier. Such licenses 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 a nonrefundable renewal fee. Such renewal application must be completed and received by the Chief of Police no later than forty-five (45) days prior to the expiration of the current license. Renewal applications may be denied if the conditions set forth in Section 4-36.7 exist.

#### **4-36.11 - License Assignment.**

The assignment or attempt to assign any license issued pursuant to this section is unlawful and any such assignment or attempt to assign a license shall render the license null and void.

#### **4-36.12 - License—Conditions.**

Any license issued pursuant to this section shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the license by the Chief of Police:

- a. The business shall be carried on in the building located at the street address shown on the license. The licensee shall notify the Chief of Police in writing within ten (10) days of any change in business location; such relocation shall require a new inspection to ensure compliance with this section. A nonrefundable reinspection fee will be required.
- b. The licensee 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.
- c. The licensee shall maintain records of all employees who will be engaged in the sale, lease, transfer or delivery of firearms or munitions, identifying them by name,

address, date of birth and social security number. The licensee shall notify the Chief of Police in writing within ten (10) days of any change in employees and submit the required identifying information for each newly hired employee.

d. The licensee shall comply with the requirements of this section.

#### **4-36.13 - License—Grounds for Revocation.**

In addition to subsection 4-36.12, any provisions constituting grounds for denial shall also constitute grounds for revocation.

#### **4-36.14 - License—Hearing.**

a. Any person whose application for a license under this section or a renewal license has been denied, or whose license has been revoked pursuant to the provisions of this section, 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 licensee written notice of the intent to deny the application or to revoke the license. The notice shall set forth the ground or grounds for the Chief of Police's intent to deny the application or to revoke the license, and shall inform the applicant or licensee that he or she has ten (10) days from the date of receipt of the notice to file a written request for a hearing. The application may be denied or the license revoked if a written hearing request is not received within the ten (10) day period.

c. If the applicant or licensee 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. Any person dissatisfied with the decision of the Chief of Police may appeal to the City Council a hearing officer.

#### **4-36.15 - Appeals.**

Any person dissatisfied with a decision of the Chief of Police may file an appeal to the City Council within the time specified below. The appeal shall be made in writing and filed with the City Clerk not later than fifteen (15) days after the date written notice of the Chief of Police decision is made. Failure to file in a timely appeal shall result in a waiver to the right to appeal. The appeal shall state in detail the factual basis for the appeal.

An appeal fee shall be paid and shall consist of a processing fee plus the actual cost to the City for retaining a hearing officer if the appeal, or any portion thereof, is not granted. The processing fee shall accompany the request for an appeal. The appeal fee shall be set by Resolution of the City Council.

#### **4-36.16 - Indemnification.**

Applicants and licensees shall indemnify, defend and hold harmless the City, its officers, agents and employees, from claims arising from the negligence of the applicants or licensees.

#### **4-36.17 - License—Authority to Inspect.**

Any and all investigating officials including police and fire investigators of the City shall have the right to enter the building designated in the license 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, provisions of this section, and all Federal, State and local laws.

#### **4-36.18 - 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 or munitions on the effective date of the ordinance codified in this section shall have a period of sixty (60) days after such effective date to comply with the provisions of this section.

#### **4-36.19 - Temporary Suspension of Firearms Dealer License.**

- a. If the licensee violates any Federal, State, County or City law relating to firearms or involving firearms, the Chief of Police may immediately suspend the firearms dealer's license. This temporary suspension will not exceed three (3) days. If the violation results in a criminal charge filed in court by a Federal, State or County District Attorney, such license to sell firearms or munitions 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 license and shall be delivered to the address listed on the license.

#### **4-36.20 - Penalties.**

Notwithstanding Section 1-5, violations of this section shall carry the following penalties:

a. Any person violating any provision of this article may be subject to administrative citations. The fine for such violations shall be two hundred fifty (\$250.00) dollars for the first offense, a fine of five hundred (\$500.00) dollars for a second offense within a one (1) year period and a fine of one thousand (\$1,000.00) for a third offense within a one (1) year period.

b. Any person violating any provision of this article shall be guilty of an infraction which shall be punishable by a fine not exceeding two hundred fifty (\$250.00) dollars, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand

(\$1,000.00) dollars per violation, or by imprisonment in the County jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

c. Any aggrieved person, including the City and the people of the State of California, may enforce and seek to enjoin against any violation of this article by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. As part of any civil action brought by the people of the State of California or the City to enforce this article, a court shall assess a civil penalty in an amount up to the greater of two thousand five hundred (\$2,500.00) dollars per violation per day or ten thousand (\$10,000.00) dollars per violation, against any person who commits, continues to commit, operates, allows or maintains any violation of this article, and against any person who aids or incites another person to violate the provisions of this article.

d. Any business conducted or maintained contrary to this Article shall constitute a public nuisance.~~a. Any person or entity, whether as principal, agent, employee or otherwise, violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of an infraction for the first offense, or of a misdemeanor for any subsequent offense(s) occurring within the one (1) year after the first. Upon conviction, the person convicted shall be punished in accordance with Section 1-5 (Penalty Provisions) of this Code.~~

~~b. Notice of suspension shall be mailed to the person(s) who made application for the license and shall be delivered to the address listed on the license.~~

#### **4-36.21 - Severability.**

This section shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this section is deemed to be invalid or beyond the authority of the City, 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 section and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this section shall be deemed severable.

#### **Section 2: IMPLIED REPEAL**

Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

#### **Section 3: CEQA DETERMINATION**

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).



Section 4: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

\_\_\_\_\_  
Presiding Officer of the City  
Council

Attest:

\_\_\_\_\_  
Lara Weisiger, City Clerk

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_ 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

APPROVED AS TO FORM:

\_\_\_\_\_  
Yibin Shen, City Attorney  
City of Alameda