

DRAFT ORDINANCE NO. (TBD)

AN ORDINANCE REQUIRING CRIMINAL BACKGROUND CHECKS ON ALL GUN SALES AND TRANSFERS, WITH CERTAIN EXCEPTIONS, INCLUDING FOR FAMILY, HUNTING, AND EMERGENCY SELF-DEFENSE

Whereas, an average of 88 Americans are killed every day by gun violence; and

Whereas, according to the U.S. Centers for Disease Control, Montana has the 6th-highest gun death rate in the country; and

Whereas, in Montana nearly three times as many women are shot to death by intimate partners, and nearly three times as many gun suicides take place, as the national average; and

Whereas, federally licensed firearms dealers are required to run a background check on buyers and transferees, but no federal or state law requires a background check on sales and transfers made by other persons; and

Whereas, local governments with self-governing powers are authorized under state law to prevent the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors; and

Whereas, in states that require background checks on all handgun sales, 46 percent fewer women are shot to death by intimate partners, 48 percent fewer law enforcement officers are killed with handguns, and 48 percent fewer people kill themselves with guns.

NOW, THEREFORE, BE IT ORDAINED BY THE MISSOULA CITY COUNCIL OF MISSOULA, MONTANA:

Chapter 9.60

FIREARM SALES

9.60.010 Purpose and Intent.

It is the intent of the City of Missoula that no sale or transfer of a firearm shall take place within the city limits unless and until the person purchasing or otherwise receiving the firearm passes a national instant criminal background check. There is broad consensus that felons, minors, and people adjudicated as mentally ill by a court should not possess firearms. In fact, federal law has long prohibited these people from possessing firearms. However, no federal or state law requires background checks for sales and transfers made by persons who are not licensed firearms dealers—meaning that criminals, minors, and people adjudicated as mentally ill are able to purchase and receive firearms despite their legal prohibition.

Background checks shall not be required for transfers between immediate family members, for transfers of curio and relic firearms between collectors or for transfers of antique firearms, for temporary transfers while hunting or target-shooting or for competitions, or for temporary transfers for emergency self-defense or while in the presence of the transferee.

Parties to a transfer made by any person who is not a licensed firearm dealer will meet at a licensed dealer, where the buyer or transferee will pass a background check before the sale or transfer may be completed.

In enacting this ordinance, the City of Missoula relies on authority provided to localities with self-government powers under MCA 7-1-101 and provided otherwise under state law.

9.60.020 Definitions.

- A. "Dealer" means a person who holds a federal firearms license under 18 United States Code 923(a).
- B. "Firearm" shall have the same meaning attributed to that term under 18 United States Code 921(a)(3).
- C. "Immediate family members" means spouses, domestic partners, parents, children, siblings, grandparents, grandchildren, nieces, nephews, aunts, uncles, and first cousins. The relationships referred to include relationships by half blood, by adoption, or by step-relation.
- D. "Transfer" means any delivery or receipt of a firearm, regardless of whether the firearm is purchased with consideration or payment or else is delivered or received as a gift, a loan, or otherwise without consideration or payment.
- E. "Transferee" means a person who receives or intends to receive a firearm, regardless of whether the person purchases the firearm with consideration or payment or else whether the person receives the firearm as a gift, a loan, or otherwise without consideration or payment.
- F. "Transferor" means a person who delivers or intends to deliver a firearm, regardless of whether the person sells the firearm with consideration or payment or else whether the person delivers the firearm as a gift, a loan, or otherwise without consideration or payment.

9.60.030 Background checks required for sales and transfers.

- A. Except as otherwise provided in this chapter, every firearm transfer between a transferor and a transferee, in whole or in part in the City of Missoula, shall be subject to a background check. Except as otherwise provided in this chapter, no person shall transfer a firearm, and no person shall receive a firearm, without complying with this chapter, including that the parties must comply with the process described in section 9.60.040.
- B. The transferor and transferee must each complete, sign, and submit all federal, state, and local forms necessary to process the background check and otherwise complete the transfer.
- C. Neither the transferor nor the transferee shall knowingly make any material false oral or written statement or knowingly furnish or exhibit any false identification likely to deceive a dealer or the police department.

9.60.040 Background check by dealer.

A. The transferor and transferee shall meet jointly at a dealer and request that the dealer facilitate the transfer. A dealer who agrees to facilitate a firearms transfer under this section shall process the transfer as though the dealer is transferring the firearm from its own inventory to the transferee, complying with all requirements of federal and state law that would apply if it were making such a transfer.

B. The transferor may remove the firearm from the premises of the dealer while a background check is being conducted, but the transferor must subsequently deliver the firearm to the dealer to complete the transfer.

C. Neither the dealer nor the transferor may deliver any firearm to the transferee if the results of the background check indicate that the transferee may not possess the firearm. If the results of the background check indicate that the transferee may not possess a firearm, the transferor may remove the firearm from the premises of the dealer.

D. A dealer who agrees to facilitate a transfer pursuant to this section may charge a reasonable fee to cover costs for services rendered.

9.60.050 Exceptions from the background check requirement. The provisions of Section 9.60.030 do not apply if:

A. Either the transferee or transferor is a dealer; or

B. The transfer is between immediate family members; or

C. The transfer is of a curio or relic, as defined in 27 Code of Federal Regulations 478.11, and is between collectors of firearms as curios or relics as defined by 18 United States Code 921(a)(13) who each have in their possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco, Firearms & Explosives; or

D. The transfer is of an antique firearm, as defined in 18 United States Code 921(a)(16); or

E. The transfer is temporary and is necessary to prevent imminent death or great bodily harm to the transferee, and

1. The transfer lasts only as long as necessary to prevent such threat; and

2. The transferor has no reason to believe that the transferee is prohibited from

possessing firearms under state or federal law and has no reason to believe that the transferee intends to use the firearm in the commission of a crime; or

F. Either the transferor or the transferee is a law enforcement or corrections agency or is, to the extent the person is acting within the course of his or her employment or official duties, a peace officer, a law enforcement or corrections officer, a member of the armed forces of the United States or the national guard, a private security guard who possesses a firearm in performance of his duties, or any officer of the United States government; or

G. The transfer is temporary, the transferor has no reason to believe that the transferee intends to use the firearm in the commission of a crime, and the transferee's possession of the firearm takes place exclusively:

1. At an established shooting range authorized by the governing body of the jurisdiction in which such range is located; or
2. At a lawful organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance; or
3. While hunting or trapping if such activity is legal in all places where the transferee possesses the firearm and the transferee holds any license or permit required for such activity; or
4. In the actual presence of the transferor; provided that any transfer allowed by this subsection is permitted only if the transferor has no reason to believe that the transferee is prohibited from possessing firearms under state or federal law or, if the transferee is under eighteen years of age and is receiving the firearm under direct supervision and control of an adult, that such adult is prohibited from possessing firearms under state or federal law; or

H. The transfer occurs by operation of law upon the death of a person for whom the transferee is an executor, administrator, trustee, or personal representative of an estate or a trust created in a will.

9.60.060 Violation – Penalties. Any person who knowingly transfers a firearm without complying with section 9.60.030 shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.

Effective date: This ordinance shall be effective 30 days after adoption and passage.

Severability If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the _____ day of _____, 2015, by a vote of _____

Second and final reading and adoption on the _____ day of _____, 2015, by a vote of _____.

ATTEST:

APPROVED:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor