



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 080035-A
(As Amended on Floor 4/3/2008)

Introduced January 24, 2008

Councilmembers Clarke and Miller

**Referred to the
Committee on Public Safety**

AN ORDINANCE

Amending Chapter 10-800 of The Philadelphia Code, entitled "Safety," by adding a new Section 10-831, entitled "Straw and Multiple Handgun Purchase Reduction," to limit purchases of handguns by Philadelphia residents to one a month, and to prohibit "straw purchases" of handguns utilized by criminals for the purpose of evading the one handgun a month limitation; all under certain terms and conditions.

Whereas, Law enforcement, public health and independent research data consistently finds illegal handgun trafficking ("straw purchases") to be one of the most prevalent and persistent root causes of handgun violence and crime that destroys lives and devastates communities in Philadelphia, around Pennsylvania and all over the United States; and

Whereas, Illegal handgun trafficking is characterized by criminals and illicit sellers employing non-felons to make multiple or bulk purchases of handguns so they then can market the wares on the streets at huge profits in virtually unlimited quantities to people who would otherwise be unable to obtain the weapons; and

Whereas, The Philadelphia Police Department is known to recover more than 5,000 stolen and illegal guns a year, over 1,200 Pennsylvanians and 2-300 Philadelphia citizens lose their lives each year to illegal handgun violence, and every two years, more Americans die or are seriously injured from handgun violence than in the Vietnam War; and

Whereas, According to the ATF, over 22% of guns used in crime nationally, and 51% of guns used in crime with eliminated serial numbers, come from multiple handgun sales; in addition, "straw purchases" account for 46% of guns used in crime; and

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Whereas, Research by the Virginia State Crime Commission and the American Medical Association find handgun trafficking reduction laws to be effective in disrupting illegal sales and transfers, and Virginia, California, Maryland and South Carolina have all enacted such measures; and

Whereas, In the Philadelphia assault weapons ban case of Ortiz et al vs. the Commonwealth of Pennsylvania et al, 545 Pa. 279, 681 A.2d 152 (1996), the Pennsylvania Supreme Court ruled that municipalities are strictly limited by the Pennsylvania General Assembly regarding the regulation of the possession, sale and transfer of firearms; and

Whereas, The statutory limitations of municipalities to regulate the possession, sale and transfer of firearms, as upheld by the Pennsylvania Supreme Court, has been duly incorporated within the body of this legislation along with the paramount and legitimate interests of the public safety of the citizens of our City and the Commonwealth; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 10-800 of The Philadelphia Code, entitled “Safety,” is amended to add a new Section 10-831 to read as follows:

§10-831. Straw and Multiple Handgun Purchase Reduction.

(1) Definitions.

(a) Collector: Any person who acquires, holds, or disposes of firearms as curios or relics, as the United States Attorney General shall by regulation define, and the term “licensed collector” means any such person licensed under the provisions of Chapter 44 of Title 18 of the United States Code.

(b) Handgun: Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle, or shotgun with a overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action bolt or cylinder – whichever is applicable.

(c) Straw Purchaser. Any person who conducts or attempts to conduct a gun purchase on behalf of another person.

(2) Limitation on purchases.

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(a) Prohibited Conduct by Prospective Buyers.

(1) No prospective firearm purchaser or other transferee shall be allowed to purchase or receive more than one handgun in any 30 day period.

(2) No one shall act as a straw purchaser in any handgun transaction in order to evade the provisions of this Section.

(b) Prohibited Conduct by Prospective Sellers.

No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any handgun to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, unless he has:

(1) obtained a 30 day eligibility report from the City of Philadelphia Police Department; and

(2) forwarded a copy of the completed application/record of sale from the potential buyer or transferee to the City of Philadelphia Police Department, postmarked via first class mail, within 14 days of the sale.

(c) Exceptions. This Section shall not apply to sales or transfers to:

(1) Law enforcement agencies or agencies authorized to perform law enforcement duties.

(2) State and local correctional facilities.

(3) Licensed firearms dealers, importers, manufacturers and collectors.

(4) Private security companies licensed to do business within this Commonwealth.

(5) A person whose handgun is stolen or irretrievably lost, provided that person has, within 72 hours of learning of such theft or loss, filed a report with the City of Philadelphia Police Department or the Pennsylvania State Police, in a form and specifying such information as the City of Philadelphia Police Department or the Pennsylvania State Police shall require.

(6) A person exchanging a handgun at its original place of purchase.

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(7) A person who presents to the seller or transferor a written statement issued by the City of Philadelphia Police Department dated within the past thirty days stating that the transferee or purchaser requires access to a handgun because of a threat to the life of the transferee or purchaser or any member of the household of that transferee or purchaser.

(8) A person who presents to the seller or transferor a written statement issued by the Adjutant General of Pennsylvania, or his designee, dated within the past thirty days, stating that the transferee or purchaser requires access to a handgun because of a threat to the citizens of this Commonwealth which the purchaser or transferee seeks to defend against as directed by law.

(9) A person who presents to the seller or transferor a written statement issued by the City of Philadelphia Police Department dated within the past thirty days stating that the transferee or purchaser, if all other eligibility requirements are met, may purchase or otherwise obtain a handgun regardless of the results of the 30 day eligibility report, because the Police Department is satisfied that the person is not a straw purchaser.

(3) 30 Day Report of Eligibility.

(a) Nature of Report. A 30 day eligibility report prepared by the City of Philadelphia Police Department shall indicate only whether the prospective purchaser or transferee is eligible or ineligible. Anyone who received another handgun within the immediately preceding 30 days shall be deemed ineligible and shall be deemed eligible again 30 days from the date of the prior transaction.

(b) Method of Compiling Report. Prior to the expiration of the 48 hour period from the time of the application for the purchase or transfer of the handgun, the seller or transferor shall request that the City of Philadelphia Police Department conduct a 30 Day eligibility inquiry. Such request shall be made by means of a telephone call, or by means of an electronic query via e-mail or via a website, so long as e-mail or web-based communications are available and fully operational. The purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser. The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per buyer or transferee.

Upon receipt of such a request, the City of Philadelphia Police Department shall immediately issue a request to the Pennsylvania State Police to conduct a review of all firearms transactions processed via the Instantaneous Criminal History Records Check System within the past 30 days to determine whether the prospective purchaser or transferee has received another handgun within the immediately preceding 30 days.

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Upon receipt of the results of the Pennsylvania State Police inquiry, if the prospective purchaser or transferee is eligible to obtain a handgun under this Section, the City of Philadelphia Police Department shall issue a unique approval number and transmit a receipt containing the date and approval number to the prospective seller. If the prospective purchaser or transferee is ineligible to obtain a handgun under this Section, the City of Philadelphia Police Department shall issue a letter of denial, recorded with the date on which the prospective purchaser will become eligible to obtain an additional handgun under this Section and transmit this letter of denial to the prospective seller.

(4) Investigations of Multiple Handgun Purchasers.

The receipt of applications/records of sale which indicate that a purchaser or transferee has obtained more than one handgun in any 30 day period shall constitute prima facie evidence that the multiple handgun purchaser is involved in the trafficking of handguns. The City of Philadelphia Police Department shall thereafter commence a criminal investigation to determine the extent, if any, of criminal activities committed by the multiple handgun purchaser.

(5) Penalty.

The penalty for violation of this Section shall be a fine of not more than three hundred dollars (\$300.00), or imprisonment of not more than ninety (90) days, or both. The fine may be imposed through the confiscation of the illegally obtained handgun by the City of Philadelphia Police Department, said handgun to be melted down or rendered inoperable thereafter.

SECTION 2. This Ordinance shall take effect six months after it becomes law.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. If any clause, sentence, paragraph or phrase of this Ordinance shall, for any reason, be adjudged by any court of competent jurisdiction, or administrative agency, to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or phrase thereof so found to be unconstitutional or invalid.