

ORDINANCE 3581

An ordinance amending Missoula Municipal Code Title 9, establishing Chapter 9.60 entitled "Firearm Sales," Sections 9.60.010 through 9.60.060 requiring criminal background checks on all gun sales and transfers, with certain exceptions, including for family, hunting, and emergency self-defense to prevent possession of firearms by certain ineligible persons pursuant to Montana Code Annotated (MCA) 45-8-351(2)(a).

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 that Chapter 9.60 Missoula Municipal Code is hereby established:

Chapter 9.60

FIREARM SALES

9.60.010	Purpose and Intent
9.60.020	Definitions
9.60.030	Background checks required for sales and transfers
9.60.040	Background check by dealer
9.60.050	Exceptions from the background check requirement
9.60.060	Violation – Penalties

9.60.010 Purpose and Intent.

This ordinance is adopted pursuant to the statutory powers explicitly granted to Montana local governments pursuant to subsection 45-8-351(2) MCA for public safety purposes to prevent and suppress the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors in order to ensure that background checks generally occur with respect to firearm ownership transfers as a prevention mechanism to serve as a deterrent to

convicted felons, adjudicated mental incompetents illegal aliens and minors unlawfully obtaining possession of firearms.

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.

Furthermore, the City of Missoula recognizes the opportunity that all Federal firearm licensees (FFLs) have to enhance public safety and assist law enforcement by facilitating transfers of firearms between private individuals through their businesses, as noted in a 2013 “Open Letter to All Federal Firearms Licensees” from the U.S. Dept. of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives that states the following:

"As background, millions of transactions involving the private sale of firearms between the residents of the same state occur each year in the United States at gun shows, and through classified and online advertisements. These private sellers, who are not Federal firearms licensees, do not have the ability to use the National Instant Criminal Background Check System (NICS) to conduct background checks on prospective private purchasers and, consequently, have no comprehensive way to confirm whether or not the private individual to whom they are selling a firearm is prohibited from possessing a firearm.

Many FFLs throughout the United States have routinely facilitated firearms transfers between private individuals, and FFLs may charge administrative fees to do so consistent with any state law requirements. ATF encourages FFLs to facilitate firearms sales between private individuals through FFL businesses. This service provides both customers and the community assurance that individuals who want to purchase firearms undergo a comprehensive background check. FFL facilitation of private firearm transfers will also improve law enforcement's ability to trace firearms if they are later recovered in a crime."

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 with a licensed dealer, where the buyer or transferee will pass a background check before the sale or transfer may be completed.

In particular in enacting this ordinance, the City of Missoula relies on the statutory authority for local governments for public safety purposes to prevent possession of firearms by certain

ineligible persons as authorized in MCA 45-8-351(2)(a) which provides in part that: "A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors." The background checks required by this ordinance are adopted as the means to prevent and suppress the possession of firearms by certain ineligible persons as provided by MCA 45-8-351(2)(a).

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. "Gun show or event" shall have the same meaning attributed to that term under 27 Code of Federal Regulations 478.100(b)
- D. "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.
- E. "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.
- F. "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.
- G. "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. It shall be unlawful for any transferor or transferee to knowingly make any material false oral or written statement or to furnish or exhibit any false identification likely to deceive a dealer or law enforcement officer concerning information necessary to perform a background check..

9.60.040 Background check by dealer.

A. All steps detailed in this section are intended to be consistent with the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives ATF Procedure 2013-1 which sets forth the record keeping and National Instant Criminal Background Check System (NICS) procedures for Federal firearm licensees (FFLs) who facilitate the transfer of firearms between private unlicensed individuals.

B. The transferor and transferee shall meet jointly with 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.

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

D. 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 or gun show or event.

E. 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 their 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 their 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 en route to and from hunting or trapping where the transferee possesses the firearm and the transferee holds any license or permit required for the hunting or trapping 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 the transferor has no reason to believe 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.

I. The transferee holds either a valid Montana concealed weapons permit or a valid concealed weapons permit from a state recognized under Montana law as determined by Montana's Attorney General, and the transferee presents the permit to the transferor prior to the transaction.

9.60.060 Violation – Penalties. Any transferee or transferor who transfers a firearm in violation of this chapter shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars on the first offense, and thereafter for subsequent violations 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 12th day of September 2016, by a vote of 9 ayes, 2 nays and 1 absent.

Second and final reading and adoption on the 26th day of September 2016, by a vote of 8 ayes, 4 nays.

ATTEST:

/s/ Martha L. Rehbein

Martha L. Rehbein, CMC
City Clerk

APPROVED:

/s/ John Engen

John Engen
Mayor

(S E A L)