

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

November 10, 2021

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

I write to transmit the “Ghost Gun Clarification Emergency Amendment Act of 2021,” “Ghost Gun Clarification Emergency Approval Resolution of 2021,” and “Ghost Gun Clarification Temporary Amendment Act of 2021,” (collectively “legislation”) for consideration and enactment by the Council of the District of Columbia.

District law currently prohibits the registration and possession of ghost guns. Recently, however, this prohibition, and a pre-*Heller* provision categorically prohibiting the manufacture of firearms, has been challenged in federal district court as violative of the Second Amendment.

Consequently, there is an immediate need for clarifications to these laws in order to ensure that they prohibit only undetectable and untraceable firearms—true ghost guns—while permitting the self-manufacture of serialized registered firearms. Specifically, there is an immediate need for clarifications to the current definition of “ghost gun” to ensure that only undetectable firearms are captured within it, and that excepted from the definition and the District’s prohibition on manufacture, are self-manufactured firearms, made solely for personal use, that have unique serial numbers and are lawfully registered. These proposed amendments preserve the District’s strong prohibitions on ghost guns but clarify the law’s reach. They are consistent with federal law and the best practices of other States.

OAG thanks the Council for moving swiftly to ensure that the District’s laws strike the right balance between constitutional rights and public safety. If you have any questions, you may contact me, or your staff may contact Deputy Attorney General Emily Gunston at (202) 805-7638.

Sincerely,

A handwritten signature in black ink, appearing to be 'KARL A. RACINE', written in a cursive style.

Karl A. Racine
Attorney General for the District of Columbia


Chairman Phil Mendelson
at the request of the Attorney General

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on a temporary basis, the Firearms Control Regulations Act of 1975 to clarify requirements involving ghost guns and permit the possession of properly serialized self-manufactured firearms; and to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Ghost Gun Clarification Temporary Amendment Act of 2021”.

Sec. 2. The Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 7-2501.01) is amended as follows:

(1) Paragraph (9B) is amended to read as follows:

“(9B)(A) “Ghost gun”:

“(i) Means:

“(I) A firearm that, after the removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar by walk-through metal detectors calibrated and operated to detect the Security Exemplar;

“(II) A firearm of which no major component is as detectable as the Security Exemplar by walk-through metal detectors calibrated and operated to detect the Security Exemplar;

1 “(III) Any major component of a firearm that, when
2 subjected to inspection by the types of detection devices commonly used at secure public
3 buildings and transit stations, does not generate an image that accurately depicts the shape of the
4 component;

5 “(IV) A firearm, including a frame or receiver, that lacks a
6 unique serial number engraved or cast on it by a licensed manufacturer or importer in accordance
7 with federal law, assigned by the agency of a State and permanently engraved or cast on the
8 firearm, or otherwise placed on the firearm in compliance with section 202; and

9 “(ii) Does not include:

10 “(I) A firearm that has been rendered permanently
11 inoperable;

12 “(II) A firearm manufactured or imported before December
13 16, 1968; or

14 “(III) A firearm identified as provided for under section
15 5842 of the Internal Revenue Code of 1986.

16 “(B) For purposes of subparagraph (i)(I), the term “firearm” does
17 not include the frame or receiver of any such weapon.

18 “(C) For purposes of subparagraphs (i)(II) and (i)(III), the term
19 “major component” with respect to a firearm:

20 “(i) Means the slide or cylinder or the frame or receiver of
21 the firearm; and

22 “(ii) In the case of a rifle or shotgun, includes the barrel of
23 the firearm.”.

24 (3) A new paragraph (10A) is added to read as follows:

1 “(10A) “Manufacture”:

2 “(A) Means to fabricate, make, form, produce or construct, by
3 manual labor or by machinery;

4 “(B) Includes assembling a functional firearm, or molding,
5 machining, or 3D printing a frame or receiver; and

6 “(C) Does not include making or fitting special barrels, stocks, or
7 trigger mechanisms to firearms.”.

8 (4) A new paragraph (11A) is added to read as follows:

9 “(11A) “Permanently inoperable” means incapable of discharging a shot
10 by means of an explosive and incapable of being readily restored to a firing condition.”.

11 (5) Paragraph (12B) is amended to read as follows:

12 “(12B)(A) “Receiver” means a part of a firearm that, when the complete
13 weapon is assembled, is visible from the exterior and provides the housing or structure
14 designed to hold or integrate one or more fire control components, even if pins or other
15 attachments are required to connect those components to the housing or structure.

16 “(B) For purposes of this paragraph, the term “fire control
17 component” means a component necessary for the firearm to initiate, complete, or
18 continue the firing sequence, and includes a hammer, bolt, bolt carrier, breechblock,
19 cylinder, trigger mechanism, firing pin, striker, or slide rails.

20 “(C)(i) The term “receiver” shall not include a receiver that has
21 been destroyed.

22 “(ii) For the purposes of this subparagraph, a receiver is
23 destroyed if it has been permanently altered not to provide housing or a structure that

1 may hold or integrate any fire control or essential internal component, and may not
2 readily be assembled, completed, converted, or restored to a functional state.

3 (D) For the purposes of this act, the word “frame” is synonymous
4 with the term “receiver.””.

5 (6) Paragraph (17B) is amended to read as follows:

6 (17B)(A) “Unfinished frame or receiver” means any forging, casting,
7 printing, extrusion, machined body, or similar article that:

8 (i) Has reached a stage in manufacture where it may
9 readily be completed, assembled or converted to be a functional frame or receiver when
10 combined with other parts; or

11 (ii) Is marketed or sold to the public to become or be used
12 as the frame or receiver of a functional firearm once the frame or receiver has been
13 completed.

14 (B) For the purposes of this paragraph, the term “Assemble”
15 means to fit together component parts.

16 (C) In determining whether a forging, casting, printing, extrusion,
17 machined body, or similar article may readily be completed, assembled, or converted to a
18 functional state, the Chief may consider any available instructions, guides, templates,
19 jigs, equipment, tools, or marketing materials.”.

20 (b) Section 202 (D.C. Official Code § 7-2502.02) is amended by adding a new subsection

21 (c) to read as follows:

1 “(c)(1) Notwithstanding any other provision of this section, a registration certificate may
2 be issued for a self-manufactured firearm if the applicant meets the requirements of section 203,
3 as well as the following:

4 “(A) If the firearm is manufactured from polymer plastic, 3.7 ounces of
5 material type 17-4 PH stainless steel shall have been embedded within the plastic; and

6 “(B) A unique serial number is engraved or cast on, or otherwise
7 permanently affixed to, the firearm in a manner that meets or exceeds the requirements imposed
8 on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of
9 Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto;
10 provided, that a serial number or mark of identification exceeds these requirements if the
11 engraving, casting, or stamping (impressing) of the serial number exceeds the required minimum
12 depth or exceeds the minimum print size of that provision.

13 “(2) Beginning 30 days after the effective date of the Emergency Ghost Gun
14 Clarification Act of 2021, as introduced on November ___, 2021 (Bill 24-___), an applicant may
15 register a self-manufactured firearm that does not bear a serial number described in subsection
16 (c)(1)(B), if, prior to finishing the frame or receiver, the applicant has caused a unique serial
17 number to be engraved, casted, stamped (impressed), or placed on the unfinished frame or
18 receiver, as set forth below.

19 “(A) The serial number shall consist of the first and last name of the self-
20 manufacturer, followed by the designation “DC”, and then a set of 2 to 5 numbers.

21 “(B) The set of numbers described in paragraph (A) shall not duplicate any
22 serial number placed by the self-manufacturer on any other firearm. The applicant shall, before
23 engraving, casting, stamping (impressing), or placing a serial number on the unfinished frame or

1 receiver, confirm with the Metropolitan Police Department that the proposed serial number has
2 not already been registered to another firearm.”.

3 (c) Section 203(b)(10) (D.C. Official Code § 7-2502.03(b)(10)) is amended by striking
4 the phrase “The name” and inserting the phrase “For a firearm that is not self-manufactured
5 pursuant to section 202, the name” in its place.

6 (d) Section 206 (D.C. Official Code § 7-2502.06) is amended by adding a new
7 subsection (c) to read as follows:

8 “(c) Notwithstanding subsection (a) of this section, a person seeking a registration
9 certificate for a firearm that the person has self-manufactured shall file a registration application
10 within 5 business days of completing manufacture of the firearm.”.

11 (e) Section 401(a) (D.C. Official Code § 7-2504.01(a)) is amended to read as follows:

12 “(a) No person or organization shall engage in the business of manufacturing any
13 firearm, destructive device or parts thereof, or ammunition, within the District; provided that:

14 “(1) Nothing in this section shall preclude persons not otherwise prohibited from
15 possessing firearms from making their own firearms solely for personal use (not for sale or
16 distribution) in accordance with this act, rules implementing this act, and any applicable federal
17 law or regulation; and

18 “(2) A person holding registration certificates may engage in hand loading,
19 reloading, or custom loading ammunition for his or her registered firearms; provided further, that
20 such person may not hand load, reload, or custom load ammunition for others.”.

21 (f) Section 504 (D.C. Official Code § 7-2505.04) is amended by adding a new subsection
22 (b-1) to read as follows:

1 “(b-1) Notwithstanding any other provisions of this section, a person may lawfully own a
2 pistol that is:

3 “(1) Self-manufactured; and

4 “(2) Registered pursuant to section 202.”.

5 Sec. 3. Section 6 of An Act To control the possession, sale, transfer, and use of pistols
6 and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules
7 of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code
8 § 22-4506), is amended by adding a new subsection (b-1) to read as follows:

9 “(b-1) The Chief shall not approve an application submitted pursuant to subsection (a) of
10 this section for any firearm that was self-manufactured and registered in the District of Columbia
11 pursuant to section 202 of the Firearms Control Regulations Act of 1975, effective
12 September 24, 1976 (D.C. Law 1-85; (D.C. Official Code § 7-2502).”.

13 Sec. 4. Fiscal impact statement.

14 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
15 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
16 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

17 Sec. 5. Effective date.

18 (a) This act shall take effect following approval by the Mayor (or in the event of veto by
19 the Mayor, action by the Council to override the veto), a 30-day period of congressional review
20 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
21 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
22 Columbia Register.

23 (b) This act shall expire after 225 days of its having taken effect.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Emily Gunston
Deputy Attorney General for Legislative Affairs and Policy
Office of the Attorney General

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: November 10, 2021

SUBJECT: Legal Sufficiency Review – Draft “Ghost Gun Clarification Emergency Amendment Act of 2021,” “Ghost Gun Clarification Emergency Declaration Resolution of 2021,” and “Ghost Gun Clarification Temporary Amendment Act of 2021”
(AE-21-584)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers