

SUBSTITUTE NO. 1 TO ORD. 17-023

AN ORDINANCE TO AMEND CHAPTER 36 OF THE CITY CODE TO CREATE THE GUN OFFENDER REGISTRATION ACT.

Rev. #1
#4380

Sponsor:

WHEREAS, in recent years, violent crime has become a significant issue facing the residents and visitors of Wilmington, with firearm-related crime rates on the rise; and

Council
Member
Williams

WHEREAS, it is important that the Wilmington Police Department has access to as many tools as possible in its efforts to curb gun violence in Delaware's largest city; and

Co-Sponsor:

Council
Member
Walsh

WHEREAS, a number of law enforcement agencies across the country have implemented a registry of convicted gun offenders, as part of broader efforts to monitor those who have committed criminal acts with a firearm, and ensuring that they do not reoffend; and

WHEREAS, police departments in Baltimore, Chicago and New York City all have a gun offender registration program, implemented as a mechanism through which police can learn more about the backgrounds of those with whom they interact; and

WHEREAS, both City Council and the Administration concur that such an approach shows promise for enhancing the effectiveness of anti-crime efforts in Wilmington, and could easily be absorbed into existing personnel and functions of the WPD as not to result in a significant fiscal or administrative impact.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS.**

SECTION 1. Chapter 36 of the City Code is hereby amended by adding new § 36-70 et seq. which shall be known as "The Gun Offender Registration Act," and shall read as follows:

§ 36-70.1. Gun Offender Registration; Definitions.

(a) *In general.* The following terms have the meanings indicated.

(b) *Convicted.* “Convicted” means:

- (1) having been found guilty of a gun offense by a jury or judicial officer;
- (2) the acceptance of a plea of guilty or nolo contendere for a gun offense;
- (3) having been granted a probation before judgment after a finding of guilt for a gun offense, if the court orders compliance with this section as a condition of probation; or
- (4) having been found “not guilty by reason of insanity,” as defined in 11 Del. C. § 401, of a gun offense by a jury or judicial officer; or
- (5) having been found “guilty, but mentally ill,” as defined in 11 Del. C. § 401, of a gun offense by a jury or judicial officer; or
- (6) the acceptance of a plea of “guilty, but mentally ill,” as defined in 11 Del. C. § 401, for a gun offense.

(c) *Correctional facility.* “Correctional facility” means a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime.

(d) *Gun offender.*

(1) *In general.* “Gun offender” means any person who is convicted of a gun offense in the United States District Court of Delaware or any Delaware State Court.

(2) *Exclusions.* “Gun offender” does not include a person:

- i. whose conviction for a gun offense has been reversed on appeal or otherwise set aside pursuant to law; or
- ii. who has been pardoned by the Governor.

(e) *Gun offense.* “Gun offense” means:

(1) A violation of any of the following sections of Title 11 of the Delaware Code:

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| Sec. 1442 | {Carrying a concealed deadly weapon} |
| Sec. 1444 | {Possessing a destructive weapon} |
| Sec. 1445 | {Unlawfully dealing with a dangerous weapon} |
| Sec. 1447A | {Possession of a firearm during the commission of a felony} |
| Sec. 1448 | {Possession and purchase of deadly weapon by persons prohibited} |
| Sec. 1448A | {Criminal history record checks for sales of firearms} |
| Sec. 1450 | {Receiving a stolen firearm} |

- Sec. 1451 {Theft of a firearm}
- Sec. 1454 {Giving a firearm to persons prohibited}
- Sec. 1455 {Engaging in a firearms transaction on behalf of another}
- Sec. 1456 {Unlawfully permitting a minor access to a firearm}
- Sec. 1457 {Possession of a weapon in a Safe School and Recreation Zone}
- Sec. 1458 {Removing a firearm from possession of a law enforcement officer}
- Sec. 1459 {Possession of a weapon with a removed, obliterated or altered serial number}

(2) A violation of any of the following sections of the City of Wilmington Code:

- Sec. 36-156 {Armor-piercing bullets}
- Sec. 36-157 {Firearms dealers; storage, display}
- Sec. 36-158 {Certain firearms prohibited}
- Sec. 36-162 {Discharge of firearms on street, etc.}
- Sec. 36-163 {Hunting}

(f) *Police Chief*. "Police Chief" means the Chief of the Wilmington Police Department or his/her designee.

§ 36-70.2. Gun Offender Registration; Rules and regulations.

- (a) *Adoption*. The Police Chief may adopt rules and regulations as necessary to carry out intent of The Gun Offender Registration Act.
- (b) *Scope*. The rules and regulations adopted in accordance with subsection (a) may govern:
 - (1) the form, content, and processing of the acknowledgment required by this Act;
 - (2) the form and content of the registration required under this Act;
 - (3) the documentation required to verify the content of the registration required under this Act; and
 - (4) the maintenance, use, and availability of the information that is collected by the Police Chief under this Act.
- (c) *Publication*. A copy of the rules and regulations, and any amendments thereto, shall be made publicly available via the website for the City of Wilmington (or a hardcopy of same upon request to the Police Chief).
- (d) *Reports and Review*. The Police Chief shall provide written reports to City Council no less frequently than once every six months with updated statistics and

information about the implementation and operation of the Gun Offender Registration Act. On a biennial basis, City Council shall review the Gun Offender Registration Act, in conjunction with reports provided by the Police Chief, to determine if amendments are required.

§ 36-70.3. Gun Offender Registration; Registration.

(a) *Scope.* This program applies only to gun offenders who are residents of the City of Wilmington.

(b) *In general:*

- (1) *Registration required.* A gun offender must register with the Police Chief.
- (2) *Acknowledgment of duty to register.* When requested to do so, the gun offender must acknowledge, in writing, his or her duty to register under this subtitle.

(c) *When.* The registration must be made within ten business days of:

- (1) if the gun offender receives a sentence that does not include imprisonment, the date that the sentence is imposed;
- (2) if the gun offender receives a sentence that includes imprisonment, the date of the gun offender's release from a correctional facility;
- (3) if the gun offender is granted probation before judgment, the date that the probation before judgment is granted;
- (4) if the gun offender is found "not guilty by reason of insanity" or "guilty, but mentally ill," and is released, the date of the gun offender's release; or
- (5) if the gun offender is found "not guilty by reason of insanity" or "guilty, but mentally ill" and is committed to the State of Delaware Department of Health and Social Service's Delaware Psychiatric Center, the date of the gun offender's discharge or conditional release from that commitment, or discharge from a correctional facility following release from the Delaware Psychiatric Center.

(b) *Where.* To register, a gun offender must personally appear at an office designated by the Police Chief.

(c) *Content and form:*

- (1) *In general.* The registration must be in the form and contain the information that the Police Chief requires.
- (2) *Specific information.* The registration must specify:
 - i. the gun offender's name;
 - ii. a description of the crime for which the gun offender was convicted or received a disposition;
 - iii. the date that the gun offender was convicted or received a disposition;

- iv. any other name by which the gun offender has been legally known;
- v. a list of all aliases that the gun offender has used;
- vi. identifying factors of the gun offender, including a physical description;
- vii. the gun offender's residence; and
- viii. any other information required by the rules and regulations adopted by the Police Chief under this Act.

(3) *Signature and date.* The registration must be signed and dated by the gun offender.

(4) *Photograph permitted.* At the time the gun offender appears at the office designated by the Police Chief, the Police Chief may photograph the gun offender.

(5) *Documentation required.* The Police Chief may require the gun offender to provide documentation that verifies the contents of the registration.

§ 36-70.4. Gun Offender Registration; Verification by resident offenders.

(a) *Scope.* This program applies only to gun offenders who are residents of the City of Wilmington.

(b) *Periodic verification.*

(1) Except as provided in paragraph (b)(2) of this subsection, within twenty (20) calendar days after each 6-month anniversary of a gun offender's initial registration, the gun offender must personally appear at an office designated by the Police Chief to verify and update, as appropriate, the contents of the registration.

(2) If a gun offender is confined to any correctional facility, hospital, or institution throughout the 20-day period described in paragraph (b)(1) of this subsection, the gun offender must personally appear at an office designated by the Police Chief, within five business days of release, to verify and update, as appropriate, the contents of the registration.

(c) *Update on change of residence.* A gun offender must personally appear at an office designated by the Police Chief to update his or her residence address and other contents of the registration:

- (1) within ten (10) calendar days after establishing a residence in the City of Wilmington;
- (2) within ten (10) calendar days after moving from one residence in the City of Wilmington to another residence in the City of Wilmington; and
- (3) before moving from a residence in the City of Wilmington to a new residence outside the City of Wilmington.

- (d) *Photograph permitted.* At the time the gun offender appears at the office as designated by the Police Chief, the Police Chief may photograph the gun offender.
- (e) *Documentation required.* The Police Chief may require the gun offender to provide documentation that verifies the contents of the registration.
- (f) *Term of verification requirement.* The gun offender must verify the contents of the registration, as required by § 36-70.4, for a period of three (3) years from the date of the gun offender's initial registration.
- (g) *Sharing registration information.* While the information collected under this section shall not be made available to the general public, the Police Chief may make the information available to:
 - (1) any federal, state, or local law enforcement agency; and
 - (2) any City agency.
- (h) *Cooperation with other agencies.* The Police Chief may cooperate with other federal, state and City agencies and the judiciary to facilitate implementation of this Act.

§ 36-70.5. Gun Offender Registration; Prohibited conduct and penalties.

- (a) *Prohibited conduct.* No gun offender may:
 - (1) knowingly fail to acknowledge in writing his or her duty to register under this Act;
 - (2) fail to register as required by this Act or the rules and regulations adopted under it;
 - (3) fail to verify information as required by this Act or the rules and regulations adopted under it; or
 - (4) provide false information in the registration or verification required by this Act or the rules and regulations adopted under it.
- (b) *Penalties*
 - a. *In general.* Any person violating any provision of §§ 36-70.3, 36-70.4, or 36-70.5 of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250.00 nor more than \$1,000.00 for each such offense, together with the costs and disbursements of prosecution, for the first conviction. For any conviction of a violation that is the second conviction for the same violation, the minimum fine for any person shall be not less than \$500.00 nor more than \$2,500.00; for the third conviction not less than \$1,000.00 nor more than \$5,000.00, which minimum fine shall not be suspended; for the fourth conviction \$1,500.00 which shall not be suspended; for the fifth and subsequent conviction of the same violation, the minimum fine for each

conviction shall be not less than \$5,000.00, which shall not be suspended. Instead of, or in addition to, a fine, a person convicted of violating this Act may be punished by imprisonment for a period not exceeding twelve (12) months. Upon conviction of a violation of this Act, the court may order the defendant to correct the violation by a date certain. If the defendant fails to correct the violation by the court ordered date, the court may impose a fine of \$50.00 per day to be calculated from the date of conviction to the date by which the court had ordered the violation to be corrected.

- b. *Each seven (7) day period a separate offense.* Each seven (7) day period that a violation continues is a separate offense.
- c. Upon conviction of a violation of §§ 36-70.3, 36-70.4, or 36-70.5, the term of three (3) years established by § 36-70.4(f) shall begin anew.

SECTION 2. This Substitute Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

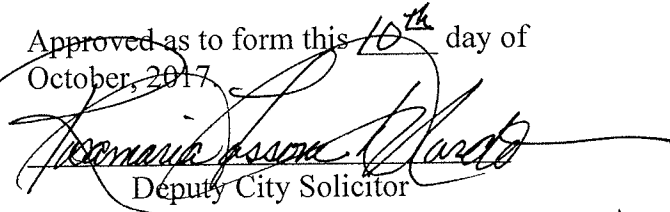
First Reading.....June 15, 2017
Second Reading..... June 15, 2017
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this 10th day of
October, 2017


Deputy City Solicitor

Approved this ___ day of _____, 2017

Mayor

SYNOPSIS: This Substitute Ordinance amends Chapter 36 of the City Code to establish the Gun Offender Registry Act (“GORA”). If enacted, this ordinance would require all gun offenders who reside in the City of Wilmington to register with the Wilmington Police Department. A Wilmington resident would be required to register with the Wilmington Police Department within five business days of disposition and release if he or she has been convicted of a gun offense in the State of Delaware as specified in Title 11 of the Delaware Code and Chapter 36 of the City Code. The GORA is similar to a sexual offender registry, and those required to register could be photographed at the time of registration. Further, registrants would be required to periodically verify registry information and provide notification of a change of address. A registrant remains in the Act’s database for a term of three (3) years from their initial registration. If the registrant re-offends or violates any provisions of the Act, their three (3) year term will begin anew. This ordinance is intended to assist the Wilmington Police Department in its efforts to curb violent crime, particularly criminal acts involving firearms.

FISCAL IMPACT STATEMENT: There is no anticipated negative fiscal impact as the implementation of the GORA can be achieved with existing resources and personnel.

POLICY STATEMENT: This proposed substitute ordinance would establish a Gun Offender Registry with the intention of providing the Wilmington Police Department with one additional tool in its efforts to reduce and prevent firearm-related crime. This Registry is patterned after similar registries in place in cities across the country, including Baltimore, Maryland. Research indicates that the Baltimore Police Department, after implementing its registry, found a reduction in reoffending – in 2012, less than 5% of the 1,669 gun offenders on the registry had been arrested on new gun charges, and only 25% of the offenders had been arrested on any other new charges. Policy research has found evidence of the effectiveness of a Gun Offender Registry as an additional tool for law enforcement agencies, indicating the value of such an approach in Wilmington as a means to enhance public safety and address the present rates of gun violence throughout the City.