



STAFF REPORT

To the Honorable Mayor and City Council From the City Manager

DATE: October 24, 2022

SUBJECT

Consideration of adopting an urgency ordinance Pursuant to Government Code Section 65858(a) imposing a moratorium on the establishment of new retail uses engaged in firearm or ammunition sales

RECOMMENDATION

1. Direct staff to research and study potential regulations of retail establishments selling firearms or ammunition; and
2. Adopt an urgency ordinance pursuant to Government Code Section 65858(a) imposing a moratorium on the establishment of new retail uses engaged in firearm or ammunition sales (requires 5/7 vote).

STRATEGIC PLAN GUIDING PRINCIPLE

Public Safety

BACKGROUND

Recently, staff has received inquiries from two firearm retailers looking to locate in Redwood City at two separate sites, 2135 Roosevelt Avenue and 648 El Camino Real. One of the firearm retailers has applied for a business license to sell firearms at 2135 Roosevelt Avenue, located at Roosevelt Plaza. Based on calls to local businesses, searches of City records and a Google search, staff do not believe there are any authorized retail establishments that sell firearms or ammunition in Redwood City.

Redwood City does not currently regulate the sale of firearms or ammunition; the City Municipal Code does not provide any restrictions or authority to address the sale of firearms or ammunition. Because there are no specific regulations, a firearm retail establishment is considered a retail use. As such, it is presently a permitted use that can be located within any Commercial and Mixed-Use Zoning District.

The Second Amendment to the United States Constitution upholds an individual's right to "bear arms." However, federal and state laws regulate the sale and possession of firearms. Moreover, heightened sensitivity and community concern regarding firearms have prompted federal, state, and local governments to consider options to mitigate gun violence. As such, local agencies across California have adopted a variety of regulations on retailers that sell firearms or ammunition.

Staff seeks direction from the City Council on whether to study potential regulations of retail establishments selling firearms or ammunition. If the City Council determines such regulations should be studied and considered, staff seeks City Council consideration of an Urgency Ordinance imposing a moratorium on retail establishments selling firearms or ammunition.

ANALYSIS

A retail establishment that sells firearms or ammunition may be located within any Commercial or Mixed-Use Zoning District in Redwood City. The City Zoning Ordinance establishes regulations and standards for sexually oriented businesses, massage businesses, cannabis retail and delivery businesses, outdoor business activities, service stations, and used car dealers, but does not include standards or regulations on businesses that sell firearms or ammunition.

Governments at all levels have a substantial interest in protecting individuals from those who use firearms, whether acquired lawfully or illegally, to commit crimes resulting in injury or death. Firearm retailers are already regulated by federal and state laws. Private sales of firearms must be through a licensed dealer. Further, the State of California Department of Justice Bureau of Firearms regulates the sales, ownership, and transfer of firearms and safety training. Purchasers are required to provide personal identification to the firearm retailer. The firearm retailer submits the information to the Department of Justice. There is a 10-day waiting period before the firearm retailer can deliver the firearm to the purchaser. During this 10-day waiting period, the Department of Justice conducts a firearms eligibility background check to ensure the purchaser is not prohibited from lawfully possessing firearms. For additional information on laws pertaining to firearms, please refer to the [Firearm Laws Summary \(2021\)](#) published by the California Department of Justice.

Local agencies across the state have adopted a variety of ordinances with regulations; these regulations have survived legal challenges. For instance, in Suter v. City of Lafayette (1997) 57 Cal.App.4th 1109, the California Court of Appeal held that state law authorizes local governments to impose additional licensing requirements on firearms or ammunition dealers. Additionally, an Alameda County ordinance prohibiting gun stores within 500 feet of any school, liquor store, or residence was upheld in Teixeira v. County of Alameda (9th Cir. 2017) 873 F.3d 670, in which the Ninth Circuit Court of Appeal ruled that imposing conditions and qualifications on the commercial sale of firearms, specifically regulating the location of these businesses, was presumptively lawful as long as it did not meaningfully restrict an individual's legal access to firearms.

Several jurisdictions, including City of Burbank, Town of Los Gatos, City of San Carlos and County of Santa Cruz, have adopted moratoria on an urgency basis prohibiting new firearms or ammunition retailers while ordinances or regulations are studied and considered.

Government Code Section 65858(a) authorizes a city to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the city council, planning commission or the planning department is considering or studying or intends to study within a reasonable time if the city council finds that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

If the City Council determines that staff should study potential regulations relating to retail establishments engaged in the sale of firearms or ammunition, adoption of the Urgency Ordinance imposing a moratorium on retail establishments selling firearms or ammunition would allow staff time to research the issues and present a comprehensive proposal for Council consideration. As noted above, before adopting such an urgency ordinance, the City Council must make a finding that there is a current and immediate threat to public health, safety or welfare.

Under the City's current City Code and Zoning Ordinance, the sale of firearms or ammunition is not regulated and is permitted by right in Commercial and Mixed-Use Zoning Districts. Many of the Commercial and Mixed-Use Zoning Districts include, are adjacent to, or are in close proximity to residential neighborhoods and other uses that include schools, child day care facilities, places of public assembly, community centers, parks, and libraries. In the absence of this moratorium, there is no way to study and consider the appropriate location of retail establishments that sell firearms or ammunition in the City, thus impairing the City's substantial interests in orderly, economically sustainable development, health, public safety, vitality and image of the City.

If the urgency ordinance is adopted, staff would study, analyze, evaluate several options, and propose potential regulations concerning firearm retail establishments. Options for further study and discussion include:

1. Should the City impose locational restrictions on new shooting ranges, gun stores and retail establishments that sell firearms or ammunition? For example, sexually oriented businesses must be a minimum of 1,000 feet from any residential district, educational, religious and/or cultural institution or public park and 1,000 feet from another sexually oriented business.
2. Should the City distinguish between a gun store, whose primary business is to sell guns and gun-related merchandise and between a retail establishment that primarily sells sporting goods and devotes a minor portion of the retail floor space to gun display and sales (large regional/national chains).
3. As part of its review of the City's Zoning Ordinance, should the City consider health and safety performance standards for new gun stores and retail establishments that sell firearms or

ammunition? Other cities require security plans, operational requirements, and high levels of perimeter construction to prevent break-ins.

4. Should the City require a Conditional Use Permit process for new gun stores and retail establishments that sell firearms or ammunition?
5. Should the City require background checks to be conducted on all licensees, employees and agents working for the firearms business establishment, considering (among other things) crime history, retraining orders, substance abuse and mental disorders?

For the reasons discussed above and identified in the proposed Urgency Ordinance, there is a current and immediate threat to the public health, safety, and welfare. A temporary moratorium would prevent new retail establishments engaged in the sale of firearms or ammunition from locating in the City until regulations are considered and adopted. By studying and analyzing our local land use regulations for the retail sale of firearms or ammunition during the moratorium, the City will be able to best tailor future regulations to the needs of our community to protect public health, safety, and welfare.

ANALYSIS

Staff recommends that the City Council direct staff to study potential regulations relating to retail establishments selling firearms or ammunition and adopt the Urgency Ordinance. A 5/7th vote of the City Council is required to enact the Urgency Ordinance. The Ordinance would take effect immediately and be in effect for a period of up to 45-days. Thereafter, the City Council may extend the moratorium for 10 months and 15 days, with a second extension for up to a year, making the legal limit 2-years.

Should the City Council adopt an Urgency Ordinance at their October 24, 2022 City Council meeting, staff will prepare an item for the City Council to consider a time extension of the Ordinance for the November 28, 2022 City Council Meeting. A time extension will be required because potential zoning changes are required to be reviewed by the Planning Commission and City Council and both bodies have long-planned agenda items scheduled within the initial 45-day period. Additionally, staff will need time to conduct research, obtain community input and coordinate among City departments such as the Police Department, Community Development and Transportation Department, City Manager's Office, and the City Attorney's Office. Any extension would require a duly noticed public hearing.

FISCAL IMPACT

There are no direct fiscal impacts associated with City Council adopting an Urgency Ordinance imposing a moratorium on retail establishments selling ammunition or firearms. If Council elects to move forward with a moratorium and directs staff to research and develop regulations for these businesses, there will be costs associated with the work. Staff will return to Council if additional funding is required.

ENVIRONMENTAL REVIEW

This activity is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

ALTERNATIVES

1. Direct staff to research and study potential regulations of retail establishments that sell firearms or ammunition but do not adopt an Urgency Ordinance pursuant to Government Code section 65858(a) imposing a moratorium on such retail establishments. This would mean a retail establishment selling firearms or ammunition may locate in Redwood City while the City studies potential regulations.
2. Do not direct staff to reach or study potential regulations of retail establishments selling firearms or ammunition and do not adopt an Urgency Ordinance pursuant to Government Code section 65858(a) imposing a moratorium on such retail establishments. This would mean Redwood City would have no regulations of retail establishments selling firearms or ammunition.
3. Provide staff with alternate direction.

ATTACHMENTS

Attachment A – Proposed Urgency Ordinance

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