



## STAFF REPORT

### To the Honorable Mayor and City Council From the City Manager

**DATE:** November 28, 2022

#### **SUBJECT**

Extension of an adopted uncodified urgency ordinance pursuant to Government Code Section 65858(a) imposing a temporary moratorium on the establishment of new retail uses engaged in firearm or ammunition sales

#### **RECOMMENDATION**

1. Adopt an Ordinance extending the uncodified adopted urgency ordinance pursuant to Government Code Section 65858(a) imposing a temporary moratorium on the establishment of new retail uses engaged in firearm or ammunition sales, to allow the City time to study and consider enactment of zoning measures for future firearm or ammunition retail uses. (Requires 5/7 vote); and
2. By motion, issue a written report on the measures taken to date to alleviate the conditions that led to the adoption of an urgency ordinance imposing a temporary moratorium on the establishment of new retail uses engaged in firearms or ammunition sales.

#### **STRATEGIC PLAN GUIDING PRINCIPLE**

[Public Safety](#)

#### **BACKGROUND**

On October 24, 2022, the City Council voted to adopt Ordinance No. 2515 as an interim measure on an urgency basis, imposing a 45-day moratorium on the establishment of new retail uses engaged in firearm or ammunition sales (“Moratorium”). The City Council adopted the temporary Moratorium after residents, through detailed correspondence and public testimony, expressed concern that a new retail establishment engaged in selling firearms and ammunition may open a location in the City without the City having had an appropriate opportunity to consider planning and zoning issues, e.g., with respect to siting such retailers in proximity to sensitive uses such as schools, parks, and residences, or with respect to conditional use provisions.

The temporary Moratorium was adopted in accordance with Government Code Section 65858(a), which provides that an interim zoning ordinance as an urgency measure shall remain in effect for up to 45 days, unless extended for an additional period of up to 10 months and 15 days and may subsequently be extended a second time for up to an additional one year. The extension of an interim ordinance requires the affirmative vote of five Councilmembers. The initial 45-day period for the temporary Moratorium will expire on December 8, 2022, unless the City Council adopts the proposed Ordinance extending the temporary Moratorium (Attachment A).

As identified in the October 24 City Council staff report, Redwood City does not currently regulate retailers engaged in selling firearms or ammunition, and by default, they are principally permitted uses by right in the commercial and mixed-use districts, such as Commercial General, Commercial Neighborhood, Central Business, Light Industrial Incubator, Mixed-Use Corridor, Mixed-Use Neighborhood, Mixed-Use Transitional, Mixed-Use Waterfront, which allow general retail uses by right. The 45-day Moratorium was adopted to “pause”, for a short-term basis, the establishment of new firearms and ammunition retailers to allow the City time to study and analyze planning and zoning regulations governing the establishment of new retailers engaged in selling firearms and ammunition, including with respect to appropriate processes, locations, and conditions for approval and establishment of such retailers.

## **ANALYSIS**

The purpose of extending the temporary Moratorium is to allow the City time to study and analyze possible regulations. City staff will further study the issues, options, and potential recommendations. Staff will then present their analysis, options, and recommendations first to the Planning Commission, and ultimately to the City Council.

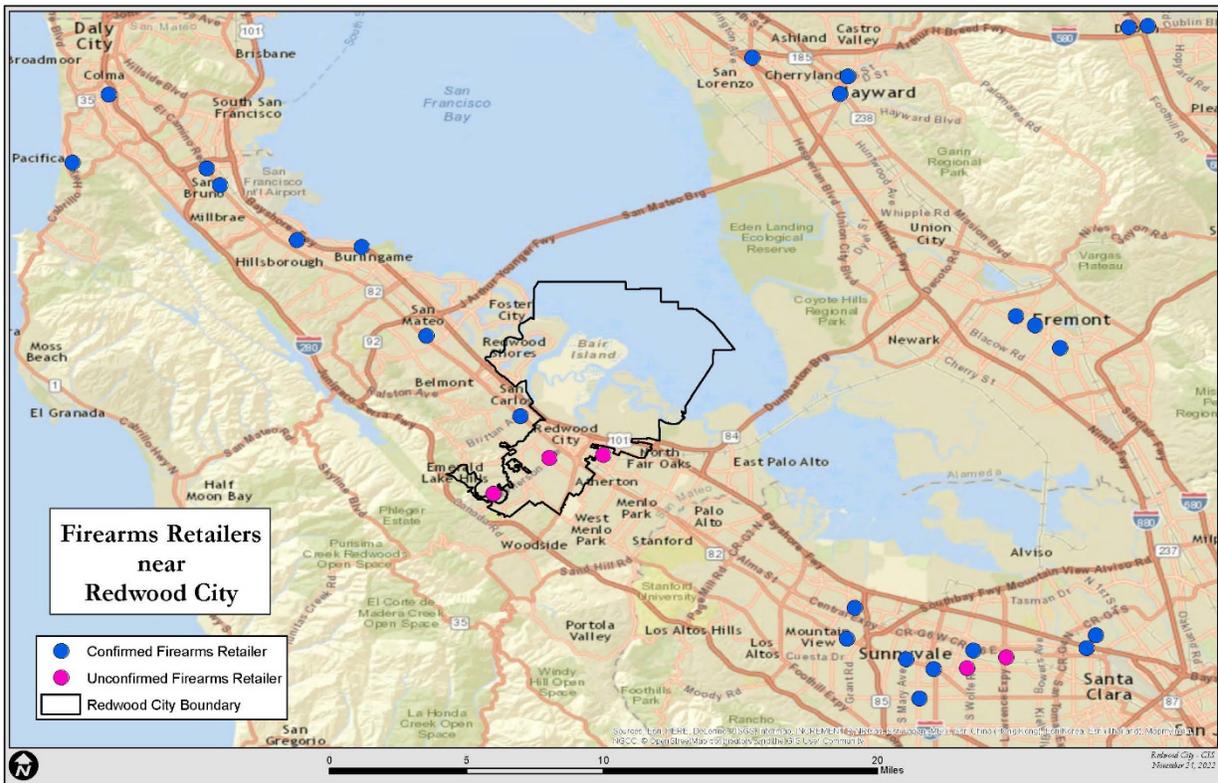
For example, the extension of the temporary Moratorium will provide staff the time to identify the appropriate locations and process for approval of these establishments and address community concerns regarding their proximity to sensitive and neighboring land uses, as well as potential conditions to impose.

The State of California and other jurisdictions have upheld the principle to maintain temporary measures to preserve the status quo pending adoption of zoning ordinances. For example, in California, courts have rejected a request to overturn a freeze on building permits pending adoption of a zoning plan (*Hunter v. Adams* (1960) 180 Cal.App.2d 511), a proscription of subdivision (*Metro Realty v. County of El Dorado* (1963) 222 Cal.App.2d 508), or a requirement for a special permit pending the completion of studies preparatory to the adoption of a zoning ordinance (*Anderson v. City Council* (1964) 229 Cal.App.2d 79). Generally, these decisions have upheld the interim ordinances and moratoria as a proper exercise of the police power.

The purpose and effect of the temporary Moratorium are not to ban firearms and ammunition retailers, nor to impair anyone’s right to keep and bear firearms and ammunition, nor to impair any right to purchase or sell firearms and ammunition, nor otherwise to infringe on Second Amendment rights. Rather, the purpose and effect of the temporary Moratorium are to provide the City an opportunity to study and consider adopting new planning and zoning regulations that, if adopted, will apply to the

potential establishment of firearms and ammunition retailers in the City, while temporarily pausing the establishment of such retailers in the interim. In the meantime, there are over 20 retailers in close proximity to the City that sell firearms and ammunition, as shown in Figure 1 below and more particularly identified in Attachment D.

**Figure 1: Existing Firearms Retailers Near Redwood City**



In addition, although not confirmed, there are three federally-licensed sellers who are within Redwood City or its unincorporated area, one of which has an active business license with the City (shown on Figure 1 above). Accordingly, persons may continue to shop for and purchase firearms and ammunition in the area while the City studies zoning issues relative to firearm and ammunition retailers and considers adopting zoning regulations.

The U.S. Court of Appeals for the Ninth Circuit—the federal appellate court with jurisdiction over California and other states in the West—has upheld local planning and zoning regulations that govern the establishment of firearms and ammunition retailers, without meaningfully restricting the ability of persons to purchase or acquire firearms and ammunition at existing retailers within or near to the jurisdiction, and without regulating the rights of members of the public to keep and bear arms in accordance and compliance with the Second Amendment to the U.S. Constitution and state and federal laws. (*Teixeira v. County of Alameda* 873 F.3d 670 (9th Cir. 2017) (en banc).) The U.S. Supreme Court has also made clear that “laws imposing conditions and qualifications on the commercial sale of arms” are “presumptively lawful.” *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008). The most recent U.S.

Supreme Court case concerning Second Amendment rights, *New York State Rifle & Pistol Association, Inc. v. Bruen* 142 S.Ct. 2111 (2022), concerned individuals' rights to carry firearms in public, not any right to open a firearms and ammunition retailer or zoning issue.

### Necessity for the Extension of the Temporary Moratorium

California Government Code Section 65858(d) requires that 10 days prior to the expiration of the urgency ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition that led to the adoption of the ordinance. Attachment B is the written report describing the measures, including:

1. Researched moratoria established by urgency ordinances in other jurisdictions faced with similar zoning, health, safety and welfare concerns.
2. Researched local regulations in place by jurisdictions within San Mateo County (See Attachment C).
3. Researched the location of existing firearms dealers in San Mateo County and northern Santa Clara County.
4. Reviewed materials provided by the community and interested groups, including the Giffords Law Center Model Ordinance and other materials identified by Everytown and Giffords.
5. Evaluated points and contentions made in a letter dated October 28, 2022, to Mayor Giselle Hale from the Second Amendment Foundation.
6. Researched Second Amendment caselaw to understand the nature and extent of permissible local zoning and other regulation.

Based on the complexity of the issues relating to local regulation of firearm retail uses, staff will need additional time to complete the research and form a recommendation to the Planning Commission followed by a recommendation to the City Council. This effort simply cannot be completed within 45 days. Therefore, staff seeks extension of the temporary Moratorium as permitted by Government Code Section 65858(a) for 10 months and 15 days, until October 23, 2023 (which Moratorium would be terminated sooner upon adoption of local regulations). This additional time would allow staff to:

- Continue researching public policy recommendations developed by national organizations such as:
  - Brady Campaign and Center to End Gun Violence
  - Everytown for Gun Safety
  - Giffords Law Center to Prevent Gun Violence
  - National Rifle Association
  - Second Amendment Foundation
- Further research and analysis of legal and zoning considerations, including:
  - Continue researching local models of policy regulation and enforcement, including considerations such as how to define sensitive receptors that might be most susceptible to the adverse effects of gun sales in particular locations

- Continue analyzing whether the City should impose locational restrictions on new 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.
  - Conduct additional analysis to consider whether the City should distinguish between a gun store, whose primary business is to sell guns and gun-related merchandise, and 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).
  - Continue review of the City's Zoning Ordinance to examine whether the City should consider health and safety performance standards for new gun stores and retail establishments that sell firearms or ammunition. For example, other cities require security plans, operational requirements, and high levels of perimeter construction to prevent break-ins. Some also limit business hours.
  - Analyze the feasibility and merits of a Conditional Use Permit process for new gun stores and retail establishments that sell firearms or ammunition.
  - Analyze the merits and feasibility of requiring background checks to be conducted on all licensees, employees and agents working for the firearms business establishment, considering (among other things) crime history, restraining orders, substance abuse and mental disorders.
- Community engagement, including:
    - City communications announcing consideration of local regulations and opportunities for community members to provide input
    - City staff meetings with key stakeholders
    - Review and consideration of public input received via email at [firearm\\_sales@redwoodcity.org](mailto:firearm_sales@redwoodcity.org) and potentially through a survey tool
  - Further refinement of policy recommendations after review of public input and staff research and analysis, including consideration of equity.

Staff anticipates pursuit of a work plan to achieve these goals within ten months and 15 days of the extension of this moratorium, and preferably sooner. With this in mind, staff proposes an ambitious schedule targeting completion of the work by June 2023, barring any delays:

December 2022 - March 2023: Continued Research and Community Outreach

March 2023 - April 2023: Refinement of Recommendations

May 2023: City Council Consideration of Policy Recommendations

If new firearm or ammunition retailers were to be established within the City before the City could study and consider adopting appropriate zoning regulations, it could result in irreversible incompatibility of land uses, conflicts with state and/or federal laws and adverse impacts on residents, businesses and neighborhoods presenting a current and immediate threat to public health, safety, or welfare. (*See, e.g., Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 1132 (1997) (“[B]ecause [firearms] dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores and bars.”))

As discussed above, the proposed temporary Moratorium extension is not intended to and does not regulate or prohibit individuals’ ability or rights to own, store, carry, possess, keep or bear firearms or ammunition in accordance and compliance with state and federal law. The purpose of the extension of the temporary Moratorium is to provide the City with the opportunity to study and consider the adoption of zoning regulations for the appropriate location and regulation of firearm and ammunition retailers.

Staff recommends extension of the temporary Moratorium to provide adequate time to research the issue and propose comprehensive regulations for retail uses engaged in firearm and ammunition sales. Approval of the extension will avoid the potential for incompatibility of land uses, conflicts with state and/or federal laws and adverse impacts on residents, businesses and neighborhoods. The adoption of reasonable planning and zoning regulations for firearm and ammunition retail uses is a well-accepted practice in California. Staff has begun compiling a list of local jurisdictions with such regulations (see Attachment C) for study.

## **FISCAL IMPACT**

There are no direct fiscal impacts associated with City Council adopting an Ordinance extending the Urgency Ordinance imposing a temporary moratorium on retail establishments selling ammunition or firearms. If Council elects to move forward with the extension of the temporary Moratorium and directs staff to research and develop regulations for these businesses, there will be costs associated with the work. In a separate staff report for the November 28, 2022 City Council meeting, staff seek Council approval to appropriate \$150,000 in temporary funding for the City Manager’s Office to support pending policy development, including the study of zoning regulations for firearm or ammunition retail uses.

## **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. Further, it is exempt from any review under CEQA pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3) of Title 14 of the California Regulations, because the Urgency Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, and only directs that a planning study be undertaken.

## **PUBLIC NOTICE**

On November 18, 2022, ten days before the hearing date, notice of the City Council hearing was posted on the City's website and published in the *San Mateo Daily Journal*.

## **ALTERNATIVES**

1. Do not adopt an Ordinance to extend the temporary Moratorium, and allow the 45-day Moratorium to expire.
2. Adopt an Ordinance to extend the temporary Moratorium for a period less than 10 months and 15 days.
3. Provide staff with alternate direction.

## **ATTACHMENTS**

Attachment A – Proposed Ordinance to extend Urgency Ordinance No. 2515

Attachment B – Report Regarding Measures Taken to Alleviate Conditions Resulting in the Adoption of a temporary Moratorium

Attachment C – Existing Firearm Retail Regulations in San Mateo County Jurisdictions

Attachment D – List of Firearm Retailers Near Redwood City

## **REPORT PREPARED BY:**

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## **APPROVED BY:**

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