

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: August 23, 2022

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director
By: Fred Ramirez, Assistant Community Development Director – Planning
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SUBJECT: Extension of an Adopted Urgency Ordinance (Project No. 22-0003897)
Imposing a Moratorium on New or Replacement Firearms Retailers in the
City of Burbank

RECOMMENDATION

Adopt AN EXTENSION OF AN UNCODIFIED ADOPTED URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK IMPOSING A MORATORIUM ON THE ESTABLISHMENT OF NEW OR REPLACEMENT RETAIL USES SELLING FIREARMS OR AMMUNITION, TO ALLOW STAFF TIME TO STUDY AND CONSIDER ENACTMENT OF ZONING MEASURES FOR FUTURE FIREARMS RETAIL USES (Attachment 1). (Requires 4/5th vote for adoption)

BACKGROUND

On July 26, 2022, the City Council was presented with a report that outlined the effects of the existing firearms retailers in the City of Burbank and immediate, short term and long-term options to address the community's concerns regarding firearms and firearms retailers (Attachment 2). The City Council was presented with a series of options to mitigate gun violence, one of which was a moratorium on new and replacement firearms retailers. The City Council adopted an Urgency Ordinance No. 22 – 3,977 (Attachment 3) that imposed a moratorium on the establishment of new or replacement retail uses selling firearms or ammunition, while the City undertakes a comprehensive Zone Text Amendment and considers other regulatory options.

Under the City's current zoning regulations, firearms stores are an allowed permitted use in all commercial zones that allow general retail uses. The purpose of the adopted

urgency ordinance was to impose a moratorium on new or replacement firearms retail uses to allow Staff the time to study and analyze possible regulations that balance free enterprise for existing firearms retailers while identify the appropriate location and process for approval of these retailers that address the community concerns with proximity to sensitive and neighboring land uses. In addition to the adopted urgency ordinance, City Council directed Staff to investigate additional regulations for firearm retailers, including:

- Adoption of a Zone Text Amendment to enact development standards that would apply to firearms retailers including the establishment of buffer zones to address community concerns with the location of new firearms retailers along commercial corridors in close proximity to sensitive-use locations.
- Limiting the number of firearms retailers in the City by suspending the issuance of new licenses and evaluating other municipalities discretionary review processes for similar retailers.
- Review of the Giffords Law Center Model Ordinance so that the City can consider the recommended best practices aimed at addressing local concerns, which can be incorporated as development standards and other regulatory requirements in a future City ordinance and Zone Text Amendment.
- Amending the business license process governed by BMC Section 3-4-111 to establish additional requirements for firearms retailers, such as successfully passing an audit by a state or federal agency as a condition of license renewal. Council may further consider implementation of local inspections regarding inventory, storage, site security, and transaction procedures.

Without the moratorium and an update to the City's current zoning regulations that govern the location of existing and future firearms retail uses, new requests for firearms retail establishments may result in compatibility issues with surrounding land uses and put the City at risk of impairing its substantial interests in economically sustainable development, community health and perceptions of safety, and public image.

DISCUSSION

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. This section constitutes the required report.

Since the adoption of the urgency ordinance, Staff has taken the following steps to alleviate the conditions leading to the urgency ordinance:

1. Reviewed the Giffords Law Center Model Ordinance and other potential regulations on the Giffords Institute website to identify what could be appropriate and incorporated into the City of Burbank's regulatory process for new permit requests for firearms retailers;

2. Created a 500-foot buffer map around the sensitive uses and existing firearms retailers to identify their proximity to one another (Attachment 4 - Maps);
3. Researched urgency ordinance moratoriums and regulatory steps taken by other cities in the State of California that have initiated and completed a similar process for creating new zoning regulations and standards for firearms retail uses (Attachment 5 - Table of California Cities with Firearms Retailer Regulations); and
4. Began work with Building and Safety Division to evaluate potential changes to the City's permit and license process, which include but is not limited to a feasibility analysis to implement a local inspections program for existing firearms retail stores.

However, the necessary work to address the concerns raised by City Council at the July 26, 2022 meeting is still ongoing. To complete a thorough analysis of possible regulations to be incorporated into a local ordinance and prepare a set of possible next steps to amend the City's administrative and permitting process for firearms retailers, Staff will need additional time. This effort cannot be completed within the 45-day period of the current urgency ordinance. Therefore, Staff is requesting that the City Council extend the urgency ordinance as permitted by California Government Code Section 65858(a).

Pursuant to State law, the adopted urgency ordinance is valid for 45-days and will expire on September 9, 2022, unless extended by the City Council. After holding a public hearing, the City Council can extend the urgency ordinance for up to an additional 10 months and 15 days, for a total effective period of one year (CA Government Code Section 65858(a)). As with the initial adoption of the urgency ordinance, a four-fifths (4/5) vote is required to extend the urgency ordinance. The City Council has the option of extending the urgency ordinance using the same moratorium adopted on July 26, 2022 or allowing the urgency ordinance to expire.

Staff recommends extending the urgency ordinance for 10 months and 15 days, until July 24, 2023, to allow Staff time to:

1. Continue the current research and development process for a Zone Text Amendment that would create a new "firearms retail use" along with applicable development standards (e.g., building standards, operational standards, discretionary review process) for approval for this specific use.
2. Identify the appropriate regulatory measures for the placement of future "firearms retail uses", including but not limited to the establishment of a cap on the number of firearms retailers, a buffer/distance separation requirement for new firearms retailers from sensitive land uses and existing firearms retailers, a new discretionary review process, and consideration of specific zones where new firearms retailers may be established and operate.

3. Continue to review the Giffords Law Center Model Ordinance and identify what portions can be utilized to further regulate firearms retail uses in the City of Burbank.
4. Study the feasibility of limiting or reducing the total number of firearms retailers over time while ensuring compliance with applicable local, state, and federal laws and also preserve the public's 2nd Amendment right to access and purchase firearms.
5. Propose amendments to the Business License process, governed by Burbank Municipal Code (BMC) Section 3-4-111, to add additional requirements for Business License renewal of a firearms retailer based on passing a successful state or federal agency audit.
6. Create a local inspection program through the Building & Safety Division and/or the Burbank Police Department that would look at the inventory, storage, site security, and transaction procedures of existing firearms retailers to ensure compliance with Federal, State and Local laws.

Necessity for the Extension of the Moratorium

As previously discussed, the City's current zoning regulations allow for firearms retailers as a by-right use in all commercial zones that allow general retail uses. The current regulations in the BMC concerning the land use or licensing requirements for this type of use do not sufficiently address the ease with which a new firearms retailer can establish itself in the city and the resulting increased concentration of these uses along critical commercial corridors. The current approval process raises concerns for sustainable and economically diverse retail areas in the community.

The adopted urgency ordinance has provided the City with the opportunity to put a pause on the current review and approval process for firearms retail uses and allow work to commence on the creation of a comprehensive set of regulations for the permitting and placement of future firearms retail uses, in particular, at a safe distance from sensitive uses that include among other things, schools, child day care facilities, and places of public assembly including places of worship, public parks, and libraries (Attachment 4 - Maps). To address all the items that were brought forth by the public and the direction provided by the City Council, Staff will need additional time to complete our review and development of permitting and zoning requirements that encompass the needed components of a new set of regulations for firearms retail businesses. In addition, prior to a completion of a Zone Text Amendment being brought before City Council, Staff would need to undertake the process of gathering community input and presenting any set of updated zoning regulations to the City's Planning Board to obtain a recommendation for

City Council consideration – BMC 10-1-1992 (Attachment 6). Furthermore, the urgency ordinance and the requested extension provide the necessary pause to give City Staff the time to complete our review of other jurisdictions in the State of California that have adopted zoning regulations for firearms retail uses and identify what is reasonable for the City of Burbank to protect the public health, safety and general welfare of the community.

FISCAL IMPACT

Approval of the extension to the adopted Urgency Ordinance (Attachment 1) imposing a temporary moratorium on new and replacement firearms and ammunition retail businesses would not impact the City's ability to collect Business License fees and property taxes from the existing firearms retail businesses already established. However, additional costs may be incurred to research and develop ordinance(s) should Council pursue certain long-term options listed in this report that would be brought forth later for Council consideration.

CONCLUSION

The requested extension to the adopted urgency ordinance will provide Staff adequate time to research this issue and present a comprehensive set of requirements that the City Council may consider for the ongoing regulation of existing and new firearms retailers. Staff is requesting additional time beyond the initial 45-day moratorium period to continue to evaluate appropriate regulatory components that can be included as part of future City code amendments including an update to the City's Zoning ordinance to address all the items raised by City Council during the July 26, 2022 Council Meeting. Approval of the extension and later consideration of a Zone Text Amendment will allow the City to avoid both potential compatibility issues with new firearms retailers and their surrounding land uses, and future impact to sustainable and the economically diverse retail areas or the character of existing residential neighborhoods.

ATTACHMENTS

Attachment 1 – Ordinance Extending the Urgency Ordinance

Attachment 2 – Adopted Urgency Ordinance No. 22-3,977, adopted July 26, 2022

Attachment 3 – July 26, 2022, Staff Report on Urgency Ordinance and Regulatory Framework

Attachment 4 – Maps of Licensed Firearms Retailers in the City of Burbank

Attachment 5 – Table of California Cities with Firearms Retailer Regulations

Attachment 6 – Burbank Municipal Code Sections

Attachment 7 – Correspondences as of August 11, 2022

Correspondences