

A SECOND EXTENSION OF AN 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 TO STUDY AND CONSIDER ENACTMENT OF ZONING MEASURES FOR FUTURE FIREARM RETAIL USES

City Attorney's Synopsis

This Ordinance extends for a period of one (1) year from July 26, 2023, through July 26, 2024, Urgency Ordinance No. 22-3,977 originally adopted on July 26, 2022, and extended on August 23, 2022, which imposes a temporary moratorium on the establishment of new or replacement retail uses selling firearms or ammunitions. With this one-year extension, the terms of the temporary moratorium will now expire on July 26, 2024.

THE CITY COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES AND DECLARES THAT:

A Governments at all levels have a substantial interest in protecting people from those who acquire guns lawfully or illegally and then use them to commit crimes resulting in injury or death of their victims, or who use them in the commission of other crimes such as robbery, sexual assault or homicide, particularly mass shootings such as those that have occurred since 2017 in Chicago, Illinois; Thousand Oaks, California; Pittsburgh, Pennsylvania; Perryman, Maryland; Bakersfield, California; Cincinnati, Ohio; Annapolis, Maryland; Santa Fe, Texas; Nashville, Tennessee; Parkland, Florida; Melcroft, Pennsylvania; Rancho Tehama, California; Sutherland Springs, Texas; Boulder, Colorado; Edgewood, Maryland; Las Vegas, Nevada; El Paso, Texas; Buffalo, New York; Uvalde, Texas, as well as many other recent mass shootings.

B. Fourteen (14) establishments licensed to sell firearms and ammunition currently operate in the City of Burbank, while neighboring cities of Glendale, Pasadena and Los Angeles have Ten (10), Three (3), and Thirty-Six (36), respectively, making Burbank the city with the most retailers of firearms and ammunition per capita than any of these nearby municipalities at a rate of 1 firearms retail store per every 7,386 residents.

C. Under the City's current zoning regulations retail firearms stores are allowed by-right in all commercial zones that allow general retail uses.

D. On July 26, 2022, pursuant to Government Code Section 65858, the City Council adopted an urgency ordinance (Urgency Ordinance No. 22-3,977) that imposed a temporary moratorium on the establishment of new or replacement retail uses selling firearms or ammunitions.

E On August 23, 2022, pursuant to Government Code Section 65858(a), the City Council extended the urgency ordinance originally adopted on July 26, 2022, for an additional 10 months and 15 days. Unless extended again by the City Council, the urgency ordinance will expire by operation of law on July 26, 2023.

F Many of the commercial zones where existing and potential future retail firearms stores are located are adjacent to residential neighborhoods and other uses that include amongst other things, schools, child day care facilities, and places of public assembly including places of worship, public parks and libraries.

G The City is authorized by Article XI, Section 7 of the California Constitution to make and enforce all local, police, and other ordinances and regulations not in conflict with general laws.

H The City Council finds and declares that it has questions and concerns about the proliferation of firearms retail use in the City, adjacent to residential neighborhoods and in proximity to schools, child day care facilities and places of public assembly as well as along thriving retail and commercial corridors, and seeks to analyze the current regulations and alternative regulations and administrative procedures to ensure the future locations of retail establishments that sell firearms and ammunitions do not detrimentally impact the health, safety and welfare of residential neighborhoods and other, specific uses.

I On July 18, 2023, pursuant to Government Code Section 65858 subdivision (a), the City Council considered an additional one-year extension to the urgency ordinance originally adopted on July 26, 2022, and extended on August 23, 2022, that imposed a temporary moratorium on the establishment of new or replacement retail uses selling firearms or ammunitions.

J The City Council finds that the one-year urgency ordinance extension is necessary for City staff to study, develop, and propose for review by the Planning Board and adoption by the City Council regulations regarding the establishment of a separate land use for the retail sales of firearms and ammunition and additional land use regulations for the City of Burbank.

K The City Council finds that given the potential deleterious effect an otherwise lawful but unregulated business selling ammunition or firearms can have on other incompatible neighboring uses, passage of this extension to the adopted interim urgency ordinance will provide City staff sufficient time to conduct all due diligence and present a comprehensive zoning proposal to help ensure that the establishment of a firearms or ammunition retail sales use within the City will not be located so as to be detrimental to the public health, safety and welfare.

L The City Council finds that other California cities have adopted zoning ordinances and business regulations that govern the sales of ammunition and firearms, and several municipalities have adopted moratoria on an urgency basis prohibiting new commercial retailers of ammunition or firearms while such permanent ordinances or

regulations are studied and considered.

M The City Council acknowledged the measures taken by City staff to alleviate conditions, which led to Urgency Ordinance No. 22-3,977 and its extension No. 22-3978 that are described in the City's written report, which was provided to the City Council on July 18, 2023.

N The City Council considered the report and recommendations of the Community Development Director and the evidence presented at such meeting.

O In the absence of an extension to the moratorium, there is no way to provide a comprehensive study and consider the appropriate location of retail establishments that sell firearms in the City, and the nature and extent of health and safety regulations that could be imposed on such businesses due to the nature of the products they sell in relation to neighboring uses within the current 10-month and 15-day extension period and thus would impair the City's substantial interests in economically sustainable development, health, public safety, vitality, and image of the City.

P The City Council has determined that the adoption of a one-year extension to the adopted urgency ordinance is categorically exempt from CEQA pursuant to Section 15061(b)(3).

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

1. All the findings set forth above are true and correct and are incorporated herein as if restated in their entirety.
2. The City of Burbank Municipal Code does not include adequate regulations concerning the land use or licensing requirements for the retail sale of firearms and ammunition, but instead considers these uses with other general retail uses.
3. Maintaining the status quo zoning regulations has the potential to result in further proliferation of new or replacement retail uses that sell firearms or ammunition without the proper analysis of any potential impacts to public health, safety, and welfare. By studying and analyzing our local land use regulations for the retail sale of firearms and 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.
4. The current regulations where we allow new firearms and ammunition retail sale without regulation or consideration for their location, have the potential to result in new or replacement gun or ammunition retail stores that can displace other neighborhood serving retail and service commercial uses from tenant spaces and therefore create a threat to critical commercial corridors and the City's effort to preserve aesthetically inviting storefronts and pedestrian-friendly retail, restaurants and offices in such spaces, which have historically been the lifeblood of the community

and a beacon to visitors.

5. In *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109 (1997), the California Court of Appeal held that State law authorizes local governments to impose additional licensing requirements on firearms and ammunition dealers.
6. This moratorium is necessary to prevent irreversible issuance of permits, business licenses, and developments that could have a detrimental effect on the health, safety and welfare of the community. Without the moratorium, the potential exists that new or replacement commercial operations engaged in the retail sale of firearms or ammunition within the City without appropriate regulation could result in incompatibility of land uses and adverse impacts on residents, businesses and neighborhoods that present a current and immediate threat to the public health, safety, and welfare.
7. The City Council finds, pursuant to Government Code Section 65858 subdivision (a), that Ordinance No. 22-3,977, as extended by Ordinance No. 22-3,978, is hereby extended for a period of one (1) year from July 26, 2023, through July 26, 2024 (“Extension Period”) with the interim development controls as follows:

A. MORATORIUM

The City Council does hereby, pursuant to Government Code Section 65858, impose a moratorium for an additional one-year period prohibiting the establishment of new or replacement retail businesses selling firearms or ammunition.

B. DEFINITIONS

For purposes of this urgency ordinance the terms below are defined as follows:

“Firearm” shall mean any pistol, revolver, rifle, shotgun or other device, designed to be used as a weapon, from which a projectile is expelled through a barrel by the force of an explosion or other form of combustion, or any device which is capable of being altered so as to expel a projectile in such manner.

“Ammunition” shall mean any projectile designed to be expelled through the barrel of a firearm by the force of an explosion or other form of combustion.

“Firearm or Ammunition Sales” shall mean the retail sale of firearms or ammunition by a firearms dealer, whether it is the principal sales item or incidental to the overall sales. This use includes firearms dealers that transfer and lease any firearms or related products.

C. ENVIRONMENTAL ANALYSIS

This extension to the adopted urgency ordinance is exempt from review under the California Environmental Quality Act (CEQA), pursuant to Sections 15061(b)(3). The activity is covered by the commonsense exemption that CEQA applies only to

projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Therefore, it is the City's determination that this ordinance will not have a significant effect on the environment and is not subject to CEQA.

D. PENDING APPLICATIONS

As to applications for permits for a new or replacement retail use selling firearms and or ammunitions stores in the City, which have been accepted as complete, processing and review of such applications may continue, but shall not be finally approved during the pendency of this Ordinance or any extensions thereof.

- 8. This extension to the urgency ordinance shall be introduced, passed and adopted at one and the same meeting and shall become effective immediately upon the adoption thereof, and shall expire and be of no further force and effect after one (1) full year from the date of its adoption.
- 9. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.
- 10. The City Clerk shall certify to the passage of this Ordinance and cause this Ordinance to be published, within fourteen days of the adoption hereof, once in a newspaper of general circulation, published and circulated in the City of Burbank, California.

PASSED AND ADOPTED this 18th day of July, 2023.



Konstantine Anthony
Mayor

Approved as to Form:
Office of the City Attorney


By: Jill Vander Borcht
Senior Assistant City Attorney

Attest:


Kimberley Clark, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Kimberley Clark, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. 23-3,998 was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the 18th day of July, 2023, by the following vote:

AYES: Mullins, Perez, Takahashi, Schultz, and Anthony.

NOES: None.

ABSENT: None.

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following of the ordinance's adoption on July 18, 2023.



Kimberley Clark, City Clerk