DATE: January 8, 2019

TO: City Council

FROM: Stephen Fischer
City Attorney

SUBJECT: Extension of Ordinance No. 2950 (Moratorium on the Establishment of New Retail Uses Selling Firearms and Ammunition). (5/10/20)

CONTACT: Stephen Fischer, City Attorney
Stephen.Fischer@oxnard.org, (805) 385-7483

RECOMMENDATION:

That City Council conduct a public hearing and adopt an ordinance to extend the moratorium on the establishment of new retail uses selling firearms and ammunition to allow the City to study this land use and make recommendations to the Planning Commission and City Council for a period of eight (8) months from the date Ordinance No. 2950 would otherwise expire.

BACKGROUND

The City Council, at its November 27, 2018 meeting, voted unanimously to adopt Urgency Ordinance No. 2950 imposing a 45-day moratorium on retail establishments selling ammunition or firearms. Council made this decision after receiving over one hundred written communications and holding a noticed public hearing at which testimony was received from nineteen individuals both in support and in opposition to the moratorium.

In adopting the Urgency Ordinance, the Council made several factual, health, safety and welfare findings as the basis for the moratorium, including that City staff needs time to: 1) analyze the City’s current Zoning Ordinance with respect to retail ammunition and firearms establishments in the City; 2) consider whether to recommend changes to the City Code; and 3) present its analysis and recommendations to the Planning Commission and City Council for consideration and for input from the public.

Urgency Ordinance No. 2950 prohibits new retail establishments selling ammunition or firearms
from locating in Oxnard for a period of up to forty-five (45) days to provide staff time to study this land use and develop recommendations for consideration by the Planning Commission and City Council. While staff has begun analyzing appropriate public review and safety measures in the context of existing zoning regulations for retail firearms stores, more time is needed.

The forty-fifth day of the moratorium is Friday, January 11. The holiday schedule and recently-adopted Sunshine Ordinance necessitated preparation and publication of the January 8 Council agenda by December 24, the twenty-seventh day of the moratorium. State law permits the City to extend an Urgency Ordinance for up to two years. However, in response to concerns raised at the November 27 hearing, staff has committed to bringing its recommendations to the Council by September, 2019, following the August recess. Thus, staff is requesting an extension of the Urgency Ordinance for eight (8) months, which the Council may approve by making appropriate findings and with a 4/5th vote (i.e., 6 affirmative votes).

ANALYSIS

Stores selling firearms and ammunition are considered retail uses and prior to the enactment of the moratorium on November 27, 2018 were a permitted use that can be located within the C-2 General Commercial Zone, and the Coastal Visitor-Serving Commercial Sub-Zone with an administrative development review permit. The City Code does not currently include health and safety performance standards or location restrictions (proximity to residential zones, parks or schools) for retail establishments selling firearms and ammunition, nor is there a mechanism to review and impose reasonable conditions on the operation of such businesses.

Following adoption of the moratorium, staff has continued to review regulations in other cities faced with similar zoning, health, safety and welfare issues. In addition, staff reviewed the public testimony at the meeting and materials provided by the community and interested groups, such as the attorney representing the California Rifle & Pistol Association. Staff has begun the extensive research required to review the nature and scope of permissible local regulation, including review of published court decisions considering the extent to which state law has preempted or allowed certain local firearm regulations.

Since staff’s expertise in the issues of firearms regulation is limited, staff has consulted with an attorney advising other cities reviewing firearm retailer regulations to assist staff in making recommendations for appropriate City Code amendments. This work is ongoing and will require additional time to draft and present recommendations to the Planning Commission and City Council.

In order to analyze appropriate restrictions on locations of firearm retailers, staff is utilizing mapping of sensitive areas that was recently developed for consideration of cannabis uses. Because these uses raise different concerns, the maps developed for cannabis uses must be revised to address concerns specific to firearm retail uses.

Staff is reviewing the existing provisions in Chapter 11 of the City Code requiring a permit to be
issued by the Police Chief in order to sell concealable firearms to determine whether amendments to those provisions could address safety and security concerns with firearm retailer operations. Such modifications would need to be within the local regulatory authority permitted by state law. Staff has not yet concluded whether it would be more efficient to administer all local firearm retailer regulations through conditions of approval imposed through a review process under the Zoning Ordinance.

Whether by zoning or administrative law enforcement permit, possible regulatory requirements could include expanded background investigations of applicants and employees, applicants’ agreement to indemnify and hold the City harmless from claims relating to firearms retailer operations, evidence of possessory interest in the proposed business location, applicants’ consent to initial and ongoing inspection of the business location, security measures such as inventory storage standards, video monitoring, and exterior bollards to prevent vehicles from penetrating exterior access points of the business.

CONCLUSION AND RECOMMENDATION

There continues to be an immediate threat to the public peace, health, welfare and safety arising from new firearms and ammunition retail uses under the current City Code. There is no current zoning authority to review and impose reasonable conditions on such businesses in the City’s Zoning Ordinance. An extension of the moratorium imposed in Urgency Ordinance No. 2950 is necessary to allow staff the time needed to develop proposals for appropriate regulation of firearms and ammunition retail uses.

Pursuant to Government Code Section 65858(a), Urgency Ordinance No. 2950 automatically expires after 45 days, but can be extended by a vote of the City Council for up to 10 months and 15 days to allow time for review of the public testimony, information provided to the City, local regulation by other California cities faced with similar issues, further public outreach, research, analysis, drafting of findings, and Planning Commission and City Council consideration of appropriate amendments to the City Code.

Staff recommends that the City Council adopt the attached Ordinance extending Urgency Ordinance No. 2950 for eight (8) months. A 4/5th vote of the entire City Council is required to extend the Urgency Ordinance.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 1. Improve community safety and quality of life through a combination of prevention, intervention, and suppression efforts that address crime and underlying issues.
FINANCIAL IMPACT

There is no financial impact to the General Fund

Prepared by Stephen Fischer, City Attorney and Eric Sonstegard, Assistant Chief of Police.

ATTACHMENTS:

Oxnard Firearm Moratorium.Extension Ordinance.Final
CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. __________

AN INTERIM URGENCY ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, EXTENDING URGENCY ORDINANCE NO. 2950 PURSUANT TO GOVERNMENT CODE SECTION 65858(a) IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW RETAIL USES SELLING AMMUNITION OR FIREARMS FOR EIGHT (8) MONTHS.

WHEREAS, Government at all levels has a substantial interest in protecting the 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 October of 2017 in Chicago, Illinois; Thousand Oaks, California; Pittsburgh, Pennsylvania; Perryman, Maryland; Bakersfield, California; Cincinnati, Ohio; Annapolis, Maryland; Santa Fe, Texas; Nashville, Tennessee; Yountville, California; Parkland, Florida; Melcroft, Pennsylvania; Rancho Tehama, California; Sutherland Springs, Texas; Thornton, Colorado; Edgewood, Maryland; Las Vegas, Nevada; as well as the many other mass shootings over the past several years; and

WHEREAS, The City Council, at its November 27, 2018 meeting, voted unanimously to adopt Ordinance No. 2950 as an urgency measure imposing a 45-day moratorium on retail establishments selling ammunition or firearms after receiving over one hundred written communications and holding a noticed public hearing at which testimony was received from nineteen individuals both in support and in opposition to the moratorium; and

WHEREAS, in adopting Ordinance No. 2950, the Council made several factual, health, safety and welfare findings as the basis for the moratorium; and

WHEREAS, following adoption of Ordinance No. 2950, there has been insufficient time for staff to study retail establishments selling ammunition or firearms and develop recommendations for consideration by the Planning Commission and City Council for consideration of adoption so as to alleviate the conditions which led to the adoption of Ordinance No. 2950; and

WHEREAS, various zones within the City allow a wide range of uses (as of right and with a special use permit), including various types of retail businesses, churches, liquor stores, and bars, that may not be compatible with retail sales of firearms and ammunition; and

WHEREAS, 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; and

WHEREAS, other California cities have adopted zoning ordinances and business regulations that govern the sales of ammunition and firearms, and several municipalities, including the Town of
Windsor, Town of Los Gatos, City of San Carlos, City of Healdsburg, and the County of Santa Cruz, have adopted moratoria on an urgency basis prohibiting new commercial sales of ammunition or firearms while such ordinances or regulations are studied and considered; and

WHEREAS, the City Council finds that it is necessary for the City staff, Planning Commission and City Council to study and develop regulations within a reasonable time regarding new retail establishments selling ammunition or firearms in the City of Oxnard; and

WHEREAS, six (6) retail establishments that sell ammunition or firearms are operating in the City; and

WHEREAS, the City Council finds and declares that it has questions and concerns about the appropriate land use regulations and zoning for additional retail establishments that sell ammunition and firearms, and wishes to prohibit such uses that may be in conflict with zoning proposals to be studied and considered within a reasonable time to address these questions and concerns; and

WHEREAS, without extending the moratorium, there is no way to study and consider the appropriate location of retail establishments that sell ammunition or 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; and

WHEREAS, without extending the moratorium, the City will not have the authority to review new retail establishments selling ammunition or firearms under the City’s current zoning ordinance, thus impairing the City’s substantial interests in orderly, economically sustainable development, health, public safety, vitality and image of the City; and

WHEREAS, the City Council has directed City staff to study, develop, and propose for review by the Planning Commission and adoption by the City Council, an ordinance for appropriate zoning of retail establishments selling ammunition or firearms; and

WHEREAS, 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 ordinance to extend Ordinance No. 2950 will provide staff sufficient time to research this issue and present a comprehensive zoning proposal to help ensure that the establishment of a retail sales use engaged in the sale of firearms or ammunition within the City will not be located as to be detrimental to the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Purpose and Findings.

A. The above recitals are incorporated herein, and each relied upon independently by the City Council as findings for its adoption of this urgency interim ordinance.
B. The City of Oxnard Zoning Ordinance does not currently include comprehensive zoning or other regulation concerning the retail sale of ammunition or firearms.

C. California is among the minority of states that impose licensing requirements on firearms dealers, but the standards are not comprehensive. (See Penal Code Sections 26500 et seq.)

D. 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 dealers.

E. The Penal Code requires local jurisdictions to accept applications for firearms dealer licenses, and emphasizes the authority of cities and counties to regulate firearms dealers. (Penal Code Section 26705.)

F. The United States Supreme Court has held that localities enacting zoning laws must be given the chance to “experiment with solutions to admittedly serious problems.” (*Renton v. Playtime Theaters*, 475 U.S. 41, 52 (1986).)

G. City staff needs time to analyze the current zoning ordinance with respect to retail ammunition and firearms establishments in the City and recommend changes providing for orderly review of retail establishments selling ammunition or firearms with appropriate public review. The residents of Oxnard will be well-served if the City more fully addresses the potential impacts of retail establishments selling ammunition or firearms on health, safety, economic sustainability, and aesthetics in the downtown core, other zoning districts and the community as a whole, the impacts of new firearms and ammunition businesses in the City, including the safety of the public at large and other health, safety, and welfare impacts.

H. The most appropriate way to ensure public review is to enact a moratorium while the issue of the appropriate zoning and health and safety regulations are studied for future consideration by the Planning Commission and City Council.

I. The City Council finds that there is a current and immediate threat to the public peace, health, welfare and safety, specifically including possible permanent damage to the City’s aesthetic, health, safety and economic interests arising from the potential new retail uses selling ammunition or firearms prior to the City completing such planning review considering the circumstances and effect such development would have on the City.

J. The City Council finds that the protection of the health, safety, and welfare, and specifically the City’s and the public’s interests in the City’s aesthetic, economic sustainability and safety arising from retail establishments selling ammunition or firearms, will not be subject to public hearing and review by the Planning Commission for compatibility with the City’s General Plan and will not take into account the circumstances and effect such retail establishments selling ammunition or firearms being approved could have on the City until additional staff and Planning Commission review has been completed and any necessary zoning and municipal code revisions have been adopted by the City Council.
K. The City Council finds that it is necessary to adopt this Ordinance pursuant to Government Code Section 65858 to extend Ordinance No. 2950 in order to protect the public health, welfare and safety, and to prevent irreversible approval of permits and development and the health and safety impacts identified herein.

Part 2. The City Council does hereby, pursuant to Government Code Section 65858, extend Ordinance No. 2950, which imposed a forty-five (45) day moratorium, for eight (8) months prohibiting new retail establishments selling ammunition or firearms, and during the period of such extension, no business license, variance, special use permit, building permit, firearms dealer permit, approval or any other applicable license or entitlement nor any other authorization or form of approval shall be approved or issued by the City allowing new retail establishments selling firearms in the City. For the reasons set forth in the legislative findings, this ordinance is declared to be an urgency ordinance intended to preserve the public peace, health and safety and is adopted as such pursuant to California Government Code section 36937. This ordinance shall take effect immediately on expiration of the initial forty-five (45) day urgency ordinance. Ten (10) days prior to the expiration of this ordinance or any extension thereof, the City Council shall issue a written report describing the measures that have been taken to study the relevant issues and to establish policies and regulations regarding retail sales of ammunition or firearms within the City.

Part 3. Environmental Analysis. This ordinance is exempt from review under the California Environmental Quality Act (CEQA), pursuant to Sections 15060(c)(2), 15060(c)(3), and 15601(b)(3), because the proposal will not result in a direct or reasonably foreseeable indirect physical change in the environment, and only directs that a planning study be undertaken. The ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA Guidelines. This ordinance is a regulatory action taken by the City in accordance with Government Code Section 65858, to assure maintenance and protection of the environment pending the completion of contemplated zoning ordinance revisions.

Part 4. For purposes of this Ordinance, “firearm” shall have the meaning set forth in Penal Code Section 16520(a), but shall exclude antique firearms as defined in Penal Code Section 16170.

Part 5. For purposes of this Ordinance, “ammunition” shall have the meaning set forth in Penal Code Section 16150(a).

Part 6. Pending applications. As to applications for permits for a new retail firearms and/or ammunition 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.

Part 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any 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 adopted this Ordinance and
such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

Part 8. This is an Urgency Ordinance and requires a four-fifths vote of approval of all of the members of the City Council and goes into effect immediately upon its adoption.

Part 9. A public hearing was held on January 8, 2019, before the City Council pursuant to the requirements of Government Code Section 65858(a) and this Urgency Ordinance was adopted on that date.

Part 10. This Urgency Ordinance shall be published once within fifteen (15) days of its adoption in accordance with Government Code Section 36933.

AYES:

NOES:

ABSENT:

ABSTAIN:

_________________________________________________________________
Tim Flynn, Mayor

ATTEST:

_________________________________________________________________
Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

_________________________________________________________________
Stephen M. Fischer, City Attorney
(This page is intentionally blank.)