

LAST MINUTE AGENDA INFORMATION I

8/2/2023 Regular Council Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the August 2, 2023, meeting.)

ITEM NO.

DESCRIPTION

9.a CONSIDERATION OF REPORT ON INTERIM ORDINANCE 2023-31; RESOLUTION CLARIFYING COMPATIBILITY FOR FIREARMS RETAIL USE; URGENCY/REGULAR ORDINANCES TO ADOPT REGULATIONS FOR THE RETAIL SALE OF FIREARMS/AMMUNITION; AND A CEQA EXEMPTION. (0260-38)	a. Amended Attachment 4 – Exhibit A
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ATTACHMENT 4

EXHIBIT A to Ordinances 2023-1232 & 2023-1233

Chapter 4.58
FIREARMS AND AMMUNITION RETAIL
ESTABLISHMENTS

Sections:

- 4.58.010 Purpose of chapter.**
- 4.58.020 Definitions.**
- 4.58.030 Retail Firearm-Ammunition permit—Required.**
- 4.58.040 Retail Firearm-Ammunition permit—Application.**
- 4.58.050 Retail Firearm-Ammunition permit—Application fee.**
- 4.58.060 Investigation of applicant by City.**
- 4.58.070 Grounds for permit denial or revocation.**
- 4.58.080 On-site security requirements.**
- 4.58.090 Liability insurance.**
- 4.58.100 Restricted admittance of minors and other prohibited purchasers.**
- 4.58.110 Display of Retail Firearm-Ammunition permit.**
- 4.58.120 Issuance of Retail Firearm-Ammunition permit—Duration.**
- 4.58.130 Nonassignability.**
- 4.58.140 Compliance by existing business.**
- 4.58.150 Law enforcement/City inspections.**
- 4.58.160 Posted warnings.**
- 4.58.170 Violations.**
- 4.58.180 Report of permit revocation to Federal and State authorities.**
- 4.58.190 Hearing for permit denial or revocation.**
- 4.58.200 Severability.**

4.58.010 Purpose of chapter.

It is the purpose and intent of this chapter to establish a local program for the license and

regulation of the sale, lease, or transfer of firearms or ammunition in a manner that protects the public health and safety. The provisions of this chapter are not intended to contradict or duplicate any applicable State or Federal law. In the event of a conflict between the provisions of this chapter and the provisions of State, Federal, or local laws, the more restrictive provision shall control unless preempted by State or Federal laws.

4.58.020 Definitions.

For the purpose of this chapter, unless the context clearly requires a different meaning, the following words, terms and phrases have the meanings given to them in this section:

“Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an “antique firearm” as that term is defined in 18 U.S.C. Section 921(a)(16).

“Applicant” means the person or authorized agent of an entity who intends to sell, lease or transfer firearms or ammunition and applies for a Retail Firearm-Ammunition permit, or the renewal of such a permit.

To “engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition” means to conduct a business by the selling, leasing or transferring of any firearm or ammunition, or to hold one’s self out as engaged in the business of selling, leasing or otherwise transferring any firearm or ammunition, or to sell, lease or transfer firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

“Firearm” means any device designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion; provided, that the term “firearm” shall not include an “antique firearm” as defined in 18 U.S.C. Section 921(a)(16).

“Permittee” means any person, corporation, partnership or other entity engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition, which person or entity has obtained a Retail Firearm-Ammunition permit to sell, lease or transfer firearms or ammunition.

“Primary business” means 50% or more of the retail space within the store is used for the sale of firearms or ammunition.

“Sheriff” means the San Diego County Sheriff or the Sheriff’s designated representative.

4.58.030 Retail Firearm-Ammunition Permit—Required.

It is unlawful for any person, corporation, partnership or other entity to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition within the City without a Retail Firearm-Ammunition permit, as required by this chapter, and a valid business license as required by Chapter 4.04.

4.58.040 Retail Firearm-Ammunition Permit—Application.

An applicant for a permit or renewal of a permit under this chapter shall file with the Community Development Department an application in writing, signed under penalty of perjury, on a form prescribed by the City. The applicant shall provide all relevant

information requested to demonstrate compliance with this chapter, including:

- A. The applicant's name, including any aliases or prior names, age and address;
- B. The applicant's Federal firearms license and California firearms dealer numbers, if any;
- C. A photocopy of the applicant's driver's license, passport, or other government-issued identification card bearing a photograph of the applicant;
- D. The address of the proposed location for which the permit is sought, together with the business name, and the name of any corporation, partnership or other entity that has any ownership in, or control over, the business;
- E. The names, ages and addresses of all persons who will have access to or control of workplace firearms or ammunition, including, but not limited to, the applicant's employees, agents and/or supervisors, if any;
- F. A certificate of eligibility from the California Department of Justice under Penal Code Section 26710 for the applicant and for each individual identified in subsection E of this section demonstrating that the person is not prohibited by State or Federal law from possessing firearms or ammunition;
- G. Proof of a possessory interest in the property at which the proposed business will be conducted, as owner, lessee or other legal occupant, and, if the applicant is not the owner of record of the real property upon which the applicant's business is to be located and conducted, the written consent of the owner of record of such real property to the applicant's proposed business;
- H. A floor plan of the proposed business which illustrates the applicant's compliance with the security provisions outlined in Section 4.58.080;
- I. Proof of compliance with all applicable Federal, State and local licensing and other business laws;
- J. Information relating to every retail license or permit to sell, lease, transfer, purchase or possess firearms or ammunition which was sought by the applicant, or by any individual identified in subsection E of this section, from any jurisdiction in the United States, including, but not limited to, the date of each application and whether it resulted in the issuance of a license, and the date and circumstances of any revocation or suspension;
- K. The applicant's agreement to indemnify, defend and hold harmless the City, its officers, elected officials, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys' fees, arising in any manner out of the negligence or intentional or willful misconduct of (1) the applicant; (2) the applicant's officers, employees, agents and/or supervisors; or (3) if the business is a corporation, partnership or other entity, the officers, directors or partners;
- L. Certification of satisfaction of insurance requirements, for applicants applying for a

permit to sell firearms; and

M. The date, location and nature of all criminal convictions of the applicant, if any, in any jurisdiction in the United States.

4.58.050 Retail Firearm-Ammunition permit—Application fee.

Each application for a Retail Firearm-Ammunition permit shall be accompanied by a nonrefundable fee for administering this chapter as established by resolution of the City Council in the City's master fee schedule.

4.58.060 Investigation of applicant by City.

A. The City shall ~~conduct an investigation~~ evaluate of the applicant and the applicant's employees, agents, and/or supervisors, if any, are authorized by applicable Federal and/or State agencies (i.e. ATF and/or DOJ) to determine ~~for the protection of the public health and safety~~, whether the Retail Firearm-Ammunition permit may be issued or renewed.

B. Prior to engaging in the business of selling, leasing, or otherwise transferring any firearm or ammunition, the applicant must first submit directly to the City:

1. A complete set of the applicant's fingerprints and a signed authorization for release of records pertinent to the investigation;
2. The names, ages and addresses of all individuals identified in Section 4.58.040(E); and
3. A complete set of fingerprints and a signed authorization for release of records pertinent to the investigation for each individual identified in Section 4.58.040(E).

C. Prior to issuance or renewal of the permit, the City shall inspect the premises to ensure compliance with this chapter.

D. The City may grant or renew a Retail Firearm-Ammunition permit if the applicant or permittee is in compliance with this chapter and all other applicable Federal, State and local laws.

4.58.070 Grounds for permit denial or revocation.

A. The City shall deny the issuance or renewal of a Retail Firearm-Ammunition permit, or shall revoke an existing permit, if the operation of the business would not or does not comply with Federal, State or local law, or if any of the following conditions exist:

1. The applicant, or any individual identified in Section 4.58.040(E) who may have authorized access to firearms and/or ammunitions, is under twenty-one years of age;
2. The applicant is not licensed as a dealer in firearms under all applicable Federal, State and local laws;
3. The applicant has failed to fully comply with the application requirements, such as by refusing or failing to provide all of the requested information or refusing to agree to indemnify, defend, and hold harmless the City of Imperial Beach, its elected and appointed officials, officers, and employees, against claims arising from operation of the business;
4. The proposed business/operation is located in any zone other than the

C/MU-1 zone;

5. The proposed business/operation is located within:
 - 500-feet of any school (K-12 grades);
 - 500-feet of any other firearm or ammunition retail sale use; or
 - 100-feet of any park or playground where children assemble.
6. The applicant has made a false or misleading statement of a material fact or omission of a material fact in the application for a Retail Firearm-Ammunition permit, or in any other documents submitted to the Sheriff pursuant to this chapter. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;
7. The applicant, or any individual identified in Section 4.58.040(E), has had a license or permit to sell, lease, transfer, purchase or possess firearms or ammunition from any jurisdiction in the United States revoked, suspended or denied for good cause within the immediately preceding five years;
8. The applicant, or any individual identified in Section 4.58.040(E), has been convicted of:
 - a. An offense which disqualifies that person from owning or possessing a firearm under Federal or California law, including, but not limited to, the offenses listed in Penal Code Sections 29800-29875 and 29900-29905;
 - b. An offense relating to the manufacture, sale, possession or use of a firearm or dangerous or deadly weapon or ammunition therefor;
 - c. An offense involving the use of force or violence upon the person of another;
 - d. An offense involving theft, fraud, dishonesty or deceit; or
 - e. An offense involving the manufacture, sale, possession or use of a controlled substance as defined by the State Health and Safety Code;
9. The applicant is within a class of persons defined in Welfare and Institutions Code Sections 8100 or 8103; or
10. The applicant is currently, or has been within the past five years, an unlawful user of or addicted to a controlled substance as defined by the California Health and Safety Code.

B. The Retail Firearm-Ammunition permit of any person or entity found to be in violation of any of the provisions of this chapter may be revoked.

4.58.080 On-site security requirements.

A. If the proposed or current business location is to be used at least in part for the sale of firearms, the permitted place of business shall be a secure facility within the meaning of Penal Code Section 17110.

B. If the proposed or current business location is to be used at least in part for the sale of firearms, all heating, ventilating, air-conditioning, and service openings shall be secured to meet all applicable State and Federal standards. If bars or metal gratings go on windows or doors, the bars or metal grating shall be located on the inside of the premises.

C. Any time a permittee is not open for business, every firearm shall be stored in a locked fireproof safe or vault in the licensee's business premises that meets the standards for a gun safe implemented by the Attorney General pursuant to Penal Code Section 23650.

D. Any time a permittee is open for business, every firearm shall be unloaded, inaccessible to the public and secured using one of the following three methods, except in the immediate presence of and under the direct supervision of an employee of the permittee:

1. Secured within a locked case so that a customer seeking access to the firearm must ask an employee of the permittee for assistance;
2. Secured behind a counter where only the permittee and the permittee's employees are allowed. During the absence of the permittee or a permittee's employee from the counter, the counter shall be secured with a locked, impenetrable barrier that extends from the floor or counter to the ceiling; or
3. Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

E. Any time a permittee is open for business, all ammunition shall be stored so that it is inaccessible to the public and secured using one of the methods mentioned in subsection (D)(1) or (2) of this section, except in the immediate presence of and under the direct supervision of an employee of the permittee.

F. The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator licensed pursuant to the Alarm Company Act, Business and Professions Code Sections 7590 et seq., or monitored by the business and in compliance with Section 4.58.080. If the~~The~~ alarm system is must be monitored by a central station, the alarm system must be listed by Underwriters Laboratories, Inc. (i.e. UL Listed/Certified), and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a No. 3 extent of protection.

G. The permitted business location shall be monitored by a video surveillance system that meets the following requirements:

1. The system shall include cameras, monitors, digital video recorders and cabling, if necessary;
2. The interior and exterior of the permitted business location shall be monitored. The number and location of the cameras are subject to the approval of the Sheriff. At a

minimum, the cameras shall be sufficient in number and location to monitor the critical areas of the business premises, including, but not limited to, all places where firearms or ammunition are stored, handled, sold, transferred, or carried, including, but not limited to, all counters, safes, vaults, cabinets, cases, entryways, and parking lots. Interior cameras shall be capable of recording the faces of the buyer and recipient of the firearm or ammunition and of the person selling the firearm or ammunition;

3. The video surveillance system shall operate continuously, without interruption, whenever the permittee is open for business. Whenever the permittee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area;

4. In addition, the sale or transfer of a firearm or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible;

5. When recording, the video surveillance system shall record continuously and store color images during daylight hours, and black and white images during nighttime hours with clearly identifiable footage,—of the monitored area at a frequency of not less than fifteen frames per second. The system must produce retrievable and identifiable images and video recordings on media approved by the Sheriff that can be enlarged through projection or other means and can be made a permanent record for use in a criminal investigation. The system must be capable of delineating on playback the activity and physical features of persons or areas within the premises;

6. The stored images shall be maintained on the business premises of the permittee for a period not less than ~~three-one~~ years from the date of recordation and shall be made available for inspection by Federal, State or local law enforcement upon request; and

7. The video surveillance system must be maintained in proper working order at all times. If the system becomes inoperable, it must be repaired or replaced within fourteen calendar days. The permittee must inspect the system at least weekly to ensure that it is operational and images are being recorded and retained as required.

H. Business operating hours shall be limited to seven a.m. to nine p.m., seven days a week.

I. The applicant shall comply with all California laws regulating the sales of firearms and ammunition, including but not limited to Penal Code Sections 26815, 26885, 32000, 32310 and 30363.

J. No outdoor display or sale of firearms or ammunition is allowed by permittee.

K. The permittee shall have a responder with intimate knowledge of onsite inventory and the business operations who shall be available 24 hours daily in the event there is an alarm activation and or a breach of business security. The responder's information shall be routinely updated with the security alarm monitoring company as a resource for law enforcement if they have to respond to the location to investigate an alarm activation or breach of physical security.

L. If necessity warrants additional security measures, as determined by the Sheriff, and in consultation with the business, the Sheriff/City may impose reasonable security requirements in addition to those listed in this section as result of a breach of security and/or safety to the establishment. ~~prior to issuance of the Retail Firearm-Ammunition permit.~~ Failure to fully comply with the requirements of this section shall be sufficient cause for denial or revocation of the Retail Firearm-Ammunition permit by the City.

4.58.090 Liability insurance.

A. If the proposed or current business location is to be used for the sale of firearms, no Retail Firearm-Ammunition permit shall be issued or reissued unless there is in effect a policy of insurance in a form approved by the City and executed by an insurance company approved by the City, insuring the applicant against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business. ~~The policy shall also name the City and its officials, officers, employees and agents as additional insureds.~~ The limits of liability shall not be less than one million dollars for each incident of damage to property or incident of injury or death to a person ~~;~~ ~~provided, however, that increased limits of liability may be required by the City Attorney if deemed necessary.~~

B. The policy of insurance shall contain an endorsement providing that the policy shall not be canceled until written notice has been given to the City Manager at least thirty days prior to the time the cancellation becomes effective.

C. Upon expiration of the policy of insurance, and if no additional insurance is obtained, the Retail Firearm-Ammunition permit is considered revoked without further notice.

4.58.100 Restricted admittance of minors and other prohibited purchasers.

A. Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow the following persons to enter into or remain on the premises unless accompanied by his or her parent or legal guardian:

1. Any person under twenty-one years of age, if the permittee sells, keeps or displays only firearms capable of being concealed on the person; provided, that this provision shall not prevent a supervisory agent or employee who has the authority to control activities on the business premises from keeping a single firearm capable of being concealed on the person on the business premises for purposes of lawful self-defense; or
2. Any person under eighteen years of age, if the permittee sells, keeps or displays firearms other than firearms capable of being concealed on the person.

B. Where firearm sales activity is the primary business performed at the business premises, the permittee and any of his or her agents, employees, or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subsection A of this section by reason of age. Clear evidence of age and identity includes, but is not limited to, a motor vehicle operator's license, a State identification card, an armed forces identification card, or an employment identification

card which contains the bearer's signature, photograph and age, or any similar documentation which provides reasonable assurance of the identity and age of the individual.

C. Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any of his or her agents, employees, or other persons acting under the permittee's authority knows or has reason to know is prohibited from possessing or purchasing firearms pursuant to Federal, State, or local law.

4.58.110 Display of Retail Firearm-Ammunition permit.

The Retail Firearm-Ammunition permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can easily be seen by those entering the premises.

4.58.120 Issuance of Retail Firearm-Ammunition permit—Duration.

A. A Retail Firearm-Ammunition permit expires one year after the date of issuance.

B. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by City Council resolution. Renewal of the permit is contingent upon the permittee's compliance with the terms and conditions of the original application and permit, as detailed in this chapter. Sheriff's Department and/or City personnel shall inspect the permitted business premises for compliance with this chapter prior to renewal of the permit, unless specifically prohibited by Federal or State law. The renewal application and the renewal fee must be received by the Community Development Department no later than forty-five days before the expiration of the current permit.

C. A decision regarding issuance, renewal or revocation of the Retail Firearm-Ammunition permit may be appealed in the manner provided in Section 4.58.190.

4.58.130 Nonassignability.

A Retail Firearm-Ammunition permit issued under this chapter is not assignable. Any attempt to assign a Retail Firearm-Ammunition permit shall result in revocation of the permit.

4.58.140 Compliance by existing business.

A person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition on the effective date of this chapter shall, within ninety days of the effective date, comply with this chapter.

4.58.150 Law enforcement/City inspections.

Permittees shall have their places of business open for inspection by Federal, State and local law enforcement and the City Manager or designee during all hours of operation. The Sheriff and/or City Manager or designee shall conduct periodic inspections of the permittee's place of business without notice to assess the permittee's compliance with this chapter. The inspections shall be of the parts of the permittee's place of business that are used to store or sell firearms, ammunition, records, and/or documents, and accessible to appropriate Federal, State, and/or local law enforcement. The Sheriff and/or City Manager or designee shall conduct no more than two inspections of a single place of business

during any six-month period, except that the Sheriff and/or City Manager or designee may conduct follow-up inspections that exceed two in a six-month period if they have good cause to believe that a permittee is violating this chapter. Permittees shall maintain all records, documents, firearms and ammunition in a manner and place accessible for inspection by appropriate Federal, State and local law enforcement.

4.58.160 Posted warnings.

A. A permittee shall comply with Penal Code Section 26835 and post all signs required by that section and any other signage required by Federal or State law. A permittee shall also post conspicuously the following warnings in block letters not less than one inch in height:

1. Within the licensed premises:

WITH FEW EXCEPTIONS, IT IS A CRIME TO SELL OR GIVE A FIREARM TO SOMEONE WITHOUT COMPLETING A DEALER RECORD OF SALE FORM AT A LICENSED FIREARMS DEALERSHIP;

2. Within the licensed premises:

IF YOU ARE STRUGGLING EMOTIONALLY OR THINKING OF SUICIDE, CALL 1-800-273-TALK (1-800- 273-8255). FREE AND CONFIDENTIAL; and

3. At each entrance to the licensed premises:

THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.

B. If a permittee sells, keeps or displays only firearms capable of being concealed on the person, the permittee shall post conspicuously at each entrance to the premises a sign stating:

FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN.

C. If a permittee sells, keeps or displays firearms other than firearms capable of being concealed on the person, the permittee shall post conspicuously at each entrance to the premises a sign stating:

FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 18 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN.

D. Where firearm sales activity is the primary business performed at the business premises, the permittee shall post conspicuously at each entrance to the premises a sign stating:

FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS PROHIBITED FROM POSSESSING OR PURCHASING FIREARMS PURSUANT TO FEDERAL, STATE, OR LOCAL LAW ARE EXCLUDED.

4.58.170 Violations.

A. The City may revoke the permit of any permittee found to be in violation of any of

the provisions of this chapter.

B. In addition to any other penalty or remedy, the City Attorney may commence a civil action to seek enforcement of these provisions.

4.58.180 Report of permit revocation to Federal and State authorities.

In addition to any other penalty or remedy, the City shall report any person or entity whose Retail Firearm-Ammunition permit is revoked pursuant to this chapter to the Bureau of Firearms of the California Department of Justice and the Bureau of Alcohol, Tobacco, Firearms and Explosives within the U.S. Department of Justice.

4.58.190 Hearing for permit denial or revocation.

A. Within ten days of the City mailing a written denial of an application or mailing a written revocation of a permit, the applicant may appeal by requesting a hearing before the City Manager. The request must be made in writing, setting forth specific grounds for appeal. If the applicant submits a timely request for an appeal, the City Manager shall, within thirty days of receipt of the request, set a time and place for the hearing.

B. The City Manager shall provide a written decision regarding the appeal within fourteen calendar days of the hearing. An applicant may appeal the decision of the City Manager to the City Council pursuant to Chapter 1.16.190.

4.58.200 Severability.

If any section, subsection, sentence or clause of this chapter is for any reason declared unconstitutional, invalid, or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity, or enforceability of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity, or unenforceability of any one or more of its sections, subsections, sentences or clauses.