

August 16, 2023

ITEM TITLE: ORDINANCE NO. 2023-1233 ADOPTING REGULATIONS FOR THE RETAIL SALE OF FIREARMS/AMMUNITION; AND A CEQA EXEMPTION. (0260-38)

ORIGINATING DEPARTMENT:

Community Development

EXECUTIVE SUMMARY:

The City recently received a business license application from a proposed firearms and ammunition retailer looking to locate a storefront retail use in Imperial Beach in the C/MU-1 (General Commercial and Mixed-use) zone on Palm Avenue. The City does not currently have any specific regulations related to firearms or ammunition retail uses. The Council adopted an interim moratorium ordinance related to the retail sale of firearms and ammunition in the City at the June 21, 2023 Council meeting to allow the City time to study the matter further. The interim moratorium ordinance expired on or about August 4, 2023. City Staff studied the matter since the adoption of the interim ordinance. On August 2, 2023, City Council considered the appropriate zoning classification for this use and adopted appropriate reasonable regulations as it relates to this proposed retail use.

RECOMMENDATION:

City Staff recommends that the City Council conduct the second reading and adopt Ordinance No. 2023-1233 by title only.

OPTIONS:

The City Council can also:

- Provide direction to modify the ordinance prior to further consideration by the City Council; or
- Continue the item and provide direction to the City Manager to obtain additional information.

BACKGROUND/ANALYSIS:

The City recently received a business license application from a proposed firearms retailer looking to locate a storefront retail use in Imperial Beach in the C/MU-1 zone on Palm Avenue. Per Imperial Beach Municipal Code (IBMC) sections 4.04.110 and 4.04.130, the business license cannot be issued until the City has determined that the use is in compliance with the City's zoning

laws. The only potentially applicable use in the C/MU-1 zone is general retail use. Otherwise, the City does not specifically regulate the sale of firearms or ammunition. Because there are no specific regulations, a firearm retail establishment may potentially be considered a general retail use.

After consideration of this matter at the June 21, 2023 Council meeting, the City Council adopted an interim moratorium on firearms and ammunition retail use in the City to allow the City time to study the matter further. The interim moratorium expires on or about August 4, 2023 and no extension of that interim moratorium is currently proposed.

On August 2, 2023, the City Council adopted Resolution No. 2023-60, which would allow the retail use in the C/MU-1 zone of the sale of firearms and ammunition if done in compliance with all federal, state, and local laws, then City Staff has drafted some proposed regulations for City Council consideration that would apply to any new businesses approved after the effective date of the ordinance. The draft regulations were prepared after a review of regulations in other cities in California to address security, operational, and locational requirements and a review of Imperial Beach's unique local characteristics and its current zoning laws.

The Second Amendment to the United States Constitution upholds an individual's right to "bear arms." Federal and state laws regulate the sale and possession of firearms. Heightened sensitivity and community concern regarding firearms have prompted federal, state, and local governments to consider options to mitigate gun violence and promote gun safety. As such, various local agencies across California have adopted a variety of regulations on retailers that sell firearms or ammunition. These types of regulations have been upheld by state and federal courts. In California, approximately 105 jurisdictions require firearm dealers to obtain a local license or permit in order to operate. Also, approximately 37 jurisdictions in California require firearm dealers to meet standards for site security and safe storage of inventory that are more rigorous than what is required by California Penal Code sections 26890 and 17110. In addition, approximately 29 jurisdictions in California prohibit firearm dealers from operating within certain distances of "sensitive areas," such as schools and parks.

The City Council considered adopting reasonable regulations with respect to operation of these businesses within the City if the right to acquire firearms is not meaningfully constrained and such regulations are meant to protect public safety. The proposed regulations allow firearms and ammunition retail uses to locate in the C/MU-1 zone which is compatible with the locational restrictions of other similar oriented businesses in the City that require age restrictions for purchase or entry such as cannabis facilities and adult oriented businesses. Based on the size and limited commercial areas in the City, Staff believes this location is reasonable and provides prospective businesses with ample areas to locate a business. The C/MU-1 zone is located along the City's busy commercial corridor and provides a prospective business with the most visible locations in the City. The proposed regulations include buffers from sensitive uses such as schools and parks and other similar retail uses. These buffers are shown on the map in Attachment 5. Additionally, none of these regulations meaningfully restrain a person's right to acquire firearms as there is a Big Five store located less than two miles from the Imperial Beach city limits (before entry onto Interstate 5) that sells firearms and ammunition.

As previously stated, the IBMC does not specifically regulate this type of business although many other unique businesses are specifically regulated in the IBMC with additional licensing and zoning requirements. On August 2, 2023, City Council adopted Resolution No. 2023-60 allowing City Staff to process any business applications that propose this retail use in the C/MU-1 zone.

Additionally, City Council adopted specific operating regulations for such businesses, by adopting urgency Ordinance No. 2023-1232, including Exhibit A which went into effect immediately to protect the health and safety of the residents of the City by implementing immediate reasonable operating regulations. City Council also conducted the first reading and introduction of Ordinance No. 2023-1233, an identical regular ordinance with the same regulations, which goes into effect under the normal first and second reading process and would go into effect 30 days after adoption. Ordinance No. 2023-1233 only requires a majority vote of the Council.

ENVIRONMENTAL DETERMINATION:

Adoption Ordinance No. 2023-1233 is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guideline Section 15183 (Action Consistent with the General Plan and Zoning); Section 15378; and Section 15061(b)(3) (No Significant Environmental Impact).

FISCAL IMPACT:

ATTACHMENTS:

ATT 1 - Ordinance No. 2023-1233

ATT 2 - Exhibit A to both Ordinances (2023-1232 and 2023-1233)

ATT 3 - Map with Buffer Zones