

ATTACHMENT 1

ORDINANCE NO. 2023-1233

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING THE IMPERIAL BEACH MUNICIPAL CODE TO ADD CHAPTER 4.58 FIREARMS AND AMMUNITION RETAIL ESTABLISHMENTS

WHEREAS, government at all levels has a substantial interest in protecting the public with respect to the location and manner of sale or use of firearms and ammunition; and

WHEREAS, under the City's current Municipal Code and zoning ordinance, the sale of firearms or ammunition is not specifically regulated and may be considered as permitted by right in Commercial/Mixed-Use zoning districts; and

WHEREAS, many of the Commercial/Mixed-Use zoning districts include, are adjacent to, or are in close proximity to residential neighborhoods and other uses that include schools, child day care facilities, places of public assembly, community centers, and parks; and

WHEREAS, other California cities have adopted reasonable business and zoning regulations that govern the sale of firearms or ammunition that have been upheld by the courts; and

WHEREAS, additionally, this type of use may be considered a unique use because sales can include both new and used merchandise and can also include private party transactions where a firearm is brought into the store to be transferred between private parties through the firearms license of the storeowner. The sale of ammunition and/or firearms may also be determined to be a sensitive use with respect to the location and operation of any such businesses which require additional requirements similar to other types of retail uses found in the IBMC such as pawn shops, cannabis outlets, smoke shops, and liquor stores which also require additional state and federal licenses to operate; and

WHEREAS, 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 help mitigate gun violence and promote gun safety. As such, various local agencies across California have adopted a variety of reasonable local regulations on retailers that sell firearms or ammunition; and

WHEREAS, the City Council finds and declares that it has concerns about retail establishments that sell firearms or ammunition locating adjacent to neighborhoods and in proximity to schools, parks, and other businesses and seeks to adopt regulations and procedures to ensure the future locations of retail establishments that sell firearms or ammunition do not detrimentally impact the health, safety, and welfare of neighborhoods and other sensitive uses; and

WHEREAS, the City Council finds that given the potential deleterious effect an otherwise lawful but unregulated establishments selling firearms or ammunition can have on other incompatible neighboring uses, adoption of this Ordinance is reasonable and necessary, does not meaningfully constrain the right to acquire firearms, and is meant to protect public health and safety;

and

WHEREAS, in the absence of this Ordinance, the City will not have the authority to review new retail establishment selling firearms or ammunition under the 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, adoption of this ordinance 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).

NOW, THEREFORE, the City Council of the City of Imperial Beach does ordain as follows:

Section 1. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this Ordinance.

Section 2. The Imperial Beach Municipal Code is amended to add Chapter 4.58 Firearms and Ammunition Retail Establishments as set forth in Exhibit "A" to this Ordinance which is incorporated herein by reference.

Section 3. CEQA. The City Council finds that this Ordinance is exempt from the provisions of 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).

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Effective Date. This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Imperial Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code section 36933. Pursuant to its own terms, Ordinance No. 2023-1231 will have expired prior to the effective date of this Ordinance.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California on the 2nd day of August 2023 and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 16th day of August 2023, by the following vote:

AYES:
NOES:
ABSENT:

COUNCILMEMBERS:
COUNCILMEMBERS:
COUNCILMEMBERS:

ATTEST:

PALOMA AGUIRRE, MAYOR

JACQUELINE M. KELLY, MMC
CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON
CITY ATTORNEY

EXHIBIT A to Ordinance 2023-1233