

ORDINANCE NO. 2018-324

AN INTERIM ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW RETAIL USES SELLING FIREARMS

WHEREAS, the Town of Windsor ("Town") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers; and

WHEREAS, Town staff recently received a business license application to sell firearms within Town limits, which application has been processed; and

WHEREAS, currently the Town's Zoning Ordinance does not establish any specific standards, regulations or permitting requirements for the sale of firearms. Staff has determined that the sale of firearms best fits under the category of "sporting goods" or "specialty shops," which uses are allowable "by right" (that is, without discretionary review) as a general retail use in all of the Town's commercial zoning districts, including the Town Center (TC) Zoning District and the Neighborhood Center Commercial (NC) Zoning District; and

WHEREAS, in the absence of a moratorium, the Town does not have adequate authority to consider appropriate health and safety regulations applicable to the retail sales of firearms to safeguard the health safety, and general welfare of the community, prior to retail gun stores locating in the Town; and

WHEREAS, California Government Code Section 65858 authorizes the adoption of interim ordinances as urgency measures to protect the public safety, health, and welfare by prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, other California cities have adopted zoning ordinances and regulations that govern the sales of firearms. The City of Healdsburg, the Town of Los Gatos and the County of Santa Cruz have also adopted moratoria prohibiting new commercial sales of firearms, giving the local agency time to study and design a scheme that most appropriately addresses the needs of the particular agency; and

WHEREAS, enactment of a temporary moratorium on the establishment of new retail uses selling firearms would allow time for staff to research options for regulating the sale of firearms and evaluate possible locational restrictions for the purpose of minimizing safety risks and any blighting or deteriorating effects upon surrounding areas; and

WHEREAS, during the moratorium period, a lawful existing retail firearms establishment would be allowed to continue to operate, but no new retail firearms establishments would be permitted.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals and Additional Findings.

- A. The above recitals are incorporated herein, and each relied upon independently by the Town Council as findings for its adoption of this urgency interim ordinance.
- B. The Town of Windsor Zoning Ordinance does not include adequate regulation concerning the retail sale or use of firearms.
- C. California is among the minority of states that impose licensing requirements on firearms dealers, but the standards are not comprehensive. (See Cal. Cal. Penal Code Sections 26500-26700.)
- 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 California Penal Code requires local jurisdictions to accept applications for firearms dealer licenses, and emphasizes the authority of cities and counties to regulate firearms dealers. (Cal. Penal Code Section 2605.)
- 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. In 2015, 3095 people died from firearm-related injuries in California. In 2014, 2,942 people died from firearm-related injuries in California.¹
- H. Firearms dealers are a high-value target for criminals, and have often been magnets for break-ins, theft, and destruction of property.²
- I. In 2017, the Bureau of Alcohol, Tobacco and Firearms issued a report showing that, between 2015 and 2016, gun thefts from California federally licensed dealers increased by 173.8%. The number of firearms stolen from California licensed dealers increased from 252 in 2015 to 690 in 2016.³
- J. A 2009 study found that guns are often found to have been used for criminal purposes not far from the gun dealer where they were first obtained.⁴
- K. The presence of firearms dealers in the Town's commercial zoning districts may endanger the public, decrease the public's sense of safety, and impact neighboring businesses by

¹ 2015 is the most recent year for which firearms fatality data is available. Centers for Disease Control and Prevention: Wide-ranging Online Data for Epidemiologic Research (WONDER) at <https://wonder.cdc.gov/>.

² According to the Special Agent in Charge of ATF's Sacramento office, "When people break into homes or businesses, guns are often the target. ... [O]f the commodities that we find that people that are involved in criminal activity are looking for, guns are very high on the list." Lynn Walsh, Dave Manoucheri and Mari Payton, *Stolen Guns Fuel Underground Market For Criminals in California*, NBC7 San Diego, Aug. 9, 2016, <http://www.nbcsandiego.com/investigations/Stolen-Guns-Fuel-Underground-Market-For-Criminals-in-California-389352802.html>.

³ See Bureau of Alcohol, Tobacco and Firearms, *Federal Firearms Licensees (FFL) Burglar, and Robbery Statistics - Calendar Year 2015*, available at: <https://www.atf.gov/firearms/docs/report/2015-summary-firearmsreported-lost-and-stolen/download>; Bureau of Alcohol, Tobacco and Firearms, *Federal Firearms Licensees (FFL) Burglary and Robbery Statistics - Calendar Year 2016*, available at: <https://www.atfgovinews/priatf-releases-2016-summary-firearms-reported-lost-and-stolen-ifis>.

⁴ Douglas J. Wiebe et al., *Homicide and Geographic Access to Gun Dealers in the United States*, BMC Public Health 2009, 9:199, at 2, 6, available at <http://www.biomedcentral.com/1471-2458/9/199>.

increasing the risk of criminal activity, such as gun thefts, "smash and grab" robberies, trafficking, and straw buying.

- L. There is a current and immediate threat to public peace, health, welfare, and safety, arising from the potential new retail uses in the Town selling firearms without regulation or consideration of the most appropriate location of such sales.
- M. This moratorium is necessary to prevent irreversible issuance of permits and business licenses and development which could have a detrimental effect on the health and safety of the community.
- N. The Town Council finds it is necessary to adopt this Ordinance pursuant to Government Code Section 65858 in order to protect the public health, welfare and safety of the community.

Section 2. Definitions.

"Firearms" shall mean a gun, pistol, revolver, rifle, shotgun, BB gun, airgun, pellet gun, or any other weapon of similar nature designed to discharge a projectile propelled by the expansion of gas.

Section 3. Imposition of Temporary Moratorium on Retail Sales of Firearms.

The Town Council of the Town of Windsor finds that, in order to best protect the health, safety and welfare of the community of the Town of Windsor, and in accordance with the authority granted to the Town of Windsor under Article XI, Section 7 of the California Constitution and in accordance with California Government Code Section 65858, from and after the effective date of this Ordinance, no business license, variance, conditional 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 Town allowing new retail establishments selling firearms in the Town.

Section 4. Compliance with the California Environmental Quality Act.

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), as it can be seen with certainty that the requested action will not have a significant effect on the environment. The recommended action is part of a larger "project" – adoption of an ordinance updating zoning regulations pertaining to the retail sale of firearms - that will be subject to environmental review in accordance with CEQA Guidelines Sections 15004 and 15352.

Section 5. Severability.

If any provision of this Ordinance is held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase hereof not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 6. Effective Date and Duration.

This Ordinance of the Town of Windsor shall be effective immediately upon its adoption on March 21, 2018, if adopted by at least four-fifths vote of the Town Council, and shall be in effect for 45 days from its adoption unless extended by the Town Council in accordance with Government Code Section 65858.

Section 7. Posting.

The Town Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

PASSED, APPROVED AND ADOPTED this 21st day of March 2018, by the following vote:

AYES:	COUNCILMEMBERS FUDGE, MILLAN, SALMON, VICE MAYOR FOPPOLI AND MAYOR OKREPKE
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	NONE


BRUCE OKREPKE, MAYOR

ATTEST:


MARIA DE LA O, TOWN CLERK