

ORDINANCE NO. 1130-389

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY AMENDING SECTION 31.12 OF ARTICLE 31 OF THE ZONING ORDINANCE AND ADDING ARTICLE 58 TO THE ZONING ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR FIREARMS AND AMMUNITION RETAIL SALE USE AND TO ESTABLISH LOCATIONAL RESTRICTIONS ON SUCH USES

WHEREAS, federal law requires firearm dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”) and to comply with all state and local dealer laws as a condition for retaining their federal licenses; and

WHEREAS, as of March 2023, there were 9,672 individuals federally licensed to sell firearms in California;¹ and

WHEREAS, federal laws are silent regarding many important aspects of the firearm dealer’s business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent, absent state or local regulation) and security requirements during business hours, which are currently inadequate to protect the public safety; and

WHEREAS, California is among a minority of states that impose licensing requirements on firearms dealers, provide for the issuance of local firearms dealer licenses, and emphasize the authority of cities and counties to regulate firearms dealers; and

WHEREAS, under California Constitution Article XI, section 5, charter cities such as the City of Redwood City have reserved powers to regulate with respect to municipal affairs; and

WHEREAS, California Constitution Article XI, section 7 gives cities and counties the power to pass zoning regulations by providing that they “may make and enforce within its limits all police, sanitary, and other ordinances and regulations not in conflict with general laws”; and

WHEREAS, the California Court of Appeal in *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109 reaffirmed that state law authorizes local governments in California to impose additional licensing requirements on firearms dealers; and

WHEREAS, the Ninth Circuit Court of Appeals in *Teixeira v. County of Alameda* (9th Cir. 2017) 873 F.3d 670 upheld a zoning ordinance that imposed conditional use

¹ U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Federal Firearms listings*, at <https://www.atf.gov/firearms/docs/undefined/0323-ffl-list-type-statepdf/download>, (last visited April 24, 2023).

permit requirements for firearms and ammunition retailers and that also prohibited such retail uses within 500 feet of certain sensitive zoning districts or uses (e.g., residential zoning districts, schools, other firearms retailers, and liquor stores), explaining that the Second Amendment does not independently protect retailers' rights to sell firearms and ammunition and that the ordinance did not unconstitutionally infringe on prospective purchasers' Second Amendment rights; and

WHEREAS, the U.S. Supreme Court decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 142 S.Ct. 2111 concerned individuals' rights to possess or carry firearms in public and held that New York's very restrictive licensing requirements for carrying firearms in public violated individuals' Second Amendment rights, but it did not concern zoning regulations for retailer uses or retailer-license requirements; moreover, the concurring opinion noted that state and local governments may lawfully impose objective safety regulations regarding carrying and possessing firearms in public; and

WHEREAS, the U.S. Supreme Court decision in *City of L.A. v. Alameda Books* (2002) 535 U.S. 425, 439-40, which concerned regulations that affected First Amendment rights to free speech, held that local governments enacting zoning laws must be given the chance to "experiment with solutions to admittedly serious problems," even when constitutional rights are at issue; local governments considering an "innovative solution" to reduce crime and other secondary effects "may not have data" to directly prove "the efficacy of [their] proposal[s] because the solution would, by definition, not have been implemented previously"; and

WHEREAS, the California Supreme Court has held, in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, that zoning regulations are presumptively constitutional; and

WHEREAS, the International Association of Chiefs of Police recommends that local governments impose their own licensing requirements on firearms dealers because local requirements can respond to specific community concerns, and local review of licensees provides additional resources to identify and stop corrupt dealers;² and

WHEREAS, a 2009 study, *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities;³ and

² International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* p. 14 (Sept. 2007), available at: <https://www.theiacp.org/sites/default/files/all/a/ACF1875.pdf>, (last visited April 24, 2023).

³ Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, *J. Urb. Health* (July 2009), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273/pdf/11524_2009_Article_9351.pdf (last visited April 24, 2023).

WHEREAS, while California law requires a digital video surveillance system, no federal or California law imposes any other security requirements on firearms dealers during business hours or requires firearms dealers or ammunition sellers to install burglar alarms. California law explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law; and

WHEREAS, no federal or California law prohibits firearms dealers or ammunition sellers from operating in residential neighborhoods or near schools, daycare centers, parks, or other places children frequent, or requires firearms dealers or ammunition sellers to obtain a land use permit; and

WHEREAS, a 2020 study, *Proximity of Gun Stores to High Schools and Student Gun Carrying*, found that the proximity of gun stores to schools is significantly associated with self-reported gun carrying at school;⁴ and

WHEREAS, according to data from Giffords Law Center, as of December 13, 2022, in California:⁵

- 89 cities and 17 counties require firearms dealers to obtain a license or permit.
- 37 cities and four counties require firearms dealers to obtain liability insurance.
- 75 cities and eight counties expressly prohibit firearms dealers from operating as a home occupation.
- 33 cities and five counties prohibit firearms dealers from being located near sensitive areas, such as daycare centers, schools, parks, places of worship, community/recreation centers, and other places children frequent; and

WHEREAS, firearms dealers are considered a high-value target for criminals and have been magnets for break-ins, theft, and destruction of property.⁶ According to the ATF, a total of 4,691 firearms were stolen from gun dealers in 2019.⁷ This number

⁴ Zhang, G., Nakamoto, J., & Wendt, S. (2021). "Proximity of Gun Stores to High Schools and Student Gun Carrying." *Crime & Delinquency*, 67(9), 1381–1403, <https://doi.org/10.1177/001128720902694>, (last visited April 25, 2023.)

⁵ Giffords Law Center to Prevent Gun Violence, *Communities on the Move*, at: <https://giffords.org/lawcenter/report/communities-on-the-move-local-gun-safety-legislation-in-california/>, (last visited April 24, 2023).

⁶ 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>, (last visited April 24, 2023).

⁷ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco and Firearms, *Federal Firearms Licensee Burglary and Robbery Statistics - Calendar Year 2015 – 2019* (Jan. 2020), available at: <https://www.atf.gov/infographics/federal-firearms-licensee-burglary-and-robbery-statistics-calendar-year-2015-2019>, (last visited April 24, 2023).

significantly increased in 2020, with 7,180 guns stolen from FFLs nationwide;⁸ and

WHEREAS, an ATF report revealed that 83 firearms were stolen from California dealers in 2019.⁹ This number more than doubled in 2020, as 229 firearms were stolen from California dealers in 2020;¹⁰ and

WHEREAS, federal and California laws require firearms dealers to report the loss or theft of any firearm within 48 hours of discovery to the local law enforcement agency where the dealer's business premises are located but do not otherwise require dealers to provide inventory reports to local law enforcement agencies; and

WHEREAS, a 2009 study, *Homicide and Geographic Access to Gun Dealers in the United States*, found that gun homicide rates in major cities were higher in areas where firearm dealers were more prevalent.¹¹ The authors analyzed ATF data showing that guns "are often found to have been used for criminal purposes not far from the gun dealer where they were first obtained";¹² and

WHEREAS, in 2020 and 2021, there were numerous reports of robberies or attempted robberies of firearms dealers in California. A sampling of incidents includes:

- Attempted smash-and-grab at Marin County Arms in Novato, CA. One rifle was stolen. March, 2021.¹³
- 29 firearms were stolen from Richardson Tactical in Hayward, CA. June, 2020.¹⁴
- 70 firearms, including 13 pistols, were stolen from Guns, Fishing and Other Stuff in Vacaville, CA. June, 2020.¹⁵

⁸ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, Federal Firearms Licensee (FFL) Theft/Loss Report (Jan. 4, 2021) at <https://www.atf.gov/firearms/docs/undefined/federalfirearmslicenseeffltheftlossreportjan2020-dec2020508pdf/download>, (last visited April 24, 2023).

⁹ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, Federal Firearms Licensee (FFL) Theft/Loss Report (Jan. 2, 2020) at <https://www.atf.gov/file/142186/download>, (last visited April 24, 2023).

¹⁰ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, Federal Firearms Licensee (FFL) Theft/Loss Report (Jan., 2021), <https://www.atf.gov/firearms/docs/undefined/federalfirearmslicenseeffltheftlossreportjan2020-dec2020508pdf/download>, (last visited April 24, 2023).

¹¹ 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>, (last visited April 24, 2023).

¹² *Id.* at 2 (observing that it is "helpful to adopt an urban planning perspective when considering the possibility that [federally-licensed firearms dealers] could be impacting local homicide rates").

¹³ *Car Driven Into Novato Gun Store in Attempted Robbery*, KPIX-CBS, Mar. 4, 2021, <https://sanfrancisco.cbslocal.com/2021/03/04/car-driven-into-novato-gun-store-in-apparent-robbery-attempt/>, (last visited April 24, 2023).

¹⁴ Jake Sheridan, *Amid Bay Area looting, Hayward gun store is robbed of 29 firearms*, LA Times, Jun. 4, 2020, <https://www.latimes.com/california/story/2020-06-04/amid-bay-area-looting-hayward-gun-store-robbed-of-29-firearms>, (last visited April 9, 2023).

¹⁵ Rick Hurd, *Feds Indict Five Bay Area Residents with Stealing 70 Guns from North Bay Gun Store*, East Bay

- Nine “long guns” were stolen from Alex Imports Gun Shop in La Mesa, CA. June, 2020;¹⁶ and

WHEREAS, based on the above evidence, the presence of firearms dealers in residential neighborhoods and sensitive areas may endanger the public (and decrease the public’s sense of safety¹⁷) by increasing the risk of criminal activity, such as gun thefts, “smash-and-grab” robberies, trafficking, and straw buying, as well as violent crime, including gun homicide; and

WHEREAS, the City has a compelling interest in protecting the public health, safety, and welfare of its residents by regulating retail establishments selling firearms or ammunition; and

WHEREAS, on May 2, 2023, the Planning Commission held a duly-noticed public hearing on the proposed zoning ordinance amendments, and on said date, the public hearing was opened, held, and closed, and all interested members of the public were afforded an opportunity to be heard; and

WHEREAS, on July 24, 2023, the City Council held a duly-noticed public hearing on the proposed zoning ordinance amendments and on said date, the public hearing was opened, held, and closed, and all interested members of the public were afforded an opportunity to be heard; and

WHEREAS, the proposed amendments to the Zoning Ordinance would require a conditional use permit for firearms and ammunition retail sale use and establish locational restrictions on such uses (the “Zoning Ordinance Amendments”); and

WHEREAS, at the public hearing, the City Council considered the staff reports, oral and written, and the testimony and materials presented by all those wishing to be heard on the Zoning Ordinance Amendments; and

WHEREAS, the City Council has reviewed and considered the determination under the California Environmental Quality Act (“CEQA”) prior to taking any approval actions.

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

Section 1. Recitals. The recitals set forth above are true and correct and are

Times, Jun. 26, 2020, <https://www.eastbaytimes.com/2020/06/26/feds-indict-five-with-stealing-70-guns-from-bay-area-gun-store/>, (last visited April 24, 2023).

¹⁶ KUSI Newsroom, *\$10,000 Reward for Information on Gun Store Burglary in La Mesa*, KUSI, Jun. 9, 2020, <https://www.kusi.com/10000-reward-for-information-on-gun-store-burglary-in-la-mesa/>, (last visited April 24, 2023).

¹⁷ See *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (law that reduces the “perceived risk from a mass shooting, and mak[es] the public feel safer as a result” provides “a substantial benefit”).

hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. Findings. The City Council hereby finds that the proposed Zoning Ordinance Amendments are in the public interest and consistent with the Redwood City General Plan.

Section 3. Compliance with CEQA. This Ordinance has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines (California Code of Regulations, Title 14, sections 15000 et seq.). The Ordinance is not a project under CEQA Guidelines section 15378 including because it involves organizational or administrative activities that will not result in direct or indirect physical changes in the environment.

Section 4. Amendments to the Zoning Ordinance. The City Council hereby adopts the Zoning Ordinance Amendments as provided in Exhibit "A", amending Section 31.12 (Home Occupations) of Article 31 (Special Use) of the Zoning Ordinance, by adding text shown in underline (example) and deleting the text shown in ~~strikeout (example)~~, and the Zoning Ordinance Amendments in Exhibit "B", adding Article 58 (Firearms and Ammunition Retail Sale Use) to the Zoning Ordinance, attached hereto and incorporated by reference. Wording in brackets ([example]) is informational only and is not to be included in the published ordinance.

Section 5. Severability. If any section, subsection, clause, or phrase of the Zoning Ordinance Amendments is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Zoning Ordinance Amendments. The City Council of the City of Redwood City hereby declares that it would have adopted the Zoning Ordinance Amendments and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 6. Effective Date. The Zoning Ordinance Amendments shall go into effect 30 days following their adoption.

Section 7. The City Clerk shall publish the Zoning Ordinance Amendments in accordance with the provisions of the City Charter.

* * *

EXHIBIT A

[Section 31.12 of Article 31 of the Zoning Ordinance is amended to read as follows]

31.12 - Home Occupations.

- A. **Definition.** Home occupation means a business enterprise that is conducted within a dwelling unit by the residents of the dwelling unit and is incidental to the residential use of the dwelling unit. Examples include cottage food operations, handicrafts, consulting, and home offices for off-site business-activity such as landscaping and instruction. A family childcare home is not considered a home occupation and is regulated separately in Article 39 (Child Care).
- B. **Requirements.** Home occupations are permitted by right in a legal dwelling unit in any zoning district with the following requirements:
1. All business activity occurring at the residence is conducted entirely within a dwelling and is carried on exclusively by the inhabitants.
 2. The use does not change the character of the dwelling or adversely affect the uses permitted in the residential district.
 3. The use creates no significant additional traffic and requires no additional parking spaces.
 4. For all business activity occurring at the residence, no persons are employed other than that necessary for domestic purposes. Employees for off-site business activities shall not assemble at the dwelling.
 5. No indoor or outdoor storage of materials, equipment, or supplies, other than that necessary for domestic purposes, shall exist.
 6. The entrance to the space devoted to such use is from within the building, and no internal or external alterations or construction features not customarily used in dwellings is involved.
- C. **Prohibited Uses.**
1. On-site vehicle repair;
 2. Sexually-oriented businesses;
 3. Animal-related uses;
 4. Firearm and Ammunition Retail Sale Use;
 - 4~~5~~. Any use deemed by the Zoning Administrator to not be incidental to the residential use of the dwelling unit.

EXHIBIT B

[A new Article 58 (Firearms and Ammunition Retail Sale Use) is added to the Zoning Ordinance]

ARTICLE 58- Firearms and Ammunition Retail Sale Use

58.1 - Purpose.

This Article establishes regulations governing Firearms and Ammunition Retail Sale Use, as well as the permitting requirements for such use.

58.2 - Applicability.

This Article shall apply to all retail establishments that engage in Firearms and Ammunition Retail Sale Use.

58.3 - Definitions.

"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 section 921(a)(16) of Title 18 of the United States Code.

"Child Care Center" means a state-licensed facility that provides nonmedical care to children under eighteen (18) years of age on less than a twenty-four (24) hour basis. Child Care Centers include infant centers, extended day care facilities, and school-age Child Care Centers.

"Community Center" means a noncommercial multipurpose meeting and recreational facility typically consisting of one or more meeting or multipurpose rooms, kitchens, and/or outdoor barbecue facilities that are available for use by various groups where the public can gather for social, educational, or recreational activities.

"Courthouse Square" means the public plaza located on Broadway, between Hamilton Street and Middlefield Road, adjacent to the San Mateo County History Museum directly across from the Fox Theater.

"Faith Based Places of Worship" means a property owned or primarily operated by a religious institution that is used for the purpose of regular assembly by members of the institution.

"Family Child Care Home" means a Small Family Child Care Home or a Large Family Child Care Home.

“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 section 921(a)(16) of Title 18 of the United States Code.

“Firearms and Ammunition Retail Sale Use” means any business selling, leasing, or transferring 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, including temporary retail sale uses like gun shows.

“Large Family Child Care Home” means a facility that provides care, protection, and supervision for seven (7) to fourteen (14) children, inclusive, including children under ten (10) years of age who reside at the home, as set forth in Health and Safety Code Section 1597.465 and as defined in implementing State regulations.

“Library” means any City library, including the libraries named as follows as of the adoption of this ordinance: the Redwood City Downtown Library, Fair Oaks Branch Library, Schaberg Branch Library, and Redwood Shores Branch Library.

“Public Park” means all grounds, parks, playgrounds, buildings, and public areas under the jurisdiction of any governmental agency used for park and recreation purposes.

“School” means any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This includes kindergarten, elementary school, middle or junior high school, and senior high school. This definition also includes Cañada College.

“Small Family Child Care Home” means a facility that provides care, protection, and supervision for eight (8) or fewer children, including children under ten (10) years of age who reside at the home, as set forth in Health and Safety Code Section 1597.44 and as defined in implementing State regulations.

“Youth Center” includes any public or private facility that is primarily used to host recreation or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities, and shall have the same meaning as set forth in California Health and Safety Code Section 11353.1.

58.4 - Permitted Firearms and Ammunition Retail Sale Use.

Firearms and Ammunition Retail Sale Use is prohibited except as stated below.

- A. Firearms and Ammunition Retail Sale Use is conditionally permitted as a retail use in any zoning district where the "Retail Sales, General" land use, as defined by Article 2.2, is permitted, subject to Section 58.5 (Minimum Distance Requirements) and the following:
 - 1. A Use Permit, pursuant to the provisions of Article 42 (Use Permits).
 - 2. Law Enforcement Permit, pursuant to the provisions of Municipal Code, Chapter 37, Article III (Law Enforcement Permit for Retail Establishments Selling Firearms or Ammunition).
- B. An approved Use Permit is not effective until a valid Law Enforcement Permit has been issued by the City.

58.5 - Minimum Distance Requirements.

- A. Firearms and Ammunition Retail Sale Use shall not be permitted within six hundred (600) feet of any of the following, whether existing or entitled, as defined in Section 58.3:
 - 1. Schools
 - 2. Public Parks
 - 3. Youth Centers
 - 4. Child Care Centers
 - 5. Family Child Care Homes (to the extent such facilities self-identify themselves to the City prior to or during the public hearing for consideration of a Use Permit)
 - 6. Libraries
 - 7. Community Centers
 - 8. Faith Based Places of Worship
 - 9. Courthouse Square
- B. Firearms and Ammunitions Retail Sale Use shall not be permitted within one thousand (1,000) feet from another retail establishment selling Firearms or Ammunition.
- C. Measurement of Distance. Notwithstanding any other provision in the Zoning Ordinance of the Redwood City to the contrary, the required minimum distance is measured horizontally in a straight line from the closest property line of the protected use to the closest property line of the lot containing the Firearms and Ammunition Retail Sale Use.

58.6 - Public Notice Requirement.

In addition to providing legally required notice under state law, public notice of a Use Permit application for a Firearms and Ammunition Retail Sale Use shall be provided to all properties within six hundred (600) feet of the proposed Firearms and Ammunition Retail Sale Use location.

58.7 - Violation—Penalty.

- A. Any person found to be in violation of any provision of this Article shall be subject to the enforcement remedies set forth in Article 50 of this Zoning Ordinance.
- B. Each violation of this Article and each day of violation of this Article shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in Subsection A of this section for each and every separate violation and each and every day of violation.

58.8 - Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this Article shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Article 50 of this Zoning Ordinance.

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At a Joint City Council/Successor Agency Board/Public Financing
Authority Meeting thereof held on the 28th day of August 2023 by the following
votes:

AYES, and in favor of the passage and adoption of the foregoing ordinance:

AYES: Aguirre, Eakin, Howard, Martinez Saballos, Sturken, Vice Mayor
Espinoza-Garnica, and Mayor Gee
NOES: None
ABSENT: None
ABSTAINED: None
RECUSED: None



Jeff Gee
Mayor of the City of Redwood City

Attest:



Yessika Castro, CMC, CPMC
Interim City Clerk of Redwood City

I hereby approve the foregoing Ordinance
this 29th day of August 2023.



Jeff Gee
Mayor of the City of Redwood City