



COUNTY OF SANTA CRUZ

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Dwight L. Herr

AGENDA: February 12, 2013

January 30, 2013

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Re: PROPOSED EXTENSION OF TEMPORARY MORATORIUM
PROHIBITING THE ESTABLISHMENT OF NEW COMMERCIAL
OPERATIONS ENGAGED IN THE SALE OF FIREARMS AND/OR
AMMUNITION WITHIN THE UNINCORPORATED AREA OF THE
COUNTY OF SANTA CRUZ

Dear Members of the Board:

On January 15, 2013, Supervisor Leopold proposed and your Board adopted Ordinance No. 5146 on an urgency basis, establishing a temporary moratorium on the establishment of new commercial operations engaged in the sale of firearms and/or ammunition within the unincorporated area of the County of Santa Cruz. Under State law, an initial moratorium period is limited to 45 days. Staff was directed to evaluate the need for additional regulations and report back to your Board on this date with a recommendation on whether to extend the moratorium.

This Office has been working with representatives of the County Administrative Office, the Sheriff's Department and the Planning Department to study the issues involved and determine what local regulatory oversight may be appropriate.

Local governments are expressly authorized under state law to regulate firearms dealers (California Penal Code section 26705; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109.) Furthermore, the United States Supreme Court ruled in *District of Columbia v. Heller* (2008) 554 U.S. 570, that laws imposing conditions on the commercial sale of firearms are "presumptively lawful" under the Second Amendment to

the United States Constitution. Many local California cities and counties have enacted ordinances regulating firearms dealers, including locally the cities of Santa Cruz and Capitola.

As was reported on January 15th, the County does not currently license businesses that sell firearms, nor are such businesses expressly regulated under our zoning and land use regulations. There are currently thirteen firearms dealers licensed by the State and Federal government located within the unincorporated area. Staff is in the process of preparing a draft ordinance that would impose a requirement that firearms dealers obtain a license or some form of registration with the County. We are also evaluating site and locational standards which may be applied to such operations.

While it was not possible to finalize a recommendation for your Board to take action on today, staff anticipates being able to return by March 5th with a proposed ordinance. To allow the time necessary to complete this work, give time for your Board's consideration on the matter, and any time necessary for any adopted regulations to go into effect, it is recommended that your Board act today to extend the current moratorium. As previously stated, staff intends to return by March 5th, however, state law provides that the extension period for a moratorium following its initial period of forty-five days shall be ten months and fifteen days. When this matter returns for your consideration, it will also include appropriate measures to coordinate the end of the moratorium with any final actions your Board may take.

IT IS THEREFORE RECOMMENDED that your Board consider:

1. Adopting the attached Interim Ordinance Extending a Temporary Moratorium on the Establishment of Commercial Operations Engaged in the Sale of Firearms and/or Ammunition within the Unincorporated Area of the County of Santa Cruz; and
2. Direct staff to return on or before March 5, 2013, with a report and/or recommended actions to address the regulation of firearms dealers.

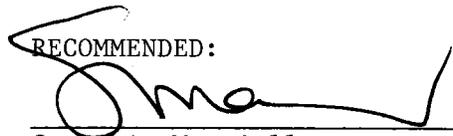
Yours truly,



DANA MCRAE, COUNTY COUNSEL

cc: Sheriff-Coroner
County Administrative Officer
Planning Director

RECOMMENDED:



Susan A. Mauriello
County Administrative Officer

ORDINANCE NO. _____

**AN INTERIM ORDINANCE OF THE COUNTY OF SANTA CRUZ
EXTENDING A TEMPORARY MORATORIUM ON THE
ESTABLISHMENT OF COMMERCIAL OPERATIONS ENGAGED IN
THE SALE OF FIREARMS AND/OR AMMUNITION WITHIN THE
UNINCORPORATED AREA OF SANTA CRUZ COUNTY AND
DECLARING THE URGENCY THEREOF**

The Board of Supervisors of the County of Santa Cruz find as follows:

WHEREAS, the sale of firearms and/or ammunition has raised the following public health, safety or welfare concerns: safety of residents in close proximity to such sales; negative influence of such sales on children; possible increase in violence or criminals in close proximity to such sales; sufficiency of federal and state inspections (if applicable); and the safe storage of ammunition offered for sale; and

WHEREAS, the sale of firearms and/or ammunition would be classified as a commercial use under the Zoning Ordinance of Santa Cruz County; and

WHEREAS, the Zoning Ordinance is currently silent with regard to the sale of firearms and/or ammunition; and

WHEREAS, Article XI, Section 7 of the California Constitution permits a county to make and enforce all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 65858, subdivision (a), provides: that legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths (4/5) vote of the legislative body; that such measures shall be of no effect forty-five (45) days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of two (2) years; and

WHEREAS, California Government Code Section 65858, subdivision (c), provides: that legislative bodies may not adopt or extend such ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

WHEREAS, the Board of Supervisors desires to (1) address the community concerns regarding the establishment and operation of firearm and/or ammunition sales businesses located in the unincorporated areas of the County of Santa Cruz, (2) evaluate the adjacent city's regulation of such ammunition and/or firearm sales, (3) study the potential impacts that firearm and/or ammunition sales may have on the public health, safety and welfare, (4) study and determine what local regulations may be appropriate or necessary for firearms and/or ammunition sales, (5) study and determine the appropriate zoning and location for businesses engaging in ammunition and/or firearm sales, and (6) determine appropriate controls for protection of public health and welfare; and

WHEREAS, on January 15, 2013, the Board of Supervisors adopted Ordinance No. 5146 on an urgency basis, establishing a temporary moratorium on the establishment of new commercial operations engaged in the sale of firearms and/or ammunition within the unincorporated area of the County of Santa Cruz; and

WHEREAS, staff requires additional time to study the issues related to the establishment and operation of firearm and/or ammunition sales businesses for the purpose of considering possible regulatory changes; therefore it is appropriate to extend the existing moratorium for an additional period of ten (10) months fifteen (15) days consistent with the authority granted by Government Code Section 65858.

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this Ordinance is exempt from CEQA based on the following:

(1) This Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the County pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

NOW, THEREFORE BE IT ORDAINED by the Board of Supervisors of the County of Santa Cruz as follows:

SECTION I

Incorporation of Recitals. The Board of Supervisors finds that all of the above Recitals are true and correct and are incorporated herein by reference.

SECTION II

Moratorium Imposed. In accordance with the authority granted the County of Santa Cruz under Article XI, Section 7 of the California Constitution, and California Government Code section 65858, from and after the effective date of this Ordinance and continuing for a ten (10) month and fifteen (15) day period, no person shall establish a commercial operation engaged in the sale of firearms and/or ammunition within the unincorporated area of the County of Santa Cruz. The establishment of a commercial operation engaged in the sale of firearms and/or ammunition is hereby expressly prohibited.

SECTION III

Authority; Urgency Statement. This Ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code section 65858, and is for the immediate preservation of the public welfare. The facts constituting an urgency and a current and immediate threat to the public health, safety and welfare are these: considerable uncertainty exists as to whether the operation of firearms and ammunition sales businesses within the unincorporated area of the County of Santa Cruz is in conformance with the General Plan and the Zoning Ordinance and whether they may be hazardous to the public health, safety and welfare. Until County staff completes its research on this matter, this uncertainty will remain. The granting of land use entitlements for uses that are inconsistent with the Zoning Ordinance or General Plan is contrary to state law. Absent the adoption of this urgency Ordinance, this uncertainty will continue and negatively impact the public welfare, safety and health. As a result of this threat to the public welfare, safety and health, it is necessary to extend the temporarily moratorium for an additional period of ten (10) month and fifteen (15) day on the granting of any land use entitlement allowing the establishment of a commercial operation engaged in the sale of firearms and/or ammunition.

SECTION IV

Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every 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 or invalid.

SECTION V

Effective Date and Duration. This Ordinance shall become effective immediately upon adoption by at least four-fifths (4/5) vote of the Board of Supervisors and shall be in effect for ten (10) months and fifteen (15) days from February 12, 2013.

PASSED AND ADOPTED THIS _____ day of _____, 2013, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:



County Counsel

Distribution: County Administrative Officer
Planning Department
County Sheriff

Alicia Murillo

From: cdbosmail@co.santa-cruz.ca.us
Sent: Monday, February 11, 2013 3:17 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 2/12/2013

Item Number : 55

Name : Mike lelieur

Email : mlelieur2003@yahoo.com

Address : 560 30th ave

Phone : Not Supplied

Comments :

I attended last discussion of this temporary moratorium and even spoke to the Board my feelings on this matter. We have had gun shops in Santa Cruz county for years. Would adding another hurt anyone? No of course not. We already have the strictest gun laws of any state. Gun shops in our county and elsewhere in the state have to follow state and federal law. I still believe this is a knee jerk reaction to the Sandy hook traged y. The board is big on shop local, buy local. I would rather spend my money in Live Oak, were I live, for ammo and supplies, then spend it in Capitola or over the hill.

Please do not continue the moratorium and let the small business owner open his shop. we do need the tax money dont we????

Alicia Murillo

From: cdbbosmail@co.santa-cruz.ca.us
Sent: Tuesday, February 12, 2013 12:50 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 2/12/2013

Item Number : 55

Name : Theodora Kerry

Email : thekerry@comcast.net

Address : Not Supplied

Phone : Not Supplied

Comments :

As many of us suspected, the 45 day moratorium on gun shops is now being expanded to an extra 10 months. Shall we also assume that due to the zoning staff's likely inability to figure out appropriate zoning conditions within that 10 month period, the ordinance will ultimately be extended to the full 2 years allowed under current law? For that reason, I'm urging you to say no to extending this moratorium.