

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
AMENDING CHAPTER 36 (ZONING) OF THE MOUNTAIN VIEW CITY CODE TO
ADD FIREARMS AND AMMUNITION RETAILING AS A PROHIBITED HOME OCCUPATION USE

WHEREAS, firearm injuries and fatalities have reached alarming and unacceptable proportions nationally, in the State of California, and locally; and

WHEREAS, according to the United States Centers for Disease Control and Prevention, 45,222 lives were lost to firearms in 2020; and

WHEREAS, between 2016 and 2021, an average of 3,232 people died from firearm-related injuries in California a year. According to the California Department of Public Health's online injury data center (EpiCenter), between 2016 and 2021, there were 20,746 non-fatal hospitalizations and an additional 28,894 emergency department visits from firearm-related injuries; and

WHEREAS, in 2021, 1,863 homicides were committed with a firearm in California, comprising 74.6% of all homicides committed that year, and 209 of those homicide victims were 19 years of age or less; and

WHEREAS, regulation of the sale, transfer, lease, or offer for sale or lease of firearms or ammunition is necessary to protect the public health, safety, and welfare, and Federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect public safety; and

WHEREAS, as of March 10, 2023, there were 9,672 individuals federally licensed to sell firearms in California ("FFLs"); and

WHEREAS, 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; and

WHEREAS, FFLs are required by Federal law to comply with all State and local dealer laws as a condition for retaining their Federal licenses; and

WHEREAS, firearms dealers may attract individuals engaged in criminal activity to the communities in which they are located; and

WHEREAS, the Federal government is not constitutionally authorized to regulate many important aspects of the dealer's business, such as its location (leaving dealers free to operate

out of their homes and near schools and other places children frequent), and Federal law does not currently regulate security requirements for FFLs during business hours; and

WHEREAS, an investigation by *USA TODAY* and The Trace from May 28, 2021, estimates that home dealers comprise around 60% of FFLs; and

WHEREAS, the Constitution of the United States affords certain protections to the ownership of firearms, and the United States Supreme Court has recognized that the Constitutional protections related to firearms ownership are not unlimited and can be subject to certain types of governmental regulations; and

WHEREAS, a city's police power includes the power to regulate individuals and businesses that seek to operate within its jurisdiction, including those who are engaged in the dealing or selling of firearms; and

WHEREAS, Article XI, § 7 of the California Constitution 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 City Council wishes to amend Chapter 36 (Zoning Ordinance) of the City Code to prohibit the sale, lease, or transfer of firearms and ammunition as a home occupation use pursuant to direction from the City Council; and

WHEREAS, Chapter 36 of the Mountain View City Code requires both the City's Environmental Planning Commission and the City Council to hold a duly noticed public hearing regarding any proposed amendment(s) to Chapter 36; and

WHEREAS, the Environmental Planning Commission held a public hearing on August 16, 2023, on Zoning Text Amendments to effectuate Council's direction pursuant to Section 36.52.65; and

WHEREAS, the City Council held a public hearing on September 12, 2023 on the amendments to the Zoning Ordinance, and considered all information, documents, and comments presented at said hearing, including the recommendation from the Environmental Planning Commission, the Council report, and staff presentation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 36, Article IX, Division 11, Section 36.28.90, is hereby amended as set forth below (section titles are shown in **bold** font, deletions are shown by ~~striketrough~~, and additions are shown in red underline).

Section 2. Code Amendments.

Chapter 36, Article IX, Division 11, Section 36.28.90 of the Mountain View City Code is hereby amended as follows.

“SEC. 36.28.90. - Prohibited home occupation uses.

The following uses are found to be not incidental to or compatible with residential activities, and are, therefore, prohibited as home occupations:

- a. Adult entertainment establishments;
- b. Dance or night clubs;
- c. Medical services (not including chiropractors and counselors/psychotherapists);
- d. Mini-storage;
- e. Storage of equipment, materials and other accessories for the construction and service trades;
- f. Vehicle repair (body or mechanical), upholstery, automobile detailing and painting;
- g. Welding and machining;
- h. On-site dining for cottage food operations;
- i. Cannabis businesses; ~~and~~
- j. Sale, lease, delivery, transfer, commercial storage or commercial bailment of firearms or ammunition; and

~~j.k.~~ Any other use determined by the zoning administrator not to be incidental to or compatible with residential activities.”

Section 3. CEQA. This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

Section 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity

of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance 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 5. Publication. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 6. Effective Date. Pursuant to Mountain View City Charter section 519, this ordinance shall become effective thirty (30) days after the date of its adoption.

Section 7. Amortization Period. All firearms dealers possessing a current Mountain View business license for the sale of firearms and ammunition from their residence are required to cease operations within one (1) year of the effective date of this ordinance.

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