

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS
EXTENDING URGENCY ORDINANCE 1526 PURSUANT TO GOVERNMENT CODE
SECTION 65858(a) IMPOSING A MORATORIUM ON RETAIL ESTABLISHMENTS SELLING
AMMUNITION OR FIREARMS, AS DEFINED IN MUNICIPAL CODE SECTION 9.24.010 IN
THE CITY OF SAN CARLOS FOR TEN MONTHS AND FIFTEEN DAYS.**

IT IS ORDAINED by the City Council of the City of San Carlos as follows:

SECTION 1:

WHEREAS, Government at all levels has a substantial interest in protecting the people from those who acquire guns lawfully or illegally and then use them to commit crimes resulting in injury or death of their victims or who use them in the commission of other coercive crimes such as robbery, sexual assault or homicide including recent events in Las Vegas, Nevada, and Sutherland Springs, Texas, as well as the many other mass homicides over the past several years; and

WHEREAS, on October 23, 2017, the City Council received extensive public comments on the issue of whether the City should consider adopting regulations concerning the business operations and sales of ammunition and firearms. At the conclusion of the public comment, the City Council directed City staff to bring forward a moratorium for consideration to enable study of the issues raised by the community during the Council meeting; and

WHEREAS, the City Council, at its November 13, 2017 meeting, voted to adopt Urgency Ordinance 1526 imposing a 45-day moratorium on retail establishments selling ammunition or firearms after receiving lengthy and detailed public correspondence and over three hours of public comment raising concerns about the absence of local zoning and health and safety regulations of retail establishments, the effect on public safety, concerns about security at such establishments and that they have been a target for criminal activity in San Carlos and elsewhere; and

WHEREAS, after conducting a three-hour public comment session, the City Council adopted the Urgency Ordinance imposing a moratorium. San Carlos residents and members of the City Council expressed concern that a new retail store whose business includes selling firearms may open a location in San Carlos. Over 300 residents and interested persons attended the meeting and over 100 persons spoke, with a large majority expressing support for the moratorium and expressing concerns about the safety and security of retail establishments that sell firearms and ammunition. Members of the City Council expressed concerns as well, pointing to histories of burglaries at local retail establishments selling firearms and ammunition and burglaries and armed robberies of Turner Outdoorsman stores in other communities. Turner Outdoorsman has not received any building permits for demolition or remodeling of the proposed location; and

WHEREAS, the City Council made appropriate findings at its November 13, 2017 meeting in adopting the Urgency Ordinance imposing the moratorium; and

WHEREAS, the Urgency Ordinance was adopted on November 13, 2017, and there has been insufficient time for the City Council to fully explore and describe measures taken to alleviate the conditions which led to the adoption of the Ordinance; and

WHEREAS, without an extension of the moratorium, a new retail establishment selling ammunition or firearms could obtain a business registration and building permits in the City in a short period of time; and

WHEREAS, other California cities have adopted zoning ordinances and business regulations that govern the sales of ammunition and firearms. The Town of Boulder Creek, Town of Los Gatos and the County of Santa Cruz all adopted moratoria on an urgency basis prohibiting new commercial sales of ammunition and firearms.

WHEREAS, the City Council finds that it is necessary for the City staff, Planning Commission and City Council to study and develop regulations within a reasonable time regarding new retail establishments selling ammunition or firearms in San Carlos; and

WHEREAS, the City has existing retail establishments that sell ammunition and firearms and additional inquiries have been made regarding applications for new retail firearm establishments selling ammunition or firearms in the city near public and private school facilities and other businesses that cater to children; and

WHEREAS, the City Council finds and declares that it has questions about additional retail establishments that sell ammunition and firearms and the appropriate land use regulations and zoning for such establishments; and

WHEREAS, as made clear by the hours of public testimony, the public and residents of San Carlos have concerns about the lack of zoning and health and safety regulations of new and existing retail establishments selling firearms or ammunition in the city; and

WHEREAS, in the absence of the extension of the moratorium, there is no way to consider the appropriate location of retail establishments that sell ammunition and firearms, and where such establishments could be appropriately located in the city, and the nature and extent of health and safety regulations that should be imposed on such businesses due to the nature of the products they sell; and

WHEREAS, in the absence of a moratorium, the City will not have the authority to review new retail establishments selling ammunition or firearms under the City's 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, the City Council directs City staff to review, develop and propose for review by the Planning Commission and adoption by the City Council, an ordinance for appropriate zoning of retail establishments selling ammunition or firearms.

SECTION 2: Purpose and Findings.

- A. The above recitals are incorporated herein, and each relied upon independently by the City Council as findings for its adoption of this urgency interim ordinance.
- B. The City of San Carlos Zoning Ordinance does not currently include zoning or other regulations concerning the retail sale of ammunition or firearms.
- C. The City Council finds that there is a current and immediate threat to the public peace, health, welfare and safety, specifically including possible permanent damage to the City's aesthetic, health, safety and economic interests arising from the potential new retail uses selling ammunition or firearms considering the circumstances and effect such development would have on the City.
- D. The City Council finds that it is necessary to adopt this Ordinance pursuant to Government Code Section 65858(a) to extend Urgency Ordinance 1526 to protect the public health, welfare and safety.
- E. City staff needs time to analyze the current Zoning Ordinance with respect to retail ammunition and firearms establishments in the city and possibly recommend changes providing for orderly review of retail establishments selling ammunition or firearms with appropriate public review. The citizens of San Carlos will be well-served if the City more fully addresses the potential impacts of retail establishments selling ammunition or firearms on health, safety, economic sustainability and aesthetics in the downtown core, other zoning districts and the community as a whole, the impacts of a new firearms and ammunition businesses in the City, including the safety of the public at large and other health, safety and welfare impacts.
- F. The most appropriate way to ensure public review is to enact a moratorium while the issue of the appropriate zoning and health and safety regulations are studied for future consideration by the Planning Commission and City Council.
- G. There is an immediate need to prevent new retail establishments selling ammunition or firearms prior to the City completing such planning review.
- H. This moratorium is necessary to prevent irreversible approval of permits and development and the health and safety impacts identified herein.
- I. Residents and the public have expressed concerns about the safety and security of retail establishments that sell firearms and ammunition. Members of the City Council expressed concerns and pointed to histories of burglaries at local retail establishments selling firearms and ammunition and burglaries and armed robberies of such retail establishments in other communities.
- J. The City Council finds that the protection of the health, safety and welfare, and specifically the City's and the public's interests in the City's aesthetic, economic sustainability and safety arising from retail establishments selling ammunition or firearms, will not be subject to public hearing and review by the Planning Commission for compatibility with the City's General Plan and will not take into account the circumstances and effect such retail establishments selling ammunition or firearms being approved could have on the City until additional staff and Planning Commission review has been completed and any necessary zoning and municipal code revisions have been adopted by the San Carlos City Council

SECTION 3: The City Council does hereby, pursuant to Government Code Section 65858(a), extend Ordinance 1526 that imposed a forty-five day moratorium for ten months and fifteen days prohibiting new retail establishments selling ammunition or firearms. For the reasons set forth in the legislative findings, this Ordinance is declared to be an urgency ordinance intended to preserve the public peace, health and safety and is adopted as such pursuant to California Government Code Section 36937. This Ordinance shall take effect immediately on expiration of the initial forty-five day urgency ordinance. Ten (10) days prior to the expiration of this Ordinance or any extension thereof, the City Council shall issue a written report describing the measures that have been taken to study the relevant issues and to establish policies and regulations regarding retail sales of ammunition or firearms within the city.

SECTION 4: Environmental Analysis. This Ordinance is exempt from review under the California Environmental Quality Act (CEQA), pursuant to Sections 15060(c)(2), 15060(c)(3), and 15601(b)(3), because the proposal will not result in a direct or reasonably foreseeable indirect physical change in the environment, and only directs that a planning study be undertaken. The Ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA Guidelines. This Ordinance is a regulatory action taken by the City in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the completion of contemplated Zoning Ordinance revisions.

SECTION 5: For purposes of this Ordinance, “firearms” shall be defined as provided in San Carlos Municipal Code Section 9.24.010.

SECTION 6: Pending applications. As to applications for permits for a new retail firearm or ammunition stores in the city, which have been accepted as complete, processing and review of such applications may continue, but shall not be finally approved during the pendency of this Ordinance or any extensions thereof.

SECTION 7: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Carlos hereby declares that it would have adopted this Ordinance and such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 8: This is an Urgency Ordinance and requires a 4/5 vote of approval of all of the members of the City Council and goes into effect immediately upon its adoption.

SECTION 9: A public hearing was held on November 27, 2017, before the City Council pursuant to the requirements of Government Code Section 65858(a).

SECTION 10: This Urgency Ordinance shall be published once within fifteen (15) days of its adoption in accordance with Government Code Section 36933.

AYES, COUNCIL MEMBERS: _____

NOES, COUNCIL MEMBERS: _____

ABSENT, COUNCIL MEMBERS: _____

ABSTAIN COUNCIL MEMBERS: _____

CITY CLERK of the City of San Carlos

APPROVED:

MAYOR of the City of San Carlos