

ORDINANCE NO. 10.2023

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
AMENDING CHAPTER 18 OF THE MOUNTAIN VIEW CITY CODE TO ADD ARTICLE II
“FIREARM DEALERS” TO IMPOSE LOCAL PERMIT REQUIREMENTS ON FIREARMS DEALERS
OPERATING WITHIN THE CITY OF MOUNTAIN VIEW

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

WHEREAS, according to Gun Violence Archive (www.gunviolencearchive.org), to date, there has been more than 30 mass shootings in California in 2023; and

WHEREAS, according to provisional data from the Centers for Disease Control and Prevention, there were 48,117 firearm-related deaths in the United States in 2022; and

WHEREAS, according to the California Department of Public Health’s online injury data center (EpiCenter), in 2021, 3,578 people died from firearm-related injuries in California and there were 4,214 non-fatal hospitalizations and an additional 6,061 emergency department visits; and

WHEREAS, according to EpiCenter, 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 old or younger; and

WHEREAS, regulation of the sale, transfer, or lease of firearms and ammunition is necessary to protect the public health, safety, and welfare; and current federal regulation of firearm and ammunition dealers is not sufficient to protect Mountain View residents; and

WHEREAS, although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosive (“ATF”), ATF does not have the resources to oversee the nearly 134,000 firearms dealers, manufacturers, collectors, and others that it licenses (“FFLs”); and

WHEREAS, ATF faces numerous obstacles that limit its ability to enforce the law; for example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for ATF’s prosecution and revocation of licenses is extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed; and

WHEREAS, as a result of inadequate staffing, ATF has been unable to inspect the majority of all FFL dealers for the last decade, inspecting just 15% of active dealers annually between 2010 and 2019, which averages to one visit every seven years. Despite massive surges in gun sales during

the COVID-19 pandemic in the US, the number of FFLs inspected decreased to a historic low of less than 6% of active licensees in 2020; and

WHEREAS, in 2004, the Office of the Inspector General found that inspections by ATF are not fully effective for ensuring that FFLs comply with federal firearms laws; and

WHEREAS, federal laws are silent regarding 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 security requirements during business hours; and

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

WHEREAS, California Penal Code section 26705 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, violence in neighborhoods around schools continues to be a major public health problem among students; and

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

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

WHEREAS, in order to ensure that any victims who are injured by a firearms dealer's negligence or other conduct receive the compensation to which they are legally entitled, firearms dealers should obtain adequate insurance policies; and

WHEREAS, the Constitution of the United States afford certain protections to the ownership of firearms, and the United States Supreme Court has recognized that the Constitutional protections related to firearm 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;

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

SECTION 1. Chapter 18 of the Mountain View City Code is hereby amended to add Article II as set forth below (section titles are shown in **bold** font, deletions are shown by ~~striketrough~~, and additions are shown in underline).

SECTION 2. Code Amendments.

Chapter 18, Article II of the Mountain View City Code shall read as follows.

ARTICLE II.
FIREARM DEALERS.

SEC. 18.30. - Definitions.

As used in this Article,

“Ammunition” means projectiles, cartridge cases, primers, bullets, or propellant powder designed for use in any Firearm, and any component thereof, but shall not include blanks or ammunition that can be used only in an “antique firearm” as that term is defined by section 921(a)(16) of Title 18 of the United States Code.

“Applicant” means any Person who applies pursuant to this Article for a new permit or for the renewal of an existing permit to sell, lease, or transfer Firearms or Ammunition in the City of Mountain View.

“Chief of Police” means the City of Mountain View police chief, or their designee.

“City” means the City of Mountain View.

“Engaged in the Business” means to conduct a business by the selling, leasing, or transferring of any Firearm or Ammunition, or to hold one’s self out as engaged in the business of selling, leasing, or 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.

“Firearm” means any gun, pistol, revolver, rifle or other device, designed or modified to be used as a weapon, from which a projectile is expelled by the force of an explosion or other form of combustion, and any device defined as a firearm by the California Penal Code as said definition(s) now reads or may hereafter by amended to read. The term “Firearm” shall not include an “antique firearm” as that term is defined by section 921(a)(16) of Title 18 of the United States Code.

“Firearm Dealer” means any Person Engaged in the Business of selling, leasing or transferring or offering for sale, lease or transfer any Firearm or Ammunition.

“Permittee” means any Person Engaged in the Business of selling, leasing, or transferring any Firearm or Ammunition who has obtained a permit pursuant to this Article to sell, lease, or transfer Firearms or Ammunition within the City of Mountain View.

“Person” means any natural person, partnership, company, corporation, association, firm, trust, or other entity.

SEC. 18.35. – Permit required.

It shall be unlawful for any Person to Engage in the Business of selling, leasing or transferring any Firearm or Ammunition within the City without first obtaining a permit pursuant to this Article.

SEC. 18.40. – Application.

A. All Firearm Dealers operating within the City shall file with the Chief of Police a written application for a permit, signed under penalty of perjury, on a form to be furnished by the City. The Applicant shall provide all information and documentation necessary to determine eligibility for the permit, including, but not limited to, the following:

1. The Applicant’s name, including any aliases or prior names, date of birth and address;
2. The Applicant’s federal firearms license and California firearms dealer numbers, if any;
3. The business name and street address for which the permit is sought, together with the name of any Person, as that term is defined above, that has any ownership interest in, or control over the business;
4. The name, age and address of every natural person who will have access to or control of any Firearms or Ammunition displayed, kept, stored, or sold at the location for which the permit is sought, including but not limited to, all owners, employees, and agents of the business, if any;
5. A certificate of eligibility from the California Department of Justice under California Penal Code section 26710, or any successor provision of state law, for every natural person who will have access to or control of the Firearms or Ammunition displayed, kept, stored, or sold at the location for which the permit is sought, including but not limited to, all owners, employees, and agents of the business, if any;
6. Proof of a possessory interest in the property at which the business will be conducted, as owner, lessee or other legal occupant, and, if the Applicant is not the owner of record of the real property upon which the business is or will be located and

- conducted, the written consent of the owner of record of said real property for operation of the business on said property;
7. Proof of compliance with all applicable federal, state and local licensing laws and regulations;
8. Information relating to every license or permit to sell, lease, transfer, purchase or possess Firearms or Ammunition sought by the Applicant from any jurisdiction within the United States, including but not limited to, the date of each application, whether the application was approved or denied, and the date and circumstances of any revocation or suspension of any previously approved license or permit;
9. The date, location and nature of Applicant's criminal convictions for the following offenses, if any, in any jurisdiction in the United States:
- a. Any offense that would disqualify them from owning or possessing a firearm under applicable federal, state, and local laws,
 - b. Any offense relating to the manufacture, sale, possession, use, or registration of any firearm as defined by applicable federal or state law or dangerous or deadly weapon,
 - c. Any offense involving the use of force or violence upon the person of another,
 - d. Any offense involving theft, fraud, dishonesty, or deceit,
 - e. Any offense involving the manufacture, sale, possession, or use of any controlled substance as defined by the California Health and Safety Code as said definition now reads or may hereafter be amended to read.
- B. For the protection of the public health and safety, the Chief of Police shall conduct a thorough review of all application materials and investigation to determine eligibility for the permit. Prior to Engaging in the Business of selling, leasing, or transferring any Firearm or Ammunition, the Applicant must first submit directly to the Chief of Police a complete set of fingerprints and a signed authorization for release of records pertinent to the investigation. The Chief of Police may require additional information from an Applicant to complete the investigation.

SEC. 18.45 – Application fee.

The application shall be accompanied by a nonrefundable fee set by City Council resolution. To the extent practicable, the fee amount shall be sufficient to cover the costs of the administration and enforcement of this Article.

SEC. 18.50. – Application denial, suspension, or revocation.

- A. The Chief of Police shall deny the issuance or renewal of a permit and shall have the authority to suspend or revoke an existing permit, if they determine that any of the following conditions exist:
1. The Applicant, Permittee or any other natural person who will have access to or control of any Firearms or Ammunition displayed, kept, stored, or sold at the location for which the permit is sought, including but not limited to, owners, employees, and agents of the business are under the age of twenty-one (21);
 2. The Applicant or Permittee is not licensed as required by all applicable federal, state, and local laws, including Article I of Chapter 18 of the Mountain View City Code governing business licenses;
 3. The Applicant or Permittee has had a similar permit or license revoked or denied for good cause within the immediately preceding year;
 4. The Applicant knowingly made a false or misleading statement of a material fact or omission of a material fact in the application for a permit under this Article;
 5. The Applicant, Permittee or any other natural person who will have access to or control of any Firearms or Ammunition displayed, kept, stored, or sold at the location for which the permit is sought, including but not limited to, owners, employees, and agents of the business has been convicted of any of the offenses set forth in Sec. 18.40(A)(9);
 6. The Applicant, Permittee or any other natural person who will have access to or control of any Firearms or Ammunition displayed, kept, stored, or sold at the location for which the permit is sought, including but not limited to, owners, employees, and agents of the business is an unlawful user of any controlled substance as defined by the California Health and Safety Code as said definition now reads or may hereafter be amended to read;
 7. The operation of the business will not comply with all applicable federal, state, and local laws;
 8. The business will be operated in any of the following locations:
 - a. Within a zoning district where the proposed business activity or use is not a permitted by applicable zoning regulations,
 - b. From a residence as home occupation,

- c. Within two hundred fifty (250) feet of a public or private day care center, day care home, childcare facility, school, or a public park, except that any Firearm and Ammunition retail business that is lawfully operating in a location more than two hundred fifty (250) feet from any public or private day care center, day care home, childcare facility, school or public park pursuant to this Article may continue to operate in the same location and shall not be denied a permit if a public or private day care center, day care home, childcare facility, school or a public park is subsequently established or constructed within two hundred fifty (250) feet of the existing Firearm and Ammunition retail business.

- 9. The Applicant does not have or cannot provide evidence of a possessory interest in the property at which the proposed business will be conducted;

- 10. The business will be operated in a manner that will violate any applicable building, fire, health, and safety or zoning regulations set forth in this Code.

SEC. 18.55. – Permit duration and renewal.

All permits issued pursuant to this Article shall expire one (1) year after the date of issuance; provided, however, that such permits may be renewed by the Chief of Police for an additional one-year period upon approval of an application for renewal by the Chief of Police and payment of a renewal fee. A complete written application for renewal, signed under the penalty of perjury, must be received by the Chief of Police no later than forty-five (45) days prior to the expiration of the current permit.

SEC. 18.60. – Liability insurance and indemnification.

- A. No permit shall be issued or renewed pursuant to this Article unless there is in effect a policy of insurance in a form approved by the City and executed by an insurance company approved by the City, insuring the Applicant against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease, or transfer or offering for sale, lease, or transfer of a firearm, or any other operations of the business. The policy shall also name the City, its officers, employees and agents as additional insureds. The limits of liability shall not be less than one million dollars (\$1,000,000) for each incident of damage to or destruction of property and one million dollars (\$1,000,000) for each incident of injury or death to a person; provided, however, that additional insurance coverage may be required by the City if deemed necessary.

- B. The insurance policy shall contain an endorsement providing that the policy shall not be canceled until written notice has been given to the Chief of Police at least thirty (30) days prior to the time the cancellation becomes effective.

C. A permit issued pursuant to this Article shall be deemed revoked immediately upon expiration of the insurance policy required by the section unless the policy is timely renewed to ensure there is no lapse in coverage.

D. No permit shall be issued or renewed pursuant to this Article unless the Applicant agrees in writing to defend, indemnify and hold harmless the City, its officers, agents and employees from and against any and all claims, losses, costs, injuries, damages and liabilities of any kind, including attorney's fees, arising from the negligent or intentional acts, errors or omissions of the Applicant, Permittee, owner, officer, partner, employee, agent or other responsible person in the sale, lease or transfer of Firearms and Ammunition or other operation of the business for which the permit is sought.

SEC 18.65. – Permit conditions.

A. All permits issued pursuant to this Article shall be subject to the following conditions, the violation of which shall be grounds for suspension or revocation of the permit:

1. The sale, lease or transfer of Firearms and Ammunition shall be conducted only at the business address shown on the permit.
2. The Permittee shall comply with all federal, state and local laws governing the sale of Firearms and Ammunition for the duration of the permit.
3. The liability insurance coverage required by Section 18.42 shall be in full force and effect for the duration of the permit.
4. The Permittee shall comply with all sections of this Article for the duration of the permit.

B. The Chief of Police shall have the discretion to impose additional conditions for the issuance or renewal of a permit as they deem reasonably necessary to protect the health and safety of the public.

SEC 18.70. – Permit assignment.

The assignment or attempt to assign any permit issued pursuant to this Article or any of the rights or benefits thereunder is unlawful and any such assignment or attempted assignment shall immediately and automatically render the permit null and void.

SEC. 18.75. – Display of permit.

The permit, or certified copy thereof, issued pursuant to this Article shall be prominently displayed on the business premises where it can be easily seen by those entering the premises.

SEC. 18.80. – Appeal and hearing.

- A. The denial, revocation or suspension of a permit pursuant to this Article may be appealed by submitting a written request for an appeal hearing to the Chief of Police within fifteen (15) calendar days of the date of the written notice of denial or revocation issued by the Chief of Police. The deadline to submit a written request for an appeal hearing may be extended up to an additional fifteen (15) calendar days upon a showing of good cause.
- B. The request for an appeal hearing shall state the reason(s) or ground(s) for the appeal and may include supporting documentation. If the request for an appeal hearing was not submitted within fifteen (15) calendar days of the date of the written notice of denial or revocation, the request for appeal shall also include a statement demonstrating good cause for a fifteen (15) day extension of the appeal deadline.
- C. A written request for an appeal hearing shall be promptly delivered to the City's administrative hearing officer designated pursuant to Section 1.20 of the Mountain View City Code and the hearing officer shall issue a written notice of the date, time, and location of the hearing with thirty (30) days after receipt of the request for an appeal hearing. The hearing date shall not be less than fifteen (15) days or more than sixty (60) days after the date of the notice of hearing. The hearing officer shall have the discretion to continue the hearing date upon request and a showing of good cause.
- D. At the hearing, the appealing party and the responding party shall have the right to be represented by counsel and to offer witness testimony and present evidence relevant to the issues on appeal. The hearing officer shall have the authority to permit examination of witnesses. Formal California rules of evidence shall not apply to the conduct of the hearing and the hearing may be continued at the hearing officer's discretion upon a showing of good cause or to allow for the submission of additional relevant evidence.
- E. At the conclusion of the hearing, the hearing officer shall take the matter under submission and issue a written decision supported by findings within thirty (30) calendar days after the date hearing is concluded. The hearing officer's decision is final and nonappealable.

SEC. 18.85. – Inspection authority.

Any and all investigating officials of the City shall have the right to enter the building designated in the permit from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, mechanical, fire, electrical, plumbing, or health regulations, or provisions of this Article. Compliance inspections to ensure conformance with all federal, state, and local laws, and the provisions of this Article may also be conducted by any and all investigating officials of the City.

SEC. 18.90. – Compliance by existing businesses.

Any Person Engaged in the Business of selling, leasing, or transferring any Firearm or Ammunition on the effective date of this Article shall, within ninety (90) days of the effective date, submit an application for a permit in accordance with the provisions of this Article.

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 final adoption.

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 12th day of September 2023, and thereafter adopted at the Regular Meeting of said Council, duly held on the 26th day of September 2023, by the following roll call vote:

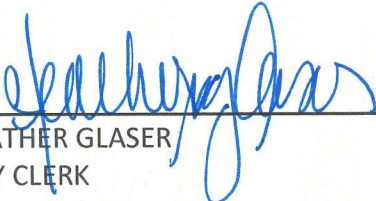
AYES: Councilmembers Abe-Koga, Kamei, Matichak, Ramirez, Ramos, Vice Mayor Showalter, and Mayor Hicks

NOES: None

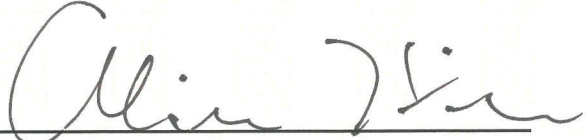
ABSENT: None

ATTEST:

APPROVED:



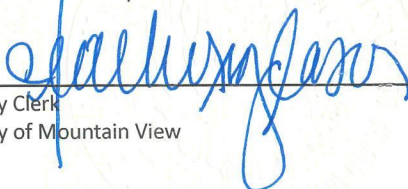
HEATHER GLASER
CITY CLERK



ALISON HICKS
MAYOR

Date of Attestation: October 2, 2023

Pursuant to Mountain View Charter § 709(b), I do hereby certify that the foregoing is an original or a correct copy of the ordinance passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 26th day of September 2023, by the foregoing vote, and was published in the *Daily Post* by reference on the 22nd day of September 2023, and posted in three prominent places in said City.



City Clerk
City of Mountain View

DF-JL/6/ORD
013-09-12-23o-so