



MEMORANDUM

Date: June 14, 2011

To: Bryan Montgomery, City Manager

From: Rebecca Willis, Community Development Director

Project: Urgency Ordinance to Add Chapter 11 to Title 5 of the Oakley Municipal Code to the Oakley Municipal Code Dealing with Firearms Sales

Approved and forwarded to City Council


Bryan Montgomery,
City Manager

Summary and Recommendation

This is a City-initiated amendment to the Oakley Municipal Code to re-instate a firearms ordinance into the Municipal Code. Contra Costa County had a firearms ordinance that applied to Oakley for many years prior to incorporation. Upon incorporation, the City adopted the County's Codes, including the firearms ordinance. In 2004, the City adopted its own Municipal Code and inadvertently failed to include the firearms ordinance. Upon discovery of this omission, staff researched firearms ordinances of other jurisdictions and prepared a draft ordinance for City Council review.

Staff is recommending the City Council adopt an urgency ordinance to restore a firearms ordinance to the Municipal Code.

Background and Analysis

The proposed urgency ordinance would require a conditional use permit for the sale of firearms. The applicant would have to provide proof of compliance with the state and federal regulations prior to review by City staff for completeness. This would include certification from the State Department of Justice that they have completed their records check and determined the applicant is eligible to acquire and possess firearms, and certification from the U.S. Department of Justice for a federal firearms license. The Police Chief will be involved in the review of the conditional use permit application submittal package before the matter is scheduled for public hearing with the City Council.

Subject: Urgency Ordinance to Add Chapter 11 to Title 5 of the Oakley Municipal Code to the Oakley Municipal Code Dealing with Firearms Sales

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Page 2 of 2

The urgency ordinance does not allow a conditional use permit to be granted if the site is:

- Within a residential zone
- Within 150 feet of a residential zone
- Within any zone in which retail services is not a permitted or conditional use
- Within 150 of a public or private day care center, day care home, elementary school, junior high or high school
- Within 500 feet of any other firearms dealer.

An urgency ordinance requires adoption by at least a 4/5th vote of the City Council.

Fiscal Impact

The City has an adopted fee schedule to recover the cost of staff time for the processing of conditional use permit applications. This would include reimbursement for the police chief's time and Planning staff time. The time and material deposit for a conditional use permit is \$3,807. The applicant would be responsible for the full cost of processing the permit.

Environmental Review

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Recommendation

Staff recommends the City Council adopt the proposed firearms ordinance as an urgency ordinance.

Attachments

1. Proposed Urgency Ordinance

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY
TO ADD CHAPTER 11 TO TITLE 5 OF THE OAKLEY MUNICIPAL CODE
DEALING WITH FIREARMS SALES

The City Council of the City of Oakley does ordain as follows:

Section 1. Findings

The City Council of the City of Oakley hereby finds and determines that this ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare as set forth in Government Code Section 36937(b) for the following reason:

Prior to the City of Oakley incorporating in 1999, the County of Contra Costa regulated the sales of firearms through its own ordinance. Upon incorporating, the City of Oakley adopted the County's firearms ordinance (through Ordinances 01-99, 17-99 and 22-99). In 2004, the City adopted Ordinance No. 03-04 to create the Oakley Municipal Code and inadvertently failed to include the County's firearms ordinance. The City, in practice, has followed the County's firearms code as it was unaware the County's firearms code had not been adopted. The City is currently operating without a firearms code and would like to establish an ordinance authorizing regulation of firearms sales at the earliest possible date to protect the public health, safety and welfare.

Section 2.

Chapter 11 to Title 5 is hereby added to the Oakley Municipal Code to read as follows:

“CHAPTER 11. FIREARMS SALES

5.11.002 Adoption of California Penal Code provisions.

The city adopts in whole provisions identical to those of Sections 12070 through 12084 of the state Penal Code, as though fully set forth herein.

5.11.004 Conditional Use Permit required.

a. Any person engaged in the business of selling, transferring, leasing or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease, any firearm must obtain a conditional use permit from the city to do so subject to approval of the City Council.

b. A person shall not be deemed licensed to sell firearms until that person has obtained all federal and state permits and licenses and a conditional use permit.

5.11.006 Conditional Use Permit and Fee.

The applicant shall apply for a conditional use permit pursuant to Section 9.1.1602(b) of the Oakley Municipal Code. The application shall be accompanied by the nonrefundable fee set forth in the city's master fee schedule.

5.11.008 Security and Safety Measures.

In addition to the requirements stipulated in this chapter, the applicant must also furnish an outline of the security and safety measures that will be used in the operation of the business. Required measures shall include the following:

- a. The facility shall be in compliance with all of the requirements of the city's building code, fire code, and any other technical code or regulation of the city which may govern the use, occupancy, maintenance, construction or design of buildings or structures. The applicant must obtain a final inspection from the city building official demonstrating full code compliance before the applicant may commence business at the premises at issue;
- b. The doors, windows or other means of entry into the proposed business site shall be furnished with a system which will cause an audible alarm to sound on the exterior of the building, or a silent alarm to a centralized monitored facility signaling unauthorized entry;
- c. The applicant must have a method of storage of inventory which is explosive or flammable at the proposed business site shall be in compliance with federal and state law and with the city's fire code;

These measures shall be subject to review by the Chief of Police or his or her designee, the appropriate fire protection agency, and must be approved by the City Council.

5.11.010 Submittal Requirements.

In addition to any submittal requirements set forth in Oakley Municipal Code Section 9.1.1602(d), the applicant shall provide proof of any and all licenses and permits required by federal or state law for firearms sales.

5.11.012 Review by Chief of Police.

The Chief of Police shall review the application for the conditional use permit and shall provide his or her findings to the City Council for consideration by the City Council as part of its public hearing for the conditional use permit.

5.11.014 Requirements.

The following requirements shall apply to any person, firm or corporation that is granted a conditional use permit for firearms sales:

- a. No firearms shall be delivered:
 1. Within fifteen (15) days of the application for the purchase, or within fifteen (15) days after submitting corrected copies of the register or any fee required by state law;
 2. Unless unloaded and securely wrapped or in a locked container which is fully enclosed and securely locked by a padlock or similar locking device as required by state law;
 3. Unless the purchaser either is personally known to the applicant or presents clear evidence of his or her identity. Such evidence of identity may include a driver's license, state identification card, an armed forces I.D. card with the purchaser's signature and photograph, or similar documentation providing reasonable assurance of the purchaser's identity. No such documentation shall be accepted, however, unless it contains the purchaser's signature and photograph;
 4. If the dealer is notified by the State Department of Justice that a purchaser is in a prohibited class under state law;
- b. No pistol, revolver or other firearm capable of being concealed upon the person or imitation thereof, or placard advertising their sale or other transfer, shall be displayed in any part of the premises where it can easily be seen from the outside;
- c. The applicant shall agree to properly and promptly process transfers of firearms pursuant to state law;
- d. The applicant shall keep a register of sales as required by state law;
- e. The applicant shall not sell, deliver or transfer any pistol, revolver, or other firearm capable of being concealed upon the person to any person under twenty-one years of age or any other firearm to any person under eighteen years of age;
- f. No pistols, revolvers or firearms capable of being concealed upon a person shall be delivered unless the purchaser or transferee presents to the applicant a basic firearms safety certificate;
- g. The applicant shall offer to provide the purchaser or transferee of a firearm with a copy of the pamphlet described in California Penal Code Section 12080 (California Firearms Law) and may add the cost of the pamphlet to the sales price of the firearm;
- h. The applicant shall re-apply for a permit from the city if it changes business location and such relocation shall require a new inspection to ensure compliance with section 5.11.008;
- i. The applicant shall maintain records of all employees, identifying them by name, address, date of birth and social security number. The applicant shall notify the city within ten (10) days of any changes in employees and submit the required identification information for each newly hired employee. Failure to comply with these requirements shall be grounds for revocation of the applicant's permit;
- j. The applicant shall conduct business only in the building located at the street address shown on the business license. This requirement, however, shall not prohibit the applicant from participating in gun shows or events which are specifically authorized by federal and state law upon compliance with federal and state law;
- k. The applicant shall comply with all federal, state and local laws related to firearms sales;
- l. All other requirements deemed by the City Council to be necessary and proper to protect the public interest and welfare.

5.11.016 Home Occupation Permit.

A home-based holder of a valid Federal Firearms License, a valid Seller's Permit issued by the State Board of Equalization, and a valid Certificate of Eligibility issued by the Department of Justice, all of which were issued prior to June 1, 2011, and who has obtained a home occupation use permit from the city, may continue his/her operation. Home-based firearms sales are prohibited if the above-mentioned licenses, certificates and permits were obtained after June 1, 2011.

5.11.018 Denial of conditional use permit.

A conditional use permit may be denied based on one or more of the following:

- a. The applicant, or an officer, employee or agent thereof, is under the age of twenty-one years;
- b. The applicant is not licensed as required by all applicable federal or state laws, or the applicant's inventory does not conform to the type of federal or state firearms permit issued to the applicant;
- c. The applicant, or an officer, employee or agent thereof, has had similar type of permit previously revoked or denied for good cause within the immediately preceding year;
- d. The applicant, or an officer, employee or agent thereof, has knowingly made any false or misleading statement of a material fact in the application for a permit;
- e. The applicant, or an officer, employee or agent thereof, fails or refuses to provide clear evidence of his or her identity, or any other information required by the Chief of Police to complete his or her investigation;
- f. The applicant, or an officer, employee or agent thereof, has been convicted of:
 1. Any offense so as to disqualify the applicant, or an officer, employee or agent thereof, from owning or possessing a firearm under applicable federal, state, and local laws,
 2. Any offense relating to the manufacture, sale, possession, use or registration of any firearm or dangerous or deadly weapon,
 3. Any offense involving the use of force or violence upon the person of another,
 4. Any offense involving theft, fraud, dishonesty or deceit,
 5. Any offense involving the manufacture, sale, possession or use of any controlled substance as defined by the state Health and Safety Code;
- g. The applicant, or any officer, employee or agent thereof, is currently an unlawful user of any controlled substance as defined by the state of Health and Safety Code, or has been in the past two years, or is an excessive user of alcohol, to the extent that such use would impair his fitness to be a dealer in firearms;
- h. The applicant, or any officer, employee or agent thereof, has been adjudicated as a mental defective, or has been committed to a mental institution, or suffers from any psychological disturbance which would impair his/her fitness to be a dealer in firearms;
- i. The business facility is in violation of any federal, state or local ordinances.

The statute of limitations provisions for filing a petition as set forth in Oakley Municipal Code Section 1.8.010 shall apply to any permit that is denied.

5.11.020 Possessory Interest.

No application for a conditional use permit shall be processed until the applicant provides proof satisfactory to the Community Development Director that the applicant, officer, employee or agent thereof has a possessory interest in the property at which the proposed business will be conducted.

5.11.022 Site restrictions.

No conditional use permit may be issued for any location which is:

- a. Within any residential zoning district or within one hundred and fifty (150) feet of the exterior limits of any such district except pursuant to section 5.11.016;
- b. Within any zoning district in which retail services is not a permitted conditional use;
- c. Within five hundred (500) feet of the exterior limits of a dealer in firearms, a massage parlor or an adult entertainment establishment;
- d. Within one hundred fifty (150) feet of the exterior limits of any premises occupied by a public or private day care center or day care home, elementary school, junior high or high school, whether public or private;
- e. Within five hundred (500) feet of any other premises occupied by a firearms dealer as measured from the entry door in a straight line.

5.11.024 Authority to inspect.

Any investigation officials of the city shall have the right to enter the premises for which the use permit was obtained from time to time to make reasonable inspections to observe compliance with sections 5.11.008 and 5.11.014 of this chapter. A warrant shall be obtained whenever required by law.

5.11.026 Revocation of conditional use permit.

If the Building Official, Chief of Police, or any other person has reason to believe that the applicant is not in full compliance with this chapter, a report shall be made to the City Council by such person. After an investigation of the facts contained in the report, the Community Development Director may commence proceedings to revoke the conditional use permit.

5.11.028 Expiration of conditional use permit.

- a. Conditional use permits issued for firearms sales shall expire one year after the date of issuance. Such permits may be renewed by the Chief of Police for additional one-year periods upon the applicant's submission of an application for renewal, accompanied

by a nonrefundable renewal fee as required by the city's master fee schedule. The completed renewal application and the renewal fee must be received by the Chief of Police no later than forty-five (45) days prior to the expiration of the current conditional use permit.

b. The Community Development Director shall inform the Chief of Police when a conditional use permit expires. The Chief of Police shall inform the Community Development Director when a renewal is denied by the Chief of Police. Proceedings to revoke the conditional use permit can be initiated by the Community Development Director for either an expired conditional use permit or when a renewal is denied.

c. A decision by the Chief of Police regarding denial of renewal of the conditional use permit may be appealed to the City Council.

5.11.030 Conditional use permits are nonassignable.

No conditional use permit issued under this chapter shall be sold, transferred or assigned by the person to whom the conditional use permit is issued or by operation of law to any other person or entity. Any such sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such conditional use permit and such conditional use permit shall thereafter be deemed terminated and void.

5.11.032 Insurance requirement.

Each applicant shall be subject to the requirements of this chapter and shall maintain at all times while engaged in said business a policy of public liability insurance. Said policy of insurance shall provide coverage in the amount and to the limits prescribed by the Finance Director. Any such policy of insurance shall contain an endorsement naming the City of Oakley and its employees and agents as additional insureds and further providing that the policy will not be cancelled without providing immediate notice to the city. Failure to obtain and maintain the insurance required herein shall constitute grounds for revocation or suspension of the applicant's conditional use permit.

5.11.034 Violations.

It is unlawful for any person or entity to operate a retail firearms business within the City of Oakley without valid federal, state and local permits and licenses as set forth by this chapter.

5.11.036 Penalties.

Any person or entity, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of any of the provisions of this chapter, shall be guilty of an infraction or misdemeanor, as charged by the City Attorney."

Section 3. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore, the project is not subjected to CEQA.

Section 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be held unconstitutional, invalid or unenforceable.

Section 5. Effective Date.

This ordinance shall take effect immediately upon its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2011 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Jim Frazier, Mayor

ATTEST:

Nancy Ortenblad, City Clerk

Date