



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

**m e m o r a n d u m**

**TO:** Urbana Plan Commission

**FROM:** Jeff Engstrom, AICP, Planner II

**DATE:** July 13, 2012

**SUBJECT:** Plan Case 2181-T-12: An amendment to Table V-1, Article II, Article V, and Article VII of the Urbana Zoning Ordinance to establish standards for “Firearm Sales” and “Private Firing Ranges”, Urbana Zoning Administrator, applicant

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**Introduction**

The Zoning Administrator is requesting an amendment to multiple sections of the Zoning Ordinance in order to add use categories and restrictions for firearm sales and firing ranges. The proposed ordinance amendment would add definitions to Article II, add the uses to Table V-1, Table of Uses, and add standard Special Use Permit conditions for firearm sales to Article VII of the Urbana Zoning Ordinance. Additionally, restrictions would be added for home occupations involving firearm sales under Article V.

The purpose of the proposed amendment is to address a deficiency in the Zoning Ordinance regarding firearms-related uses. Recently, a business owner approached the City to find out where a principal use gun shop would be allowed. The business, D & R Firearms, is looking to locate on one of two properties off of South Poplar or Glover Streets, north of Washington Street. Staff has not been able to complete the processing of this request as there is no listing for gun shop or firearm sales in Table V-1, Table of Uses. In cases where a use is proposed that is not listed in the Zoning Ordinance, Section V-1.B of the states that “such use shall be subject to the regulations of the use (whether permitted by right, a conditional use, or special use) to which it is most related or similar, as determined by the Zoning Administrator.” For firearm sales there are compatibility and security considerations that must be taken into account that do not apply to any other use listed in the Zoning Ordinance, and therefore there are no other uses that closely match the proposed use. In order to best protect the City’s options in reviewing the business proposal, it is necessary to first establish specific regulations for these uses through a text amendment to the Zoning Ordinance.

Firing ranges are a related use that is also not listed in the Table of Uses. The Zoning Administrator is proposing adding regulations to allow firing ranges, both indoor and outdoor, on a case-by-case basis as conditional or special uses in limited districts.

The Plan Commission should review the proposed Zoning Ordinance text amendment and make a recommendation for City Council to adopt or deny the proposed changes. The Urbana City Council will make the final decision regarding which locations and under what circumstances firearm sales and private firing ranges should be allowed in the City. It should be noted that our legal research on the topic indicates that a complete prohibition on the sale of firearms in Urbana could be susceptible to legal challenge based upon relevant case law and court activity. Rather, it would be in the best interest of the City to adopt regulations that allow for some limited sales of firearms consistent with the City's comprehensive planning policies and land use restrictions and with the regulations found in other cities.

## **Background**

Firearm sales are licensed and regulated by the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF). There are several federal laws that apply to firearm sales, including the Gun Control Act (18 U.S.C. Chapter 44), the National Firearms Act (26 U.S.C. Chapter 53), and the National Instant Criminal Background Check System (24 CFR Part 25). These laws require that anyone selling firearms obtain a license from ATF, and there are several requirements regarding issues such as record-keeping, storage, background checks, and limiting sales to adults. A complete list of federal laws regarding firearms is available at <http://www.atf.gov/publications/firearms/>.

Additionally, the State of Illinois has its own set of laws regarding firearms. The state issues Firearm Owner's Identification cards (FOIDs) to qualified persons wishing to purchase or sell firearms. The state laws require a 72-hour waiting period, strict record-keeping, and prohibit sales to criminals, minors, and anyone without a FOID. Illinois also bans sales of firearms at schools and establishments that sell liquor. The complete State of Illinois laws and statutes regarding firearms can be found at: <http://www.atf.gov/publications/download/p/atf-p-5300-5-2011/atf-p-5300-5-illinois-2011.pdf>. This document also abstracts municipal firearm regulations reported to the ATF.

Local governments have the power to enact laws that control the sales of firearms through zoning ordinances or licensing of dealers. The attached Zoning News Bulletin (Exhibit A) discusses some of the issues and solutions municipalities typically have for firearm-related uses. Research of municipal ordinances regarding firearm sales shows that many communities do not regulate firearm sales but instead rely solely upon state and Federal statutes. For example, the City of Champaign classifies firearm sales as a retail use and allows anywhere retail sales are permitted. It should be noted that Champaign does restrict firearms sold at pawn shops through their city code, including prohibiting widow display and requiring a burglar alarm.

For cities that do regulate firearm sales, there are two mechanisms that are commonly used: zoning-based restrictions and licensing requirements. The most common approach is through specific regulations in the Zoning Ordinance. These regulations may include minimum distances from schools, parks, churches, or other gun shops. Distance requirements are one way to limit the number and concentration of firearm sales in a city. For example, some cities require that gun shops be at

least 2,000 feet from other gun shops. The table below shows list of minimum distance requirements taken from a variety of municipalities. A few communities restrict firearm sales to business districts that are at least 500 feet away from the nearest residence. Most communities that list firearm sales as a principal use in their zoning ordinance restrict this use to commercial or industrial districts, and require a Conditional Use or Special Use Permit.

<b>Sample Minimum Distance Requirements for Gun Shops in Feet</b>					
<b>City</b>	<b>Distance from Other Gun Shop</b>	<b>Distance From School/Church/Etc</b>	<b>Distance from Residences</b>	<b>Districts Allowed</b>	<b>Notes</b>
<b>North Miami, FL</b>	2000	2000		M-1 (Industrial)	Special Exception Review
<b>New Haven, CT</b>	1500	500	500	BD, BD-1, BE (Business), IL, IH (Industrial)	Special Exception Review
<b>Pittsburgh, PA</b>		500		UNC, HC (Commercial) NDI, GI, UI (Industrial) DR (Downtown)	Special Use Permit
<b>Bellingham, WA</b>		500		Allowed as Retail	License Required.
<b>Northbrook, IL</b>	1500	1500		Allowed as Retail	License Required. Handgun sales prohibited.

*Compiled by American Planning Association*

Some communities have an additional level of regulation for firearm sales. They require the dealer to be licensed with the city in addition to with the ATF. A licensing program allows municipalities to require even more detailed record-keeping or daily reporting to the city, fingerprinting of customers, annual inspections, and collection of fees. One city, Northbrook, Illinois, has used its licensing program to prohibit handgun sales, while allowing hunting guns. Cities can also limit the number of firearm dealer licenses, much like they do for liquor or taxi licenses. This approach may work well for larger cities that have a high concentration of gun shops.

Zoning ordinance requirements for shooting ranges are less common than those for firearm sales. Cities that do regulate shooting ranges usually concentrate on outdoor ranges, requiring large parcels with deep setbacks from neighboring properties. These requirements generally keep outdoor firing ranges to the mostly rural or fringe areas around cities, reducing the chance that they will negatively

impact urban neighborhoods. Indoor firing ranges generally have few use restrictions. Design standards published by the federal government may be adopted to ensure safety and low noise impacts on adjacent properties.

## **Discussion**

Recently, a business owner approached the City to ask in which locations a principal-use gun shop would be allowed. The proposed locations are at 801 South Poplar (zoned IN-1, Light Industrial/Office) or 705 South Glover (zoned B-3, General Business). Since there is no similar use allowed in the City, the Zoning Administrator is requesting the Plan Commission make a recommendation and that City Council adopt a text amendment to identify the appropriate zones and use restrictions for this type of business.

In the City of Urbana, there are currently no regulations for principal use firearm sales (gun shops) or shooting ranges. Table V-1 of the Zoning Ordinance does not list firearm sales or gun shop as a principal use. According to Section V-1.B of the Zoning Ordinance, when a principal use is proposed to be established that is not listed in Table V-1, the Zoning Administrator shall determine what is the most related or similar use. The proposed use would then be allowed under the same regulations as the most similar use. In the case of firearm sales, there is no similar use provided in the Table of Uses, due to the special considerations unique to this use.

“Sporting goods store” is a related use, but it is not generally similar. A sporting goods store sells a variety of merchandise, including clothing, fitness equipment, and sport-specific equipment. Sporting goods stores sometimes sell firearms for hunting or target shooting, but these are a small part of their business. Similarly, a general merchandise store such as Walmart may sell firearms in their sports or hunting department. Firearm sales would generally be allowed as an accessory use for these stores, but only if it is a small part of their business. These businesses must have a federal license to sell firearms. Staff is not aware of any sporting goods stores or general merchandise stores that sell firearms within the City of Urbana. Pawn shops are locations in the City where firearms are known to be sold. As with sporting goods and general merchandise stores, firearm sales are a small part of the business and considered an accessory to the principal use.

The Zoning Administrator proposes to allow firearm sales only with a Special Use Permit, along with standard conditions designed to promote the safety and general welfare of the public. Some cities do not have a specific use category for firearm sales, and they fall under the heading of retail sales. For most cities that do list firearms sales as a principal use, they are allowed only with a Special Use Permit or a specific firearms sales license, and are customarily allowed only in certain commercial and industrial districts. Staff is proposing firearm sales would only be allowed in the IN-1, Light Industrial/Office and B-3, General Business districts in Urbana. The B-3 district is intended for general commercial activity for uses that are more intense than those allowed in neighborhood business districts. While a gun shop is not a high-impact use in terms of generating vehicle trips, excessive noise, or other potential nuisances, it may not be compatible with residential and

institutional uses. The IN-1 district is designed to provide for limited retail commercial uses, in addition to office and light industry. Properties zoned IN-1 are generally located in areas that are not next to residences.

Requiring a Special Use Permit will give Plan Commission and City Council a chance to review each proposed gun shop. Per Section VII-V of the Zoning Ordinance, Special Use Permits are evaluated on the following factors:

- Is the proposed use conducive to the public convenience at the proposed location?
- Is the proposed use designed, located, operated so that it will not be unreasonably injurious or detrimental to the district it is in or to the public welfare?
- Does the proposed use conform to the applicable regulations and standards of, and does it preserve the essential character of the district?

City Council may require additional conditions for individual Special Use Permits as deemed necessary for the public health, safety, and welfare. In addition to these criteria, staff is suggesting standard conditions that all principal use firearm sales businesses meet. The first condition is a minimum distance from schools, churches, temples and mosques. Staff is proposing this condition in order to keep gun shops away from community institutions. The second condition is to require a security plan that would be approved by the Urbana Police Chief. This will ensure that the stock is locked in a secured space with a burglar alarm, while allowing for flexibility to match the needs of each potential site. Finally, firearms and ammunition may not be displayed in windows. All of these conditions are common to many municipal ordinances.

Two related text amendments have been included with this plan case: limiting retail sales of firearms as a home occupation, and permitting private firing ranges as a conditional or special use in certain districts. Currently the Zoning Ordinance does not address home occupations that deal with firearms. The home occupation ordinance does not distinguish different types of businesses; instead it regulates businesses based on how they impact their surrounding neighborhood. Home offices and mail-order/internet businesses are generally approved, but retail uses that depend on walk-in customers are not allowed.

For firearm sales as a home business, one major concern is securing weapons kept in the home. All businesses must advertise to gain clients, but advertising that one's home contains a number of firearms could be a security hazard, even if those weapons are secured in a gun safe. A safer approach is to allow a home business that only has firearms in the house on rare occasions, such as for special orders. Staff is therefore proposing a text amendment that would clarify that walk-in retail sales of firearms are not allowed as a home occupation. This would allow for firearms dealers to have a home office, but they would not be allowed to keep a regular stock of firearms or have walk-in customers at the home. Two home occupation permits have been previously issued for firearm sales in Urbana, and would be allowed to continue as a legally nonconforming use should the proposed text amendment be adopted.

Firing ranges are another use involving firearms that is not addressed in the Zoning Ordinance. Staff has received inquiries about potential firearm range businesses in the past. These uses are generally recreational, but could have impacts on surrounding properties if not properly designed and constructed. Primary concerns include safety for users of the range and adjacent properties, and noise for surrounding properties. These concerns are addressed in federal guidelines for Range Design Criteria ([www.hss.doe.gov/SecPolicy/pfs/Range\\_Design\\_Criteria.pdf](http://www.hss.doe.gov/SecPolicy/pfs/Range_Design_Criteria.pdf)). Staff is proposing to define an indoor firing range as a use that meets the federal range design criteria. The criteria include specifications for baffles, backstops, HVAC systems, sound-proofing, and other requirements to ensure that ricochets do not escape the building or harm users, and that sound from discharging weapons will not affect neighbors. Any potential indoor firing range would also have to ensure noise levels do not exceed the City's noise standards. Outdoor firing ranges present a different set of challenges. Noise is a major concern, as there are no walls to absorb the sound of weapons firing. Stray shots and ricochets are also a concern. For these reasons, outdoor firing ranges are proposed to be allowed only on large parcels in districts that are generally located on the fringe of the City. Outdoor ranges must also meet the previously referenced Range Design Criteria, which include clear zones or overhead baffles to capture any stray shots.

## Comprehensive Plan

The following goals and objectives of the 2005 Urbana Comprehensive Plan relate to this case:

### Goal 17.0 Minimize incompatible land uses.

#### *Objectives*

- 17.1 Establish logical locations for land use types and mixes, minimizing potentially incompatible interfaces, such as industrial uses near residential areas.
- 17.2 Where land use incompatibilities exist, promote development and design controls to minimize concerns.

The proposed text amendment would accomplish these goals by establishing logical locations for potentially incompatible firearm-related uses, separate from residential and institutional uses. It would also add design controls to minimize incompatibilities between uses.

## Proposed Text Changes

The proposed changes are listed below, using a strikethrough and underline notation system. A strikethrough is used to indicate ~~deleted language~~, while an underline is used to indicate added language. Commentary on the proposed changes are listed *in italics*.

## Section II-3. Definitions

*Firearm: Any device designed to be used as weapon from which a projectile is expelled through a barrel by the force of an explosion or other form of combustion.*

Firing Range, Private Indoor: A building inside of which club members, or the public at large, discharge firearms for target practice, which fully complies with the U.S. Department of Energy's Range Design Criteria.

Firing Range, Private Outdoor: A secured outdoor space in which club members, or the public at large, discharge firearms for target practice, which fully complies with the U.S. Department of Energy's Range Design Criteria.

*This change would add definitions for Firearm and Firing Ranges. The proposed definition for firearm is based on similar definitions common to other zoning ordinances and federal statutes. The definition of firearm would exclude pellet or paintball guns powered by compressed air. The definition for firing range will ensure that firing ranges are built to Federal standards.*

### Section V-13.

H: The sale of firearms as a home occupation shall be limited to special orders (no stock in trade), internet sales, and other sales by appointment only. No firearms inventory shall be regularly kept in the home.

*This change would restrict firearm sales out of the home. Firearms dealers could still maintain an office in their home, but they would not be allowed to keep a regular stock of firearms in their home or conduct on-premise walk-in sales.*

**Table V-1. Table of Uses**

Principal Uses	R-1	R-2	R-3	R-4	R-5	R-6	R-6B	R-7	AG	B-1	B-2	B-3	B-3U	B-4	B-4E	CCD	CRE	MOR	IN-1	IN-2
<u>Firearm Sales†</u>												S							S	
<u>Private Indoor Firing Range††</u>									C								C		S	
<u>Private Outdoor Firing Range††</u>									S								S			

† See Section VII-5.D for Standards for Firearm Sales

†† See Section VII-5.E and Table VII-1 for Standards for Firing Ranges

*This change would establish which districts firearm sales and indoor firing ranges would be allowed, and specify that a Special Use or Conditional Use Permit is required, depending on the district. The footnote references specific conditions that will apply to all principal use firearm sales. Firearm sales will require a Special Use Permit in order to ensure that City Council has the chance*

*to review each site and to add any necessary restrictions. Firing ranges are proposed to be allowed in CRE and AG districts due to their recreational nature. Staff is proposing to allow indoor firing range as a Special Use in the IN-1 district to allow for the use under a higher level of review in a district where it may be appropriate depending on the context.*

**Section VII-5. Special Use Terms and Conditions**

D. The following conditions shall apply to “Firearm Sales”:

1. Firearm sales shall not be established within 500 feet of the property boundaries of existing schools, churches, temples or mosques.
2. The operator of a proposed firearms sales establishment shall obtain approval for a site security plan from the Urbana Police Department.
3. Firearms and ammunition shall not be displayed in windows.
4. The firearm sales use shall meet any other requirements deemed necessary to protect public safety and minimize land use incompatibilities.

E. The following conditions shall apply to Firing Ranges:

1. Indoor Firing Ranges shall conform to U.S. Department of Energy’s Range Design Criteria.
2. Outdoor Firing Ranges shall conform to U.S. Department of Energy’s Range Design Criteria. The range must be secured by a fence at least eight feet tall in the side and rear yards. The minimum lot size for an outdoor firing range shall be 20 acres. Targets and shooting areas shall be set back at least 100 feet from all property lines.

*This change would apply to all principal use firearm sales. It would limit sales to properties that are over 500 feet from existing schools and churches. A security plan would need to be submitted and approved before the Special Use Permit to allow the firearm sales could be issued. Finally, firearms on sale could not be displayed to passersby on the street. Staff is proposing these restrictions in order to reduce potential impacts for areas where gun shops may operate, and to ensure that gun shops operate in a secure manner that deters potential thieves. Firing ranges will be required to be located on large parcels, and shooting activities will be set back 100 feet from property lines.*

**Table VII-1. Standards for Specific Conditional Uses**

Use	Required Fencing	Setbacks (in feet)			Minimum Lot Size (acres)	Other Provisions
		Front	Side	Rear		
<u>Private Indoor Firing Range</u>	-	-	-	-	-	<u>Ranges must conform to U.S. Department of Energy’s Range Design Criteria.</u>



*This change would apply standards to indoor firing ranges when they are considered for approval as a Conditional Use.*

## **Summary of Staff Findings**

1. The Zoning Administrator is proposing a text amendment to the Zoning Ordinance in order to establish regulations for firearms-related uses, which are currently not addressed in the Table of Uses.
2. Firearms sales are regulated by federal and state laws, and are licensed through the Bureau of Alcohol, Tobacco, and Firearms.
3. The proposed amendment will modify Articles II, V, and VII of the Urbana Zoning Ordinance to allow firearm sales and firing ranges in limited districts under specific conditions.
4. The proposed amendment would prohibit firearm sales within 500 feet of schools, churches, temples and mosques; would require a security plan; and would prohibit display of firearms in outside windows.
5. The proposed amendment will limit retail sales of firearms as a home occupation.
6. The proposed amendment will require firearm sales to be approved by City Council as a Special Use, and will require firing ranges to be approved by the Zoning Board of Appeals as a Conditional Use or approved by City Council as a Special Use.
7. The proposed amendment will provide restrictions to ensure firearm sales and firing ranges do not have a negative impact on surrounding properties.
8. The proposed amendment is consistent with the goals and objectives of the 2005 Urbana Comprehensive Plan to minimize potentially incompatible land uses and to promote design controls to minimize concerns.
9. The proposed amendment conforms to notification and other requirements for the Zoning Ordinances as required by the State Zoning Act (65 ILCS 5/11-13-14).

## **Options**

The Plan Commission has the following options for recommendation to the Urbana City Council regarding Plan Case 2181-T-12:

- a. forward this case to City Council with a recommendation for approval as presented herein;
- b. forward this case to City Council with a recommendation for approval as modified by specific suggested changes; or
- c. forward this case to City Council with a recommendation to deny the proposed amendment.

### **Staff Recommendation**

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Plan Commission make a recommendation to City Council to **APPROVE** the proposed text amendment as presented herein.

Attachments:

Exhibit A: “On the Firing Line”, Article from Zoning News Bulletin, February 2000

## On the Firing Line: Zoning for Gun-Related Uses

By Michael Davidson

Few issues have received more attention in recent decades than the implications of firearms. Gang-related warfare, school rampages, and post office shootings spurred a passionate debate between those defending the right to bear arms and those concerned about the violence in society. *Zoning News* will not delve into moral issues or the state of American culture. Rather, this issue will address the land-use requirements of gun-related enterprises, including firearms dealers and shooting ranges.

### Is Nothing Untouched by Sprawl?

Outdoor shooting ranges have fallen victim to incompatible zoning. As the countryside succumbs to urbanization and farms are sold to developers, range operators find themselves uncomfortably close to the residents of new subdivisions. Annoyed and concerned homeowners, neighborhood associations, and town zoning boards complain about noise and related nuisances coming from the nearby shooting range.

Most outdoor shooting ranges are classified as agricultural, industrial, or recreational uses, and therefore are zoned appropriately where few residential uses are present. Even then, a jurisdiction may take extra measures to minimize the impact of the land use. For example, Durham, North Carolina, gives outdoor shooting ranges a "buffer intensity" classification in the city's rural zoning district.

Ohio enacted legislation in 1998 to protect owners, operators, and users of existing shooting ranges from the ramifications of sprawl. Ranges that were established in isolated areas years ago came under fire when encroaching residential development led to legal action over noise. Supporters of the legislation argued for protection similar to that given farmers under Ohio's Right-to-Farm Law. The law provides limited immunity from civil and criminal liability to persons who own, operate, and use shooting ranges that are in "substantial compliance" with standards established by the Division of Wildlife in Ohio's Department of Natural Resources. The law prohibits courts from issuing injunctions against shooting ranges for nuisances if they find that a range is in substantial compliance with state standards. The law also affects the manner in which local governments can regulate ranges with measures such as zoning.

The law's greatest effect is on the "reconstruction, enlargement, remodeling, or repair" of structures or facilities that are part of an existing shooting range. However, it offers minimal protection from local regulations addressing the establishment of new shooting ranges, which must comply with all existing local ordinances. Under the new law, all shooting ranges will abide by the general development standards that apply to all structures in a county or township. The rules adopted by the Division of Wildlife for the reconstruction, enlargement, remodeling, or repair of a shooting range and its related facilities do not preempt

local laws. However, locally adopted standards may no longer be authorized if they specifically target facilities or structures that are part of a shooting range.

### No Guns in My Back Yard

Zoning ordinances ensure that compatible land uses are placed in zoning districts that will minimize or prevent land-use conflicts. Concerns over gun-related enterprises include the buffering and screening of shooting ranges for aesthetic reasons and to prevent bullets and projectiles from leaving the premises. Other concerns focus on firearm noise, devaluation of property near gun dealers and ranges, the perpetuation of crime, illegal firearms sales, and gun accessibility to minors and persons without licenses.



Outdoor shooting ranges have fallen victim to incompatible zoning. As the countryside succumbs to urbanization and farms are sold to developers, range operators find themselves uncomfortably close to the residents of new residential subdivisions.

Many ordinances eliminate gun dealing in residential areas altogether. Opponents of the dealers argue that "kitchen-table" operations pose a potential threat to nearby residents. The homes of such enterprises may not be equipped with the state-of-the-art security systems often found in commercial buildings. Storefront gun shops are typically required by ordinance to place bars on the windows and doors, employ security personnel, and install bulletproof glass. Gun inventories in stores are kept in locked cases, accessible to customers only when a trained professional is present. There is also the risk associated with residential gun dealers who do not keep sufficient records or conduct background checks on customers. Both offenses violate many state and federal laws.

Municipal ordinances can effectively deter kitchen-table operations by requiring a local dealer's license. For example, the dealer may be required to present proof that the operation exists outside a residential neighborhood and away from schools, day care centers, parks, liquor stores, bars, and other firearms dealers. All these areas are frequently deemed sensitive by local officials.

Zoning provisions can restrict firearm dealers to commercial areas. Lafayette, California, requires that dealers first obtain a land-use permit before opening shop. Applicants must also go



**Permitted and Conditional Uses for  
Commercial Districts, Pleasanton, California\***

Use	CR	CR	CN	CC	CS	CF	CA
	(m)	(p)					
Antique stores, no firearm sales				P			
Antique stores with sales of antique firearms				C			
Catalog stores, no firearm sales	P	P		P			
Catalog stores with firearm sales	C	C		C	C		
Firearm sales	C	C		C			
Firearm sales in which no more than 10 firearms are stored on site at any one time and the majority of firearms are sold through catalogs, mail order, or at trade shows.	C	C		C	C		
Gunsmiths	P	P		P	P		
Shooting Galleries, indoors: with firearm sales	C			C	C		
Sporting goods stores, no firearm sales	P	P	P	P			
Sporting goods stores, with firearm sales	C	C		C			

\*P = Permitted Use C = Conditional Use  
 \*CR (m) = Regional Commercial (enclosed mall); CR (p) = Regional Commercial (peripheral area around mall);  
 CN = Neighborhood Commercial; CC = Central Commercial; CS = Service Commercial; CF = Freeway Commercial;  
 CA = Automobile Commercial

through a public hearing process before the local plan commission to allow for public input. Still, the land-use permit is not lawful until the applicant secures a local police permit and meets federal and state licensing requirements. Such measures have reduced dramatically the number of residential gun dealers throughout the country. Oakland, California, passed its own comprehensive gun dealer ordinance in 1992, reducing the number of local dealers from 115 to six.

The owners of some storefront gun shops in Illinois actually lobbied against residential dealers by supporting President Clinton's 1994 crime bill, which gave local governments more regulatory power over gun dealers. Until then, dealers in some of Chicago's southern suburbs could hold a permit to sell firearms even if the business was violating a state law or a local ordinance. Shop owners say their support for the bill arose from concerns about image rather than profits.

Banning guns in residential zones was not the only important objective of an ordinance passed in Los Angeles County, California. Requiring gun dealers to have a "fixed place of business where all licensed activities will be conducted" helps to eliminate illegal gun sales conducted out of the trunks of cars. The ordinance requires the dealer to be the legal occupant of the place of business, which cannot be a United States post office box address or a private commercial mailbox. The dealer also must prove that he is the owner, lessee, or other legal occupant of the fixed place of business. Any subsequent license will specify the post office address of the dealer's business.

Commercial districts are certainly not immune to the banishment of gun-related enterprises. Culver City, California, circulated a petition to adopt a zoning measure entitled "The Safe School Zones Ordinance of 1999," which would restrict certain uses, including gun shops, within 500 feet of public and private schools, regardless of the location. The petition states: "Not all commercial development is incompatible with school zones. A proper balance can be reached that enhances our business districts, but without sacrificing the health, safety, and well-being of our children in the process."

### Permitted or Not?

When gun-related enterprises are not listed as a use by right (permitted use) in a zoning district, owners are required to traverse through a lengthy administrative process to determine whether the operation is permissible through an alternate measure. Lafayette's gun-related enterprises are not allowed in commercial districts as a permitted use. A firearms dealer must

apply for and obtain a land-use permit before conducting business in a commercial area. Conversely, indoor ranges are listed as permitted uses in the planned industrial districts and the light and heavy industrial districts of Mankato, Minnesota, which requires applicants to embark on the somewhat less difficult process of acquiring a business license, building permit, certificate of occupancy, etc., and complying with any performance standards established by the federal, state, and local governments. Such a process is certainly less burdensome for the planning staff, as the land-use implications of a permitted use are relatively marginal and the paperwork minimal.

**Nonconforming use.** The preexisting nonconforming use, one which may be referred to as having "grandfather" status, is unavoidable for zoning administrators as cultural interests and living styles change and cities continue to grow. Despite such conflicts, some of the now "nonconforming" uses will be allowed to stay, albeit with restrictions. Even a minor structural modification of a gun facility could result in the termination of its nonconforming status, as stated in the Ohio law. The owner of a Michigan gun club wanted to expand his building to include a new range. The request was denied because of the club's status as a preexisting nonconforming use, and to change or alter the use would violate the law, rendering the facility "different" and making it a potential threat to the area with which it was once thought compatible.

**Conditional or special use.** Subject to the high standards of planning and design, as well as the general standards established in the ordinance, conditional or special uses are allowed in districts that do not have them as a permitted use. These add flexibility to the ordinance by allowing a previously unwanted land use to be developed with minimal negative consequences to neighboring properties. Zoning boards typically approve a conditional or special use when that use is compatible with the surrounding area. Present and future compatibility with the surrounding area is an extremely important consideration that zoning administrators, who may have the prerogative of designating the restrictions, should take seriously. Violation of any of the conditions could result in a loss of the permit or some other penalty. Any changes, however minor, to grandfathered outdoor ranges in Cowlitz County, Washington, require the issuance of a special use permit, rendering the entire facility subject to the standards of a new ordinance.

In Santa Monica, California, conditional uses (which include any "business or use which sells, transfers, leases, offers or advertises for sale, transfer or lease any firearm or munitions in any location where such business is permitted") may be granted if the following criteria are met:

- The proposed use will not adversely affect the welfare of neighborhood residents in a significant manner.
- The proposed use will not contribute to an undue concentration of similar uses in the area.
- The proposed use will not detrimentally affect nearby neighborhoods, considering the distance of the use to residential buildings, churches, schools, hospitals, playgrounds, parks, and other existing similar uses.
- The proposed use is compatible with existing and potential uses within the general area.
- The public health, safety, and general welfare are protected.
- No harm to adjacent properties will result.



- The proposed use is not within 1,500 feet of any other similar use, any day care facility, or any elementary, middle, junior, or high school.

Special use provisions for outdoor shooting ranges in New Hanover County, North Carolina, require that:

- all shooting areas shall be set back a minimum distance of 100 feet from any street right-of-way.
- the firing range shall have a natural earth embankment at least 10 feet high placed behind all targets within the shooting area.
- the firing range shall be posted "No Trespassing—Danger—Shooting Range," at 100-foot intervals around the perimeter.
- at least one qualified individual in the sponsoring club or organization shall be certified for shooting range supervision. Each facility shall adopt safety rules and regulations as determined by the sponsoring club or organization.
- the firing range shall be covered by a minimum of \$300,000 accident and liability insurance.

### Legal vs. Lethal

Because zoning ordinances originate from a local government's police power, which is used to ensure public welfare, legal challenges to municipal gun regulations may be unsuccessful, according to the Legal Community Against Violence, a San Francisco-based organization. (More information is available at the group's web site, [www.lcav.org](http://www.lcav.org).) Municipalities can regulate or prohibit uses that jeopardize the character or safety of a residential neighborhood, which may motivate opponents to challenge the municipality under various legal arguments.

**Preemption.** A preemption challenge by residential gun dealers may face rejection in a court of law. In California, the legislature authorizes cities and counties to regulate the sale of firearms within community boundaries, including decisions about licenses and local fees. State regulations exist as well, including those that require gun dealers to perform background checks. Preemption over local authority would not occur simply because a local ordinance prohibiting residential gun dealers "does not involve firearm registration or licensing." Additionally, the ordinance would not contradict the state's penal code requiring background checks because it does not impose any permit or licensing requirements on people who want to purchase firearms for their homes or places of business.

**Equal protection.** An ordinance challenged as violating equal protection will be upheld if the court finds that it does not specifically target a particular class or compromise a person's basic rights, and as long as there is a logical relationship between the ordinance and a valid governmental objective. If an ordinance that bans residential gun dealers has followed its intended purpose of maintaining the residential character of a neighborhood, then those arguing that it violates their equal protection rights will probably not have a solid legal argument.

A California Superior Court rejected a 1995 equal protection challenge to an ordinance banning residential gun dealers, stating in its order, "The sale of firearms is not a fundamental right. There is a rational basis for a ban on gun dealers in residential areas and, accordingly, there is a justifiable exercise of police power."

**Inverse condemnation.** Existing residential gun dealers may challenge an ordinance if they think that such regulation will negatively affect their business. They might argue that this would constitute a "taking without just compensation" in violation of the state and federal constitutions. Still, a cause for action under inverse condemnation should fail. A taking would

occur only if the ordinance imposed substantial constraints on the use of the property as a residence. Prohibiting kitchen-table gun operations does not severely limit a property owner in enjoying the benefits of selling or renting the home, or otherwise living in the home as she wishes.

Legislation regulating gun-related enterprises has increased substantially in recent years. Whatever the type of gun-related use, it is clear that zoning laws and other forms of municipal regulation are essential in achieving peaceful solutions.

### OUTDOOR RANGE STANDARDS

Shooting ranges have safety as the prime zoning purpose for regulation. Most codes require a minimum site size of 10-20 acres, with 20 acres most common. Setbacks of 50-200 feet are common for zone yards and behind back stops in the line of fire. Buildings located ahead of the firing line are allowed to be located to the normal zone yard setback. The site plan must show the location of the firing line or shooting stakes, targets, and backstops and indicate how the backstops are constructed. The backstop must be an earth mound or dugout of sufficient dimension to stop projectiles. The range must be screened and fenced with no gates or outlets except as approved on the site plan, to avoid the possibility of unauthorized persons entering the shooting area and to intercept and stop projectiles from leaving the site. The passageway between the firing point and targets must be enclosed or be in a trench to protect users from projectiles.

An ancillary retail store and snack shop is allowed, selling convenience items and prepared snacks and sandwiches to patrons of the shooting range, but no drinks or beer, and short-term rental of firearms and equipment for use only on the premises. Buildings can have rooms for training in the use of firearms but not as an indoor shooting range unless approved with the permit.

—Charles Reed, *The Zoning Report*, "Definitions and Standards for Campgrounds, Shooting Ranges, Golf Courses, and Other Outdoor Recreation Uses," Vol. 11, No. 15, December 17, 1993. Reprinted with permission from Charles Reed.

### Big Box Big Issue in California

California is starting out the new year with a new approach to local competition for big box retail stores, courtesy of A.B. 178, which passed the General Assembly last year. Last September, Gov. Gray Davis vetoed a second law passed by the General Assembly that targeted big box retailing. It would have prohibited municipalities from approving retail projects larger than 100,000 square feet if more than 15,000 square feet of the store were used to sell nontaxable merchandise, such as produce.

A.B. 178 prohibits local governments from offering development incentives to retail stores or auto dealers over 75,000 square feet that move from one jurisdiction to another in the same market region. The new law requires that the receiving local government share 50 percent of the sales tax revenue if the relocation results in a loss to the city where the business was originally located. The resulting tax sharing between municipalities would be continued for 10 years. According to Davis, the new law offers a fair approach to dealing with the loss of a large retail store.

State Assemblyman Tom Torlakson, a supporter of the new law, says state and local budget crises have forced governments to compete over business developments that generate sales tax. Threatened cities must then scramble to come up with an investment package or face the relocation of a business to a nearby city. Torlakson previously had tackled this issue unsuccessfully with