

Meeting Date: 6/14/2011



Agenda Item # 5-B

CITY COUNCIL AGENDA ITEM

Contact Name: Gregory Lariscy

Department Director: Peter C. Thomas

Department/Contact # Police Dept. / 775-9999

City Manager: Jamie Croteau

Type of Item:

Public Hearing

Resolution

Ordinance First Reading

Discussion & Action

Ordinance Second Reading

Council Approval

Subject: Joe Carlucci Uniform Firearms Act

BACKGROUND: The proposed ordinance amends numerous sections of our code that regulates firearms. F.S. 790.33 preempts municipalities from the "regulation of firearms and ammunition". On June 2, 2011 Governor Rick Scott signed into law an amendment to F.S. 790.33 that provides for penalties for persons attempting to enforce any municipal or county ordinance, administrative regulation, or rule not specifically listed as an exception.

RECOMMENDATIONS: Staff recommends approval of the proposed ordinance.

ATTACHMENTS: Copy of proposed ordinance and copy of House Bill 45 signed by Governor Rick Scott on 06/02/11.

FINANCIAL IMPACT: The proposed ordinance will have no financial impact.

Reviewed by City Attorney _____

Reviewed by Finance Dept. _____

Reviewed by: _____

1st Discussion Date: date.	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
---	---	--	------------------------------

ORDINANCE NO. 462

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AMENDING CHAPTER 10, OFFENSES – MISCELLANEOUS, ARTICLE I, IN GENERAL, SECTION 10-4; CHAPTER 10, OFFENSES – MISCELLANEOUS, ARTICLE II, NOISE, SECTION 10-26 (7); AND CHAPTER 10.5, LEISURE SERVICES, ARTICLE II, USE REGULATIONS, SECTION 10.5-19 (8) TO CONFORM WITH THE JOE CARLUCCI UNIFORM FIREARMS ACT; PROVIDING FOR SEV-ERABILITY, CONFLICTS AND EFFECTIVE DATE.

WHEREAS, the City Council of the City of Orange City, upon recommendation from Code Enforcement staff, and given amendments to Chapter 790 of the Florida Statutes, deems it in the best interests of the City of Orange City to amend and modify Chapter 10, Offenses - Miscellaneous, Article I, In General, Section 10-4; Chapter 10, Offenses – Miscellaneous, Article II, Noise, Section 10-26 (7); and Chapter 10.5-19 (8), Leisure Services, Article II, Use Regulations;

WHEREAS, words with ~~strike through~~ shall constitute deletions to the original text.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. Chapter 10, Offenses - Miscellaneous, Article I, In General, Section 10-4; Chapter 10, Offenses – Miscellaneous, Article II, Noise, Section 10-26 (7); and Chapter 10.5-19 (8), Leisure Services, Article II, Use Regulations, 10.5 (8) of the City Code of Ordinances shall be amended as set forth in Exhibit “A,” which is incorporated by reference as if fully set forth herein.

SECTION 2. Conflicts: All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 3. Severability: If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this ordinance shall not be affected.

SECTION 4. Effective Date: This ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida, and approval as provided by law.

ROLL CALL VOTE AS FOLLOWS:

First Reading this _____ day of _____, 2011.

Gary A. Blair	_____	Jeff H. Allebach	_____
Tom Laputka	_____	Tom Abraham	_____
Anthony Pupello	_____	O. William Crippen, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ROLL CALL VOTE AS FOLLOWS:

Second Reading this _____ day of _____, 2011.

Gary A. Blair	_____	Jeff H. Allebach	_____
Tom Laputka	_____	Tom Abraham	_____
Anthony Pupello	_____	O. William Crippen, Vice Mayor	_____
Harley Strickland, Mayor	_____		

PASSED and ADOPTED this ____ day of _____, 2011.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W.E. Reischmann, City Attorney

EXHIBIT "A"

Chapter 10 OFFENSES-MISCELLANEOUS, Article I – In General

~~Sec. 10-4. Weapons and firearms, use and control.~~

~~10-4.1. Definitions. For the purpose of this section, the following words and phrases, when used in this section, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:~~

~~(1) Firearm means any device (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device.~~

~~(2) Weapon means any dirk, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife.~~

~~10-4.2. Discharge of firearms.~~

~~(a) It shall be unlawful to discharge any firearm or airgun, BB gun, or any toy gun, projecting lead or any missiles, excepting in a regularly established shooting gallery; provided that this section shall not be construed to prohibit any officer of the law from discharging a firearm in the performance of his/her duty, or to prohibit any citizen from discharging a firearm when lawfully defending persons or property.~~

~~(b) It shall be unlawful to carry any concealed firearms or weapons in the city in violation of the laws of this state.~~

~~(c) Nothing herein shall prohibit the discharge of a BB gun, airgun or toy gun within a person's own property at inanimate objects. Children under the age of 16 years must be supervised by an adult.~~

~~10-4.3. Killing and injuring animals. It shall be unlawful for any person to discharge any firearm, BB gun, air or gas-operated guns, darts, arrows or slingshots upon dogs, cats,~~

~~birds, squirrels or any other animal, for the purpose of killing, injuring or inflicting pain on such animals, within the city limits.~~

~~10-4.4. Permits for shooting events or competition. The city administration of the City of Orange City may issue a special permit for events such as "turkey shoot," "lawful competition," "shooting range" or any other similar event. The activity allowed shall be specifically described in such permit. The city administration shall grant such authorization only if the public health and safety will not be endangered thereby. The granting of such authorization on one occasion shall not be a precedent for the granting of such authorization at a different time even if the facts and circumstances are the same or similar.~~

Chapter 10 OFFENSES-MISCELLANEOUS, Article II – Noise

~~Sec. 10-26 (7) Explosives, firearms and similar devices. The use or firing of explosives, firearms or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or on a public space or right-of-way without first obtaining a special permit issued pursuant to section 10-28.~~

Chapter 10.5 LEISURE SERVICES, Article II – Use Regulations

~~Sec. 10.5 -19 (8) Carry any concealed weapons, nor shall they have on or about their person dangerous or deadly weapons, including any rifle, shotgun, BB gun, airgun, spring gun, slingshot, bow, or other weapon in which the propelling force is gunpowder, a-spring or air, in public parks or recreational facilities.~~

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

1 A bill to be entitled
 2 An act relating to the regulation of firearms and
 3 ammunition; amending s. 790.33, F.S.; clarifying and
 4 reorganizing provisions that preempt to the state the
 5 entire field of regulation of firearms; prohibiting the
 6 knowing and willful violation of the Legislature's
 7 occupation of the whole field of regulation of firearms
 8 and ammunition by the enactment or causation of
 9 enforcement of any local ordinance or administrative rule
 10 or regulation; providing additional intent of the section;
 11 eliminating provisions authorizing counties to adopt an
 12 ordinance requiring a waiting period between the purchase
 13 and delivery of a handgun; providing injunctive relief
 14 from the enforcement of an invalid ordinance, regulation,
 15 or rule; providing a civil penalty for knowing and willful
 16 violation of prohibitions; providing that public funds may
 17 not be used to defend or reimburse the unlawful conduct of
 18 any person charged with a knowing and willful violation of
 19 the act; providing for termination of employment or
 20 contract or removal from office of a person acting in an
 21 official capacity who knowingly and willfully violates any
 22 provision of the act; providing for declaratory and
 23 injunctive relief for specified persons or organizations;
 24 providing for specified damages and interest; providing
 25 exceptions to prohibitions of the section; providing an
 26 effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

Section 1. Section 790.33, Florida Statutes, is amended to read:

790.33 Field of regulation of firearms and ammunition preempted.—

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void. ~~This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited.~~

~~(2) LIMITED EXCEPTION; COUNTY WAITING PERIOD ORDINANCES.—~~

~~(a) Any county may have the option to adopt a waiting-period ordinance requiring a waiting period of up to, but not to exceed, 3 working days between the purchase and delivery of a handgun. For purposes of this subsection, "purchase" means payment of deposit, payment in full, or notification of intent~~

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

57 ~~to purchase. Adoption of a waiting-period ordinance, by any~~
 58 ~~county, shall require a majority vote of the county commission~~
 59 ~~on votes on waiting-period ordinances. This exception is limited~~
 60 ~~solely to individual counties and is limited to the provisions~~
 61 ~~and restrictions contained in this subsection.~~

62 ~~(b) Ordinances authorized by this subsection shall apply~~
 63 ~~to all sales of handguns to individuals by a retail~~
 64 ~~establishment except those sales to individuals exempted in this~~
 65 ~~subsection. For purposes of this subsection, "retail~~
 66 ~~establishment" means a gun shop, sporting goods store, pawn~~
 67 ~~shop, hardware store, department store, discount store, bait or~~
 68 ~~tackle shop, or any other store or shop that offers handguns for~~
 69 ~~walk-in retail sale but does not include gun collectors shows or~~
 70 ~~exhibits, or gun shows.~~

71 ~~(c) Ordinances authorized by this subsection shall not~~
 72 ~~require any reporting or notification to any source outside the~~
 73 ~~retail establishment, but records of handgun sales must be~~
 74 ~~available for inspection, during normal business hours, by any~~
 75 ~~law enforcement agency as defined in s. 934.02.~~

76 ~~(d) The following shall be exempt from any waiting period:~~

77 ~~1. Individuals who are licensed to carry concealed~~
 78 ~~firearms under the provisions of s. 790.06 or who are licensed~~
 79 ~~to carry concealed firearms under any other provision of state~~
 80 ~~law and who show a valid license;~~

81 ~~2. Individuals who already lawfully own another firearm~~
 82 ~~and who show a sales receipt for another firearm; who are known~~
 83 ~~to own another firearm through a prior purchase from the retail~~
 84 ~~establishment; or who have another firearm for trade-in;~~

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

85 ~~3. A law enforcement or correctional officer as defined in~~
 86 ~~s. 943.10;~~

87 ~~4. A law enforcement agency as defined in s. 934.02;~~

88 ~~5. Sales or transactions between dealers or between~~
 89 ~~distributors or between dealers and distributors who have~~
 90 ~~current federal firearms licenses; or~~

91 ~~6. Any individual who has been threatened or whose family~~
 92 ~~has been threatened with death or bodily injury, provided the~~
 93 ~~individual may lawfully possess a firearm and provided such~~
 94 ~~threat has been duly reported to local law enforcement.~~

95 (2)(3) POLICY AND INTENT.-

96 (a) It is the intent of this section to provide uniform
 97 firearms laws in the state; to declare all ordinances and
 98 regulations null and void which have been enacted by any
 99 jurisdictions other than state and federal, which regulate
 100 firearms, ammunition, or components thereof; to prohibit the
 101 enactment of any future ordinances or regulations relating to
 102 firearms, ammunition, or components thereof unless specifically
 103 authorized by this section or general law; and to require local
 104 jurisdictions to enforce state firearms laws.

105 (b) It is further the intent of this section to deter and
 106 prevent the violation of this section and the violation of
 107 rights protected under the constitution and laws of this state
 108 related to firearms, ammunition, or components thereof, by the
 109 abuse of official authority that occurs when enactments are
 110 passed in violation of state law or under color of local or
 111 state authority.

112 (3) PROHIBITIONS; PENALTIES.-

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

113 (a) Any person, county, agency, municipality, district, or
 114 other entity that violates the Legislature's occupation of the
 115 whole field of regulation of firearms and ammunition, as
 116 declared in subsection (1), by enacting or causing to be
 117 enforced any local ordinance or administrative rule or
 118 regulation impinging upon such exclusive occupation of the field
 119 shall be liable as set forth herein.

120 (b) If any county, city, town, or other local government
 121 violates this section, the court shall declare the improper
 122 ordinance, regulation, or rule invalid and issue a permanent
 123 injunction against the local government prohibiting it from
 124 enforcing such ordinance, regulation, or rule. It is no defense
 125 that in enacting the ordinance, regulation, or rule the local
 126 government was acting in good faith or upon advice of counsel.

127 (c) If the court determines that a violation was knowing
 128 and willful, the court shall assess a civil fine of up to \$5,000
 129 against the elected or appointed local government official or
 130 officials or administrative agency head under whose jurisdiction
 131 the violation occurred.

132 (d) Except as required by applicable law, public funds may
 133 not be used to defend or reimburse the unlawful conduct of any
 134 person found to have knowingly and willfully violated this
 135 section.

136 (e) A knowing and willful violation of any provision of
 137 this section by a person acting in an official capacity for any
 138 entity enacting or causing to be enforced a local ordinance or
 139 administrative rule or regulation prohibited under paragraph (a)
 140 or otherwise under color of law shall be cause for termination

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

141 of employment or contract or removal from office by the
 142 Governor.

143 (f) A person or an organization whose membership is
 144 adversely affected by any ordinance, regulation, measure,
 145 directive, rule, enactment, order, or policy promulgated or
 146 caused to be enforced in violation of this section may file suit
 147 against any county, agency, municipality, district, or other
 148 entity in any court of this state having jurisdiction over any
 149 defendant to the suit for declaratory and injunctive relief and
 150 for actual damages, as limited herein, caused by the violation.
 151 A court shall award the prevailing plaintiff in any such suit:

152 1. Reasonable attorney's fees and costs in accordance with
 153 the laws of this state, including a contingency fee multiplier,
 154 as authorized by law; and

155 2. The actual damages incurred, but not more than
 156 \$100,000.

157
 158 Interest on the sums awarded pursuant to this subsection shall
 159 accrue at the legal rate from the date on which suit was filed.

160 (4) EXCEPTIONS.—This section does not prohibit:

161 (a) Zoning ordinances that encompass firearms businesses
 162 along with other businesses, except that zoning ordinances that
 163 are designed for the purpose of restricting or prohibiting the
 164 sale, purchase, transfer, or manufacture of firearms or
 165 ammunition as a method of regulating firearms or ammunition are
 166 in conflict with this subsection and are prohibited;

167 (b) A duly organized law enforcement agency from enacting
 168 and enforcing regulations pertaining to firearms, ammunition, or

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

169 firearm accessories issued to or used by peace officers in the
 170 course of their official duties;

171 (c) Except as provided in s. 790.251, any entity subject
 172 to the prohibitions of this section from regulating or
 173 prohibiting the carrying of firearms and ammunition by an
 174 employee of the entity during and in the course of the
 175 employee's official duties;

176 (d) A court or administrative law judge from hearing and
 177 resolving any case or controversy or issuing any opinion or
 178 order on a matter within the jurisdiction of that court or
 179 judge; or

180 (e) The Florida Fish and Wildlife Conservation Commission
 181 from regulating the use of firearms or ammunition as a method of
 182 taking wildlife and regulating the shooting ranges managed by
 183 the commission.

184 (5) ~~(b)~~ SHORT TITLE.—As created by chapter 87-23, Laws of
 185 Florida, this section ~~shall be known and~~ may be cited as the
 186 "Joe Carlucci Uniform Firearms Act."

187 Section 2. This act shall take effect October 1, 2011.