



AGENDA ITEM REQUEST FORM

Town Attorney

Susan L. Trevarthen

Department Submitting Request

Dept Head's Signature

REGULAR
COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

ROUNDTABLE/
SPECIAL MEETING
Meeting Dates / TIME

DEADLINE TO
Town Clerk
7 Days Prior (noon)

- July 26, 2011 SPECIAL BUDGET 5:30 PM
- July 26, 2011
- Aug 23, 2011
- Sept 12, 2011 1st PUBLIC HEARING
- Sept 13, 2011
- Sept 26, 2011 2nd PUBLIC HEARING
- Sept 27, 2011

- July 15 (5:00 pm)
- July 15 (5:00 pm)
- Aug 12 (5:00 pm)
- Sept 01 (5:00 pm)
- Sept 02 (5:00 pm)
- Sept 15 (5:00 pm)
- Sept 16 (5:00 pm)

- Insert Date/Time

*Subject to Change

- Presentation
- Resolution
- Reports
- Quasi Judicial
- Consent
- Old Business
- Ordinance
- New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM
PRIORITY TOPIC:

SUBJECT TITLE: Ordinance Revising Code to Address 2011 Legislative Preemption and Penalties for Local Adoption or Enforcement of Firearms Regulations ~ Ordinance 2011-15 2nd Reading

EXPLANATION: Chapter 790, Florida Statutes, regulates weapons and firearms throughout the State. Section 790.33, F.S., adopted in 1987 preempts all local regulations related to ammunition and firearms. The Florida Legislature, during its 2011 session, adopted House Bill 45 which revises Section 790.33, F.S., and provides significant penalties, both personal and corporate, to any person or organization *adopting* or *enforcing* local ammunition or firearm regulations which are preempted by the State.

Specifically, the preemption states (existing preemption, underlined text effective October 1, 2011):

Section 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.

The Town Code still addresses firearms. Previously there were no penalties, and local governments could simply choose not to enforce preempted regulations. However, the new penalties enacted by the legislature are extremely onerous. Therefore, I have brought this item forward, and recommend removing these provisions from Town Code, to avoid the possibility of some Town Official or employee overlooking the preemption in the future.

The new penalties for adopting or enforcing firearms regulations in violation of the preemption apply not only to the Town itself, but also to the individual elected or appointed officials adopting regulations or enforcing regulations. Specifically, repercussions of adopting or enforcing these regulations after October 1, 2011 include:

- Court injunction against enforcement
- Knowing and willful violation – up to a \$5,000 fine against the elected or appointed local government official under whose jurisdiction the violation occurred.



Item No. _____

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- Public funds may not be used or reimbursed for the defense of a person found to have willfully and knowingly violated the statute.
- Violation is cause for termination of employment or removal from office by the Governor.
- Prevailing plaintiff's attorney's fees, including a contingency fee multiplier.
- Actual damages up to \$100,000.

The attached ordinance is proposed to change those portions of the Town Code which conflict with the State preemption and avoid the potential for these onerous penalties.

EXPECTED OUTCOME: Approval of the attached Ordinance (Exhibit 1) on Second Reading.

EXHIBIT 1: Ordinance

2: Memo Summarizing State Laws Governing Firearms and Legislative Alert re House Bill 45 from Florida League of Cities

3: House Bill 45 staff analysis

Reviewed by Town Attorney

Yes No

Town Manager Initials

CA

ORDINANCE 2011-15

1 **AN ORDINANCE OF THE TOWN OF LAUDERDALE-**
2 **BY-THE-SEA, FLORIDA, AMENDING THE CODE OF**
3 **ORDINANCES TO ADDRESS FIREARM REGULATIONS**
4 **PREEMPTED BY STATE LAW BY AMENDING**
5 **CHAPTER 13, "NOISE," AMENDING CHAPTER 14,**
6 **"OFFENSES,;" AND AMENDING CHAPTER 14.3,**
7 **"PARKS AND RECREATIONAL FACILITIES,"**
8 **PROVIDING FOR CODIFICATION, SEVERABILITY,**
9 **CONFLICTS AND AN EFFECTIVE DATE.**

10 **WHEREAS,** the Town Commission recognizes that changes to the adopted Code
11
12 of Ordinances are periodically necessary in order to ensure that the Town's regulations
13 are current and consistent with the requirements of Florida Law; and

14 **WHEREAS,** the Florida Statutes were amended in 1987 to address the regulation
15 of ammunition and firearms throughout the state and pre-empt the regulation of that field
16 to the State; and

17 **WHEREAS,** the Florida Legislature has, by the adoption of House Bill 45 during
18 the 2011 session, adopted additional penalties and repercussions for the adoption and
19 enforcement of preempted local regulations of firearms, effective October 1, 2011; and

20 **WHEREAS,** the Town desires to eliminate preempted regulations of ammunition
21 and firearms from the Town's Code; and

22 **WHEREAS,** ammunition and firearms are currently regulated in Chapter 13,
23 "Noise," Chapter 14, "Offenses," and Chapter 14.3, "Parks and Recreational Facilities,"
24 and

25 **WHEREAS,** the Town Commission conducted a first and second reading of the
26 proposed ordinance at duly noticed public hearings, as required by law, and after having
27 received input from and participation by interested members of the public and staff, the

ORDINANCE 2011-15

28 Town Commission has determined that this Ordinance is consistent with State Law and is in
29 the best interest of the Town, its residents, and its visitors.

30 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION
31 OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:

32 SECTION 1. The foregoing “WHEREAS” clauses are hereby ratified and
33 confirmed as being true, correct and reflective of the legislative intent underlying this
34 Ordinance and are hereby made a specific part of this Ordinance.

35 SECTION 2. Chapter 13, “Noise,” Section 13-3, “Prohibited Acts,” is amended
36 to read as follows¹:

37 **Sec. 13-3. - Prohibited acts.** The following specific acts shall be prohibited at all times
38 and at all places within the limits of the Town:
39

40 * * * * *

41 (8) The unpermitted explosion of firecrackers, skyrocket, Roman candles,
42 pinwheels or any other form of fireworks ~~or the discharge of any firearms.~~
43 This subsection shall not prohibit organized fireworks displays conducted
44 in accordance with a special event permit issued pursuant to article VIII of
45 chapter 17 of this Code.
46

47 * * * * *

48
49 SECTION 3. Chapter 14, “Offenses,” Article I, “In General,” Section 14-14
50 “Discharge of firearms, etc.” is amended to read as follows:

51 **Sec. 14-14. - Discharge of firearms, etc.**

52
53 (a) It shall be unlawful for any person to willfully discharge any ~~firearm~~, air gun, BB
54 gun, or any toy gun projecting lead or any missiles in the Town, or to cast, throw
55 or propel any missile on any street, alley, or other public place within the Town.
56

57 ~~(b) However, this section shall not be construed to prohibit any Officer of the Law~~
58 ~~from discharging a firearm when lawfully defending person or property.~~
59

¹ Additions to text are shown in underline. Deletions to the text are shown in ~~strikethrough~~.

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60 **SECTION 4.** Chapter 14.3, "Parks and Recreational Facilities," is amended to
61 read as follows:

62 * * * * *

63 **Sec 14.3-2 - Definitions.**

64
65 The following words, terms and phrases, when used in this chapter, shall have the
66 meanings ascribed to them in this section, except where the context clearly indicates a
67 different meaning:

68 * * * * *

69 *Weapon* means all those weapons, ~~including~~ excluding firearms, defined as requiring a
70 license or permit under State statute, but also includes spears, crossbows, bows and
71 arrows, sling shots, paintball guns or any other dangerous weapon or projectile.

72 * * * * *

73
74
75 **Sec. 14.3-4. - Regulation of general conduct—Personal behavior.**

76 * * * * *

77
78 (e) Possession and use of ~~firearms~~/weapons/fireworks. Except for a licensed Law
79 Enforcement Officer, it shall be unlawful for any person to:

- 80
- 81 (1) Have in his/her possession within any Town park, ~~fire or discharge, or~~
82 ~~cause to be fired or discharged across, in, or into any portion of a park, a~~
83 ~~firearm or to possess a weapon, as that these terms are is defined in F.S. §~~
84 790.001.
- 85
- 86 (2) Possess, set off or attempt to set off or ignite any firecracker, fireworks,
87 smoke bombs, rockets, black powder guns or other pyrotechnics without a
88 Town permit.

89 * * * * *

90
91 **SECTION 5. Codification.** This Ordinance shall be codified in accordance with
92 the foregoing. It is the intention of the Town Commission that the provisions of this
93 Ordinance shall become and be made a part of the Town of Lauderdale-by-the-Sea Code of
94 Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and
95 the word "ordinance" may be changed to "section", "article" or such other appropriate word
96 or phrase in order to accomplish such intentions.

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97 **SECTION 6. Severability.** If any section, sentence, clause, or phrase of this
98 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
99 then said holding shall in no way affect the validity of the remaining portions of this
100 Ordinance.

101 **SECTION 7. Conflicting Ordinances.** All prior ordinances or resolutions or
102 parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

103 **SECTION 8. Effective Date.** This Ordinance shall become effective
104 immediately upon passage on second reading.

105 Passed on the first reading, this ____ day of _____, 2011.

106 Passed on the second reading, this ____ day of _____, 2011.

107
108
109
110

Mayor Roseann Minnet

111	First Reading	Second Reading
112 Mayor Minnet	_____	_____
113 Vice-Mayor Dodd	_____	_____
114 Commissioner Clotey	_____	_____
115 Commissioner Sasser	_____	_____
116 Commissioner Vincent	_____	_____
117		

118 Attest:

119 _____
120 Town Clerk June White, CMC

121 (CORPORATE SEAL)

122 Approved as to form only for the use
123 by the Town of Lauderdale-By-The-Sea:

124
125
126 _____
127 Town Attorney, Susan L. Trevarthen