

October 5, 2011

ITEM #12.D.

CITY OF HALLANDALE BEACH, REGULAR CITY COMMISSION MEETING

Date: September 26, 2011

Director's Name: Ed Dion, Interim City Attorney

Department: City Attorney's Office

Subject: Ordinance of the City of Hallandale Beach, Florida, Amending the Code of Ordinances to Address Firearm Regulations preempted by the State Law by Amending Chapter 19, "Offenses and Miscellaneous Provisions"; and Amending Chapter 21, "Personnel"; Providing for Conflicts, Providing for Severability; and Providing for an Effective Date.

CAD 008/11

Information

Requested Action

MOTION TO CONSIDER AND APPROVE

The ordinance amending Chapter 19, Offenses and Miscellaneous Provisions, and amending Chapter 21 Personnel to amend reference to firearms, and to schedule for second reading on October 19, 2011.

Why Action is Necessary

During the 2011 Legislative Session, the Florida Legislature enacted amendments to Section 790.33, Florida Statutes, to impose extremely onerous penalties for elected and appointed officials who adopt or enforce regulations which are preempted by Florida Law. The purpose of this ordinance is to repeal one (1) section of the City Code which address firearms in violation of the Statute, and amend one (1) section to conform to the Statute.

The new penalties for adopting or enforcing firearms regulations in violation of the preemption apply to the City, as well as individual elected or appointed officials adopting regulations or enforcing regulations.

Specifically, the penalties include:

- Court injunction against enforcement;
- Up to a \$5,000 fine against elected or appointed official for a knowing and willful violation;
- Public funds may not be used for the defense of any official found to have willfully and knowingly violated the statute;
- Termination of employment or removal from office by the Governor;
- Attorney's fees awarded to a prevailing plaintiff;
- Actual damages up to \$100,000.

To: Mark Antonio, City Manager
From: Ed Dion, Interim City Attorney
RE: Ordinance Amending Firearm Regulations
Date: September 26, 2011

What Action Accomplishes

The City Commission's approve the draft ordinance on first reading, and schedule for second reading on October 19, 2011, in order to comply with current law.

Is this Action Goal Related

This action is related to the Strategic Priority of *Excellence in Government* by ensuring local government is accountable, accessible and transparent in its operations; communicates effectively both internally and externally; values and supports community input and participation; and is effective in its management of human resources.

Previous Action Taken

No previous action taken.

Summary Explanation/Background

STAFF RECOMMENDS APPROVAL OF THE ABOVE MOTION

By way of background, section 790.33 F.S. known as the Joe Carlucci Uniform Firearms Act, became law in 1987 and expressly preempted the field of regulation of firearms and ammunition to the state, except as expressly provided by general law. The intent of section 790.33 at the time of its enactment was to provide uniform firearms laws in the state and to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal governments.

However, as a result of several municipalities enacting legislation regulating firearms and ammunition in spite of the legislative express preemption, House Bill 45 designated as Chapter No. 2011-109 was approved by the Governor and amends section 790.33. This amendment has an effective date of October 1, 2011.

The amendment to section 790.33, does not legalize or authorize the discharge of a firearm in public F.S. 790.15, open carry on or about one's person F.S. 790.053, improper exhibition of firearms F.S. 790.10, carrying a concealed weapon without a permit F.S. 790.06 or allowing a concealed weapons license holder to carry a concealed weapon to public meetings F.S. 790.25(3) (n) and 790.06(12) (a) 7. As such, the legislature has kept intact these sections which are meant to protect the safety of members of the public, employees, and officials.

Prior to the amendment, there were no penalties and local governments could simply choose not to enforce the preempted regulation. However, as stated above, the new penalties enacted by the legislature are extremely onerous.

Therefore, City Attorney's Office recommends approval of the motion so as to be in compliance with the State amendment and to avoid the possibility of some City Official or employee overlooking the preemption in the future.

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Fiscal Impact

Fiscal Impact/Cost Summary:

There are no fiscal impacts at this time.

Attachments

Exhibit 1 – Draft Ordinance

Exhibit 2 - Section 790.33, Florida Statutes.