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Memorandum

TO: Mayor & Commissioners
FROM: Shawn D. Smith, City Attorney
RE: State Preemption of Local Gun Control Ordinances
DATE: 25 September 2011

Mayor and Commissioners

As you may recall, the Florida Legislature passed new gun control laws last session that eviscerated local regulation of firearms. Chapter 790 of the Florida Statutes operates to regulate the entire field of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof.

Section 790.33(1), Florida Statutes, as amended last legislative session states:

"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."

As such, the City is precluded from regulating the area occupied by the State. As indicated in the prior memo to you on the subject, City legal staff has reviewed our code of ordinances in light of the state legislation. The ordinances for amendment or repeal concerning gun control before you for first reading on October 5 are intended to insure consistency with state law.

I encourage you to contact me with any questions or comments.

A handwritten signature in black ink, appearing to be "Shawn D. Smith", written over a horizontal line.

Shawn D. Smith

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES ENTITLED "AMUSEMENTS AND ENTERTAINMENT" BY AMENDING SECTION 6-1 "DEFINITIONS" TO AMEND THE DEFINITION OF A "WEAPON" TO EXCLUDE FIREARMS WHICH ARE GOVERNED BY FLORIDA STATUTES CHAPTER 790; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission finds that section 790, Florida Statutes, which addresses ownership, possession, storage and transportation of firearms, preempts part of section 6-1 of the Key West Code of Ordinances; and

WHEREAS, the Key West City Commission finds that amending section 6-1 is necessary to be consistent with Chapter 790 of the Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That section 6-1 of the Code of Ordinances is hereby amended as follows*:

Sec. 6-1. - Definitions.

* * * * *

Weapons shall mean any dirk, knife with a blade longer than two inches, scissors or shears with a blade longer than four inches, metallic knuckles, slingshot, billy, tear gas gun, chemical weapon or device, machete, axe, plastic gun or blunt-bladed table knife or other deadly weapon, excluding firearms which are governed by Florida Statutes Chapter 790, that is not otherwise regulated and approved by the Cultural Preservation Society for performances only at Mallory Square sunset celebration.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2011.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2011.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2011.

Filed with the Clerk _____, 2011.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,
AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES
ENTITLED "ANIMALS" BY AMENDING SECTION 10-14
"BIRD SANCTUARY" TO AMEND REGULATIONS
PERTAINING TO THE DESTRUCTION OF BIRDS
CONSISTENT WITH CHAPTER 790 OF THE FLORIDA
STATUTES; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission finds that amending
section 10-14 of the Code of Ordinances is necessary to comply
with recent amendments to chapter 790 of the Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,
FLORIDA:

Section 1: That section 10-14 of the Code of Ordinances
is hereby amended as follows*:

Sec. 10-14. - Bird Sanctuary.

(b) *Destruction of birds.* It shall be unlawful for any
person to ~~hunt, trap, shoot~~ harm or in any manner destroy birds
within the city limits; provided, however, the city manager is
authorized to issue a permit for the destruction of birds that
become obnoxious or destructive.

*(Coding: Added language is underlined; deleted language is
~~struck through~~.)

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2011.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2011.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2011.

Filed with the Clerk _____, 2011.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 18 OF THE CODE OF ORDINANCES ENTITLED "BUSINESSES" BY AMENDING SECTION 18-477 "DESIGNATION OF OFFICER OR AGENT OF CORPORATION," TO AMEND SECTION (b) TO INCORPORATE A REFERENCE TO FIREARMS AS GOVERNED BY FLORIDA STATUTE CHAPTER 790; BY AMENDING SECTION 18-480 - "FAILURE TO MAKE REPORT" TO INCORPORATE A REFERENCE TO FLORIDA STATUTE CHAPTER 790; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission finds that Chapter 790, Florida Statutes, which addresses ownership, possession, storage and transportation of firearms, preempts parts of sections 18-477(b) and 18-480 of the Key West Code of Ordinances, which substantially regulate pawnbrokers and metal dealers regarding the purchase, trade, acquisition and reporting of merchandise, including firearms; and

WHEREAS, the Key West City Commission finds that amending Chapter 18, by amending sections 18-477(b) and 18-480 would make such ordinances consistent with state law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That section 18-477(b) of the Code of Ordinances is hereby amended as follows*:

Sec. 18-477. - Designation of officer or agent of corporation.

(b) No officer, agent, servant or employee of any such corporate dealer shall purchase, trade for, pawn, or acquire from any minor any secondhand jewelry, furniture, clothing, radio, musical instrument, ~~pistol, revolver, one-hand firearm,~~ blackjack, metallic knuckles, handcuffs, or other similar equipment used primarily by police officers, except firearms, as governed by Florida Statutes Chapter 790, and other secondhand goods, wares, merchandise and materials, unless such officer, agent, servant or employee shall have been designated by such corporate dealer in the manner provided in this section and shall have consented in writing in the presence of and to the chief of police to such designation.

*(Coding: Added language is underlined; deleted language is ~~struck-through~~.)

Section 2: That section 18-480 of the Code of Ordinances is hereby amended as follows:

Section 18-480. Failure to report; falsely describing articles

Any metal dealer, founder or any dealer in secondhand jewelry, furniture, clothing, radios, musical instruments, ~~pistols, revolvers, one hand firearms,~~ blackjacks, metallic knuckles, handcuffs, or other similar equipment used primarily by police officers, except firearms, as governed by Florida Statutes Chapter 790, and other secondhand goods, wares, merchandise and materials who shall fail to make the report required by section 18-479 or who falsely described any such secondhand articles so purchased, traded for, pawned to or acquired shall be guilty of a violation and upon conviction thereof the license of such dealer shall thereupon be revoked and cancelled.

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this

Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2011.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2011.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2011.

Filed with the Clerk _____, 2011.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST,
FLORIDA, AMENDING CHAPTER 22 OF THE CODE
OF ORDINANCES ENTITLED "CEMETERIES" BY
REPEALING SECTION 22-11 - "FIREARMS";
PROVIDING FOR SEVERABILITY; PROVIDING FOR
REPEAL OF INCONSISTENT PROVISIONS;
PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission finds that
section 790, Florida Statutes, which addresses ownership,
possession, storage and transportation of firearms,
preempts section 22-11 of the Key West Code of Ordinances;
and

WHEREAS, the Key West City Commission finds that
amending Chapter 22, to repeal section 22-11 would serve to
promote the welfare of the citizens of Key West;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY
WEST, FLORIDA:

Section 1: That Section 22-11 of the Code of
Ordinances is hereby repealed.

~~22-11 Firearms.~~

~~No firearms shall be permitted within the cemetery except
with permission from the management; provided, however,
that a police officer on duty may carry a firearm into the
cemetery. Honor guard rifle teams for military or law
enforcement burials are exempt from this regulation~~

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately, upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

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