



**CITY OF OLDSMAR
CITY COUNCIL
AGENDA ITEM
COVER MEMO**

TO: City Council

FROM: Ann Nixon, City Clerk

DATE: June 21, 2022

AIR #: AIR-1975

SUBJECT: PUBLIC HEARING for First Reading of Ordinance 2022-07, amending Section 42-116 of the Code of Ordinances of the City of Oldsmar concerning hunting and weapons; making related findings (New Agenda Item)

BACKGROUND

On May 23, 2022, City Manager Donnelly received a Notice of Preemption Violation from Florida Carry. The City Attorney drafted Ordinance 2022-07 to address the State preemption regarding Oldsmar Code Section 42-116.

STRATEGIC GOAL

Quality of Place

RECOMMENDED MOTION

Pass the First Reading of Ordinance 2022-07, amending Section 42-116 of the Code of Ordinances of the City of Oldsmar concerning hunting and weapons; making related findings; providing for codification, severability, and an effective date.

ATTACHMENTS

[Ordinance 2022-07 \(PDF\)](#)

ORDINANCE 2022-07

AN ORDINANCE OF THE CITY OF OLDSMAR, FLORIDA, AMENDING § 42-116 OF THE CODE OF ORDINANCES OF THE CITY OF OLDSMAR CONCERNING HUNTING AND WEAPONS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, § 42-116 of the Code of Ordinances of the City of Oldsmar (“Code”) generally addresses hunting and use of weapons to hunt in public beaches or parks, and specifically prohibits persons from openly carrying, using or possessing certain weapons in public beaches or parks; and

WHEREAS, Article I, § 8(a) of the Florida Constitution provides that the “right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”; and

WHEREAS, Florida Statutes §790.33(1) provides: “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.”; and

WHEREAS, Florida Statutes §790.33(3) provides that any person, county, agency, municipality, district, or other entity that violates the Legislature’s occupation of the whole field of regulation of firearms and ammunition...by enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field shall be subject to a judicial declaration that the ordinance is improper and invalid, a permanent injunction against the local government prohibiting it from enforcing such ordinance, and, if the court determines that a violation was knowing and willful, the court shall assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials under whose jurisdiction the violation occurred; and

WHEREAS, Florida Statutes §790.33(3)(d) provides that public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated the statutory preemption of the field of firearms; and

WHEREAS, Florida Statutes §790.33(3)(e) provides that a knowing and willful violation of the statutory preemption of the field of firearms by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance prohibited by the statutory preemption shall be cause for termination of employment or contract or removal from office by the Governor; and

WHEREAS, the City has recently received a formal notice and claim under Florida

Statutes § 57.112 that parts of Code § 42-116 is expressly preempted by Florida Statutes §790.33 and demanding that the City revise its code to remedy the preemption violation; and

WHEREAS, Florida Statutes § 57.112 requires a court to award attorney fees to any party who or which successfully challenges a local ordinance as regulating a topic which has been expressly preempted to the State; and

WHEREAS, Florida Statutes § 57.112 provides that the City cannot be sued for a preemption violation if, in the case of an adopted ordinance, the City notices an intent to repeal the preempted code provision(s) within 30 days of receipt of the notice and repeals the preempted provisions within 30 days thereafter; and

WHEREAS, the Florida Attorney General opined in AGO 11-17 that a Florida county may not regulate the recreational discharge of firearms in residentially zoned areas as the regulation of firearms is preempted to the state pursuant to Florida Statutes § 790.33, and in AGO 05-40, opined that a county ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county would be preempted by Florida Statutes § 790.33; and

WHEREAS, in *Broward County v. Florida Carry, Inc.*, 313 So.3d 635 (Fla. 4th DCA 2021), the court found a county ordinance prohibiting the carrying or discharge of a gun at the county’s airport property, and prohibiting the selling or giving a gun at the airport, was preempted by Florida Statutes § 790.33; and

WHEREAS, while Florida Statutes § 790.053 makes it “unlawful for any person to openly carry on or about his or her person any firearm”, Florida Statutes § 790.25(3)(h) provides that, notwithstanding Florida Statutes § 790.053, “it is lawful for persons engaged in fishing, camping, or lawful hunting to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies”, and Florida Statutes §790.25(4) provides that the section “shall supersede any law, ordinance, or regulation in conflict herewith.”; and

WHEREAS, the City Council therefore finds that adoption of this Ordinance is required to ensure compliance with the Florida Legislature’s regulatory preemption of firearms regulations.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Oldsmar, Florida, that:

Section 1. That Section 42-116 of the Code of Ordinances of the City of Oldsmar is hereby amended to read as follows:

Hunting and weapons.

- (a) No unauthorized person shall openly carry, use or possess a weapon, other than a firearm, from which a projectile is propelled by the action of compressed air, the expansion of gas or a spring, or other mechanical means, bows and arrows, slingshots, boomerangs, or any

other form of weapon potentially dangerous to wildlife or human safety on any city public beach or park area except at and in accordance with the rules and regulations as a participant in a program sponsored by the department.

- (b) No unauthorized person shall hunt, trap, or pursue wildlife by any means or method whatsoever on any city public beach or park area.
- (c) The preceding two subsections do not apply to trained persons who have the written permission of the city manager or designee to remove dangerous animals. Such permission shall require the trained persons to:
 - (1) Use methods that cause as little pain to the animal as is possible in connection with the hunting, trapping, and removal thereof;
 - (2) Release the animal alive in a place where it is not likely to endanger humans if reasonably possible; and
 - (3) Inform the city manager or designee of the ultimate disposition of the animal.

(d) ~~This section is not intended to regulate the carrying, using, or possession of firearms, which are regulated by Florida Statutes. No person shall be cited under this section for carrying, using, or possessing a firearm, which are activities solely regulated by applicable state and federal firearms laws. Pursuant to Florida Statutes § 790.25(3)(h), it is lawful for persons engaged in fishing, camping, or lawful hunting to own, possess, and lawfully use firearms and related ammunition, and no person who is authorized under subsection (a) and (c) above to hunt, trap or remove wildlife on a city beach or park area shall be cited under this section for carrying, using, or possessing firearms or ammunition while engaged in these activities.~~

Section 2. For purposes of codification of any existing section of the Oldsmar Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Code of Ordinances of the City of Oldsmar contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING:

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PASSED ON SECOND READING AND ADOPTED:

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Daniel M. Saracki, Mayor
City of Oldsmar

ATTEST:

Ann Nixon, City Clerk, MMC
City of Oldsmar

APPROVED AS TO FORM:

Thomas J. Trask, B.C.S.
City Attorney, City of Oldsmar