

ORDINANCE NO. 2011-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AMENDING THE CODE OF ORDINANCES TO REMOVE FIREARM REGULATIONS, CONSISTENT WITH THE ADOPTION OF HOUSE BILL 45, BY THE FLORIDA LEGISLATURE, ALSO KNOWN AS THE JOE CARLUCCI UNIFORM FIREARMS ACT, PREEMPTING ALL LOCAL FIREARM REGULATIONS TO THE STATE OF FLORIDA; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

WHEREAS, the Governor of the State of Florida signed House Bill 45 on June 2, 2011; and

WHEREAS, House Bill 45 preempts the field of regulation of firearms and ammunition to the exclusion of any city or county ordinances, regulations, or rules; and

WHEREAS, House Bill 45 becomes law on October 1, 2011, and municipalities are required to be in compliance with the law by that date; and

WHEREAS, the express preemption by the State provides for penalties in the event of local regulations of ammunition or firearms; and

WHEREAS, the courts of Florida have consistently allowed the State to expressly preempt by statute certain matters that might otherwise properly be the subject of local regulation; and

WHEREAS, Chapter 2011-109 does not preempt, amend or repeal the authority of local government as provided in Section 823.16(7), Florida Statutes, to regulate the location and construction of shooting ranges; and

WHEREAS, the law expressly exempts from the preemption zoning regulations, except for zoning regulations that are designed to restrict or prohibit the sale, purchase, transfer or manufacture of firearms or ammunition, or where the zoning regulation in effect is a method of regulating firearms and ammunition as opposed to being a bona fide zoning regulation; and

WHEREAS, the City shall preserve to the fullest extent allowed by the law, including Section 823.16(7), Florida Statutes, the authority to engage in appropriate zoning in the interest of the City and its residents, including the authority in Section 823.16(7), Florida Statutes, to regulate the location and construction of shooting ranges.

WHEREAS, the City Council of the City of Palm Coast conducted an advertised public hearing on _____, 2011, and considered all public input; and

WHEREAS, words with double underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. Recitals. The recitals set forth above are hereby adopted and incorporated herein by reference as legislative findings and a statement of the intent and purpose of the City Council of the City of Palm Coast.

SECTION 2. That Section 23-56, Effect and purpose of state of local emergency, Chapter 23, Emergency Services, Code of Ordinances of the City of Palm Coast, Florida is hereby amended to read as follows:

(c)(6) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles.

SECTION 3. That Section 42-166, Firearms; fireworks, destructive devices; weapons; other potentially dangerous uses, Chapter 42, Streets, Roads, Bridges and Other Public Places, Code of Ordinances of the City of Palm Coast, Florida is hereby amended to read as follows:

- (a) It is unlawful to carry, fire or discharge any destructive device; or explosive, weapon, or firearms, as those terms are defined in Section ~~258.156 or Section~~ 790.001, Florida Statutes, (including, however, in this prohibition, the items excepted as destructive devices ~~and antique firearms~~), Florida Statutes, or any fireworks, as defined in Section 791.01, Florida Statutes, of any description in a City Park. ~~This provision shall not make it unlawful for a person to carry a concealed weapon or firearm when in possession of a license to do so in accordance with Section 790.06, Florida Statutes, and in a manner authorized by law; or to possess a firearm, weapon, ammunition and supplies lawful purposes when a person is traveling by private conveyance and has securely encased the firearm, weapon, ammunition and supplies or is traveling in a public conveyance when the firearm, weapon, ammunition and supplies are securely encased and not in the person's manual possession.~~
- (b) ~~The City may issue permits to carry firearms for events such as the reenactment of battles and military salutes if conditions are placed on such events such as, by way of example, the use of blanks. Law Enforcement Officers are hereby provided a general permit to carry issued firearms when in the course and performance of their lawful duties.~~

(e)(b) It is unlawful to carry, fire or use rockets and radio controlled planes, boats, cars and helicopters at a City Park unless such uses are specifically permitted for a special occasion.

SECTION 3. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word "Ordinance" may be changed to "Section", "Article", or other appropriate word.

SECTION 4. SEVERABILITY. It is declared to be the intent of the City Council of the City of Palm Coast, Florida, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance, is held to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not be construed as to render unconstitutional or invalid the remaining provisions of this Ordinance.

SECTION 5. CONFLICTS. All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective ten (10) days after the second reading and adoption.

APPROVED on first reading the 20th day of September 2011.

ADOPTED on second reading the 4th day of October 2011.

CITY OF PALM COAST, FLORIDA

Jon Netts, Mayor

ATTEST:

Virginia A. Smith, City Clerk

Approved as to form and legality

William E. Reischmann, Jr.,
City Attorney