

ORDINANCE NO. 08-11

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 42 ENTITLED "MISCELLANEOUS OFFENSES" BY CREATING SECTION 42-15 "POSSESSION OF AIRGUNS BY MINORS", PROVIDING FOR DEFINITIONS, LICENSURE, AGE REQUIREMENTS, REGULATIONS, AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in recognition of the inherent danger of personal injury of minors being in possession of air guns, and;

WHEREAS, The City of Key West recognizes the increased danger in the minors being in possession of air guns which usually have the appearance of real firearms, and;

WHEREAS, the City of Key West has determined that this ordinance is in the public's best interest and necessity, promotes the public health, safety, welfare and provides for penalties to business owners who provide these dangerous weapons to minors,

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

Section 1: That Section 42-15 of the Code of Ordinances
is hereby created as follows:

Sec. 42-15 Possession of Airguns by Minors

(a) Definitions.

For the purposes of this article, the following words and
phrases shall have the meanings respectively ascribed to
them by this section:

(1)Air gun: Any gun, rifle or pistol by whatever name
known which is designed to expel a projectile by the action
of compressed air or gas, or by the action of a spring or
elastic, but such term does not mean a firearm.

(2)Dealer: Any person engaged in the business of selling
at retail or renting air guns or projectiles therefore, and

***(Coding: Added language is underlined; deleted
language is ~~struck through~~) language added at 1st reading is
underlined twice; language deleted at first reading is
~~struck through twice~~)**

the term "licensed dealer" means any such person licensed under the provisions of this article, or any person regularly licensed to sell firearms.

(3) Minor: Any person under the age of 18 years.

(b) Dealer's license—Application, Term, Revocation/

Suspension.

(1) It shall be unlawful for any dealer, except a licensed dealer, to sell, lend, rent or otherwise transfer any air gun or projectile therefore. Dealers who are licensed to sell firearms shall not be required to obtain the special license to sell air guns, but shall comply with all other provisions of this article.

(2) (A) Any dealer, other than a dealer licensed to sell firearms, desiring a license to sell, lend, rent or otherwise transfer air guns or projectiles therefore shall make application to the license division, which shall provide the necessary forms and shall prescribe by reasonable rules and regulations the information to be contained in such application.

(B) It shall be unlawful for any person to knowingly make any false statement in such an application.

(3) There shall be an annual fee to obtain a dealer license of \$200.00. This fee shall be prorated only for the initial application year payable to the license division. The City shall issue to the applicant a license to sell, lend, rent or otherwise transfer air guns or projectiles therefore, which license shall remain in force, subject to annual payment of the license fee, unless revoked in accordance with the provisions of this article. No license shall be issued to any applicant within two years after the revocation of a previous license.

(4) (A) Violation by a dealer of any provisions of this article shall be sufficient cause for the revocation of the license issued under this article or any City issued license to sell firearms, after written notice to the dealer by the licensing division. The City Manager shall determine the severity of the violation and if said violation warrants a suspension or revocation of the business license to sell, lend rent or otherwise transfer air guns. The license holder shall be granted an opportunity to be heard personally or by legal counsel by the City Manager at said hearing.

(B) Final conviction of a violation of any provision of this chapter, state or federal laws relating to air guns or firearms shall automatically revoke and terminate any

license issued under this article or any City issued license to sell firearms. Upon a finding and judgment by a trial court against any dealer that he has been guilty of such a violation of any provision of this article, state or federal laws relating to air guns or firearms, the license of such dealer shall be automatically suspended pending the final disposition of any appeal from such finding and judgment.

(c) Sale or delivery to minors--Generally.

It shall be unlawful for any licensed dealer to sell, lend, rent or otherwise transfer an air gun or projectile therefore to any person whom the dealer knows or has reasonable cause to believe to be a minor, and it shall be unlawful for any other person to give, sell, rent, lend or otherwise transfer any air gun or projectile therefore to a minor, except where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the minor.

(d) Same--False representation as to age.

It shall be unlawful for any person to falsely represent himself as being over 18 years of age in order to purchase or otherwise obtain an air gun or projectile therefore.

(e) Minors not to carry in public places; exception.

It shall be unlawful for any minor to carry any air gun on the streets, alleys, public roads or public lands of this city, unless accompanied by an adult. In such a case, the air gun shall be made reasonably safe, inoperable and secured in a sealed carrying apparatus ~~hard case~~ until ready for immediate use consistent with this Chapter.

(f) Discharging in public places.

It shall be unlawful for any person to discharge any air gun from or across any street, sidewalk, alley or public road of this city, or on or across any public land, except on a properly constructed target range.

(g) Seizure and sale of air gun used in violation of Chapter 42.

Any officer making an arrest for a violation of any of the Sections in this Chapter shall immediately take possession of the air gun found upon or in the possession of the person so arrested or cited and shall retain the same until disposition of the offense. If the person is found guilty by a state, federal or municipal court, the air gun shall be forfeited and the proper department shall sell, at public sale or otherwise, or dispose of the same and

account for and pay over the proceeds as in case of fines collected. If such person is acquitted, the air gun shall be returned to the adult parent, guardian or instructor of the offender upon demand therefore.

(h) Penalties

A Violation of any section of this Chapter shall be punishable in accordance with Chapter 1-15 for each count.

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 there from 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 5th day of August, 2008.

Read and passed on final reading at a regular meeting held this 3rd day of September, 2008.

Authenticated by the presiding officer and Clerk of the Commission on 12th day of September, 2008.

Filed with the Clerk September 12, 2008.


MORGAN MCPHERSON, MAYOR


CHERYL SMITH, CITY CLERK