

ORDINANCE NO. 11-17

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3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.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 5 day of October, 2011.

Read and passed on final reading at a regular meeting held this 18 day of October, 2011.

Authenticated by the presiding officer and Clerk of the Commission on 19 day of October, 2011.

Filed with the Clerk October 19, 2011.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



SHAWN D. SMITH
LARRY ERSKINE
RON RAMSINGH

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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