

ORDINANCE NO. 11-20

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.

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(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.

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\*(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 5 day of October, 2011.

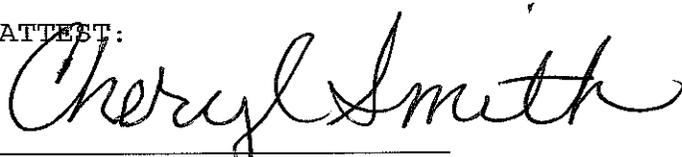
Read and passed on final reading at a regular meeting held this 18 day of October, 2011.

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

Filed with the Clerk October 19, 2011.

  
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CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



SHAWN D. SMITH  
LARRY ERSKINE  
RON RAMSINGH

## Office of the City Attorney

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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 read "Shawn D. Smith", is written over a horizontal line.

Shawn D. Smith