

**MANATEE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

<b>SUBJECT</b>	Proposed Ordinance No. 11-036; repealing Ordinance 84-19, Article V of Chapter 2-21, and Ordinance 81-9, Article I, Chapter 2-21, and Section 1-17-1 of the Manatee County Code relating to Firearms Regulations; RLS No. 11-292; CAO File 2060-093	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	September 6, 2011	<b>DATE SUBMITTED/REVISED</b>	August 22, 2011
<b>BRIEFINGS? Who?</b>		<b>CONSEQUENCES IF DEFERRED</b>	
<b>DEPARTMENT/DIVISION</b>	County Attorney	<b>AUTHORIZED BY TITLE</b>	Tedd N. Williams, Jr., Esq. County Attorney
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	Jo Ann Grace, Legal Assistant Ext. 3753	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	James A. Minix, Esq. Chief Deputy County Attorney
<b>ADMINISTRATIVE APPROVAL</b>		<i>Jan 8/22/11</i>	

**ACTION DESIRED**

**INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED**

Motion to authorize publication of a Notice of Public Hearing on proposed Ordinance No. 11-036 repealing Ordinances 81-9 and 84-19, and Section 1-17-1 of the Manatee County Code relating to the regulation and use of firearms and ammunition.

**ENABLING/REGULATING AUTHORITY**

**Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy**

Sections 125.01 and 790.233, F.S. as amended by Chapter 2011-109, Laws of Florida.

**BACKGROUND/DISCUSSION**

The publication of a Notice of Public Hearing regarding adoption of new Ordinance 11-036 will be required for consideration of proposed Ordinance 11-036. The County Attorney's office requests permission to publish this proposed ordinance for public notice and future consideration by the Board. It will repeal prior Ordinances 84-19, 81-9, and Section 1-17-1 of the Manatee County Code. These ordinances and section should be repealed for the reasons contained in the County Attorney's Office RLS 11-202 response memo dated August 1, 2011.

**APPROVED IN OPEN SESSION**

**SEP 06 2011**

**BOARD OF COUNTY COMMISSIONERS  
MANATEE COUNTY, FLORIDA**

COUNTY ATTORNEY REVIEW	
Check appropriate box	
<input type="checkbox"/>	<b>REVIEWED</b> <b>Written Comments:</b> <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials:      )
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input checked="" type="checkbox"/>	<b>OTHER</b>

<b>ATTACHMENTS: (List in order as attached)</b>		<b>INSTRUCTIONS TO BOARD RECORDS:</b> <i>sent 9/7/11</i>	
1. Proposed Ordinance 11-036 2. RLS Response Memo dated August 1, 2011		1. Please return an electronic copy of this approved agenda memorandum package to Jo Ann C. Grace, Legal Assistant to Mr. Minix at: <a href="mailto:joann.grace@mymanatee.org">joann.grace@mymanatee.org</a>	
<b>COST:</b>	N/A	<b>SOURCE (ACCT # &amp; NAME):</b>	
<b>COMMENTS:</b>		<b>AMT./FREQ. OF RECURRING COSTS:</b> <b>(ATTACH FISCAL IMPACT STATEMENT)</b>	

Cc: Ed Hunzeker, County Administrator  
 Michelle S. Hall, Esq., MSO General Counsel



Office of  
**MANATEE COUNTY  
ATTORNEY**

Tedd N. Williams, Jr., County Attorney

James A. Minix, Chief Deputy County Attorney  
Maureen S. Sikora, Deputy County Attorney\*  
Robert M. Eschenfelder, Deputy County Attorney  
Rodney C. Wade, Deputy County Attorney\*  
William E. Clague, Deputy County Attorney  
James R. Cooney, Deputy County Attorney  
Sarah A. Schenk, Deputy County Attorney\*

**MEMORANDUM**

**DATE:** AUGUST 1, 2011

**TO:** MICHELE S. HALL, ESQUIRE, MSO General Counsel

**THRU:** TEDD N. WILLIAMS, Jr., County Attorney *[Signature]* 8/1/11

**FROM:** JAMES A. MINIX, Chief Deputy County Attorney

**RE:** FIREARMS ORDINANCE-LEGISLATIVE PREEMPTION HB-45  
(LEGISLATIVE PREEMPTION OF COUNTY ORDINANCES IN  
SECTION 790.33, FLORIDA STATUTES (AS AMENDED) CHAPTER  
2011-109, LAWS OF FLORIDA); RLS 11-202; CAO File No. 2060-093

The County Attorney's Office has received a request from the Manatee County Sheriff's Office asking it to opine on the following question:

**I. QUESTION PRESENTED**

Are there any Manatee County ordinances which directly or indirectly regulate firearms and are preempted by Section 790.33, Florida Statutes (2011), as amended by Chapter 2011-109, Laws of Florida?

**II. BRIEF ANSWER**

Yes. We have searched the Manatee County Code for several ordinances which regulate firearms and may be preempted by state law. A list of those ordinances is contained in this memo. The County Attorney's Office intends to request that the Board of County Commissioners consider repealing these conflicting ordinances at a later date.

\* Board Certified City, County & Local Government Law

### III. FACTUAL BACKGROUND

The Manatee County Sheriff's Office ("MCSO") has recently reviewed the latest amendments to §790.33, Fla. Stat. which is a part of Chapter 790 that regulates weapons and firearms in Florida. This section contains a preemption clause excluding ALL existing and future county (among other entities) ordinances relating to the field of the regulation of firearms and ammunition. Chapter 2011-109, Laws of Florida recently amended Section 790.33 in several significant respects. The amended statute now states:

PREEMPTION.-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, 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. ~~This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited.~~

Under the "Policy and Intent" portion of the statute, the amended version goes on to state:

*It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state relating to firearms, ammunition, or components thereof, by **the abuse of official authority** that occurs when enactments are passed in violation of state law or under color of local or state authority. (e.s.)*

Finally, as if the foregoing fails to make its point, the amended Act now expressly states the prohibitions and penalties for violating the section outlined above:

*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, as declared in subsection (1), 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 liable as set forth herein.*

*If any county, city, town, or other local government violates this section, the court shall declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. It is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.*

*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 or administrative agency head under whose jurisdiction the violation occurred.*

*Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section."*

*A knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.*

*A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein.*

The MCSO is concerned that this amended act, particularly the Prohibitions and Penalties portion of the law as quoted above, may prohibit further enforcement of those ordinances purporting to regulate firearms. The Sheriff wants to know how far the preemption goes and what ordinances may be impacted as a result of this new law. The amended act has been considered a "migraine headache" bill for many in law enforcement and government due to the draconian penalties to those that may seek to enforce a preempted ordinance. Accordingly, the MCSO requests our legal opinion on §790.33, as amended by Chapter 2011-109, Laws of Florida.

#### IV. DISCUSSION

The Legislative intent is initially determined by the language used in the statute. If the language is clear and unambiguous, it is the obligation of the courts to interpret it according to its clear meaning. Only when the language is ambiguous or unclear, does the court resort to other methods of interpretation to ascertain the intent of the Legislature. *Fla. Birth Related Neurological Ass'n. v. Dept. of Admin. Hrgings.*, 29 So3d 992 (Fla. 2010).

The preemption clause of §790.33 could hardly be any clearer. The Legislature expressly states that "it is occupying the whole field of regulation of firearms and ammunition" and then, in case there is any question as to the scope of the term "firearms and ammunition," the Legislature goes on to say "including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof..." It is quite apparent that the Legislature does not want any regulation in this entire area from subordinate governments.

The Legislature next takes the novel step of providing for the enforcement of individual rights caused by "the abuse of official authority" that may occur when "enactments are passed in violation of state law or under color of local or state authority." I construe this language to mean that not only is the Legislature saying that it is preempting this area of the law, but it is providing for specific express penalties for the "abuse of official authority" should any subordinate government dare to interfere with the state's regulation.<sup>1</sup> The Legislature further authorizes the courts to issue a permanent injunction against any subordinate government from enforcing such an ordinance or other regulation, and assesses fines of up to \$5000 against the "elected or appointed local government official" under whose jurisdiction the violation occurred. As if that's not penalty enough, the provisions also provide that public funds cannot be used for the defense of any official found to have violated the section, and the official may be terminated from his or her employment or be removed from office for violating this section.

Based upon the clear Legislative intent and the explicit penalties provided for "the abuse of official authority," it is my considered opinion that we should err on the side of caution in this instance and repeal any ordinance or other regulation that may be preempted by this law.<sup>2</sup> The ordinances that I have discovered that may be preempted by the statute are:

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<sup>1</sup> The Legislature was explicit when it stated that "any person, county, agency, municipality, district or other entity..." may be at risk of penalties for "...enacting or causing to be enforced any local ordinance..." (e.s).

<sup>2</sup> While the County has "home rule" powers under §125.01, Fla. Stat., the Florida Constitution clearly provides that home rule powers do not extend to county ordinances inconsistent with general or special law. Art VIII, §1(f), Fla. Stat.

- Ordinance 81-9 (codified at 2-21-71 et seq of the Manatee County Code) requiring a permit to carry a concealed pistol within Manatee County.
- Special Act Ch. 67-1676, Laws of Florida (codified at 1-11-1) regarding the discharge of firearms on roads, highways, or streets.<sup>3</sup>
- Ordinance 84-19 (codified at 2-21-1, Manatee County Code) purports to regulate the discharge of projectiles (i.e. ammunition) from firearms.

#### **V. CONCLUSION**

Section 790.33, Florida Statutes (2011), as amended, requires that local governments refrain from regulating anything whatsoever to do with weapons and firearms. Until a court can determine the validity of the amendments made in Chapter 2011-109, Laws of Florida, Manatee County should repeal any ordinances dealing with firearms or weapons and not cause any of these ordinances to be enforced. The ordinances listed above may be implicated by this section.

This office will analyze the listed ordinances and determine whether they may violate the restrictions of F.S. 790.33. If any listed ordinance needs to be repealed, the County Attorney's Office will place a repealing ordinance on a future agenda.

JAM/jcg

cc: Board of County Commissioners  
Ed Hunzeker, County Administrator

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<sup>3</sup> This Special Act may not be subject to repeal under Art. VIII, §1(f), Fla. Const. See footnote #2, *supra*.

**ORDINANCE 11-036**

**AN ORDINANCE OF MANATEE COUNTY, FLORIDA,  
REPEALING ORDINANCE 84-19, CODIFIED AT ARTICLE  
I, CHAPTER 2-21 OF THE MANATEE COUNTY CODE  
RELATED TO TARGET PRACTICE RANGES; AND  
REPEALING ORDINANCE 81-9, CODIFIED AT ARTICLE  
V, CHAPTER 2-21 OF THE MANATEE COUNTY CODE  
RELATED TO CONCEALED PISTOL PERMIT; AND  
REPEALING SECTION 1-17-1 OF THE MANATEE  
COUNTY CODE REGULATING THE DISCHARGE OF  
FIREARMS ON ROADS, HIGHWAYS OR STREETS;  
PROVIDING FOR CODIFICATION; AND PROVIDING AN  
EFFECTIVE DATE.**

**WHEREAS**, Ordinance 84-19 was adopted by the Board of County Commissioners on November 14, 1984 and codified at Article I of Chapter 2-21 of the Manatee County Code further regulating firearms with regard to target practice ranges, projectile boundaries, penalties and definitions, and;

**WHEREAS**, Ordinance 81-9, was adopted by the Board of County Commissioners on June 9, 1981 and codified at Article V of Chapter 2-21 of the Manatee County Code creating regulations concerning the permitting of concealed weapons, related fees and criteria, firearms instruction and training, and;

**WHEREAS**, Special Act Chapter 67-1676, codified at Section 1-17-1 of the Manatee County Code regulates the discharge of firearms on roads, highways or streets; and

**WHEREAS**, Section 790.33, Florida Statutes (2011), as amended by Chapter 2011-109, Laws of Florida, states that the legislature intends to preempt the whole field of regulation of firearms and ammunition and requires local governments to refrain from regulating anything whatsoever to do with weapons and firearms; and

**WHEREAS**, Articles I and V of Chapter 2-21 of the Manatee County Code are no longer required or enforceable; and

**WHEREAS**, it is necessary to repeal the unenforceable ordinances per legislative direction and to avoid the penalty provisions provided by the amended statute.

**NOW THEREFORE BE IT ORDAINED** by the Board of County Commissioners of Manatee County:

**Section 1.** Article I of Chapter 2-21 of the Manatee County Code, inclusive of Section 2-21-1 (Ordinance 84-19) is hereby repealed in its entirety and the codifier shall show this article as untitled and reserved for future use.



**Section 2.** Article V of Chapter 2-21 of the Manatee County Code (Ordinance 81-09), inclusive of Sections 2-21-71 through 2-21-81, is hereby repealed in its entirety and the codifier shall show this article as untitled and reserved for future use.

**Section 3.** Section 1-17-1 of the Manatee County Code may be repealed in its entirety and the codifier shall delete this section in its entirety from the code.

**Section 4.** This Ordinance shall take effect upon filing with the Department of State.

**PASSED AND DULY ADOPTED** in open session, with a quorum voting, this \_\_\_\_ day of \_\_\_\_\_, 2011.

BOARD OF COUNTY COMMISSIONERS  
OF MANATEE COUNTY, FLORIDA

ATTEST: R.B. SHORE  
Clerk of the Circuit Court

By: \_\_\_\_\_  
Carol Whitmore, Chairman

By: \_\_\_\_\_  
Deputy Clerk