

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, REPEALING AND/OR AMENDING PROVISIONS OF THE CITY CODE INCONSISTENT WITH 2011-109, LAWS OF FLORIDA RELATING TO FIREARMS AND AMMUNITION REGULATIONS; REPEALING IN ITS ENTIRETY CHAPTER 54 (OFFENSES), ARTICLE V (OFFENSES INVOLVING WEAPONS), INCLUDING SECTIONS 54-171 THROUGH 54-175 WHICH MAKES CERTAIN OFFENSES INVOLVING WEAPONS UNLAWFUL; AMENDING IN PART CERTAIN PORTIONS OF CHAPTER 58 (PARKS AND RECREATION FACILITIES), ARTICLE III (CONDUCT IN PARKS AND RECREATION FACILITIES), SECTION 58-84 (RECREATIONAL ACTIVITIES) SUBSECTION (C) (HUNTING AND FIREARMS) OF THE CODE OF ORDINANCES WHICH REGULATES USE OF FIREARMS IN CITY PARKS; AMENDING CHAPTER 54 (OFFENSES), ARTICLE I (GENERAL) SECTION 54-1; AMENDING CERTAIN PORTIONS OF CHAPTER 94 (ZONING AND LAND DEVELOPMENT REGULATIONS), ARTICLE IV (DOWNTOWN MASTER PLAN URBAN REGULATIONS), SECTION 94-106 (GENERAL USES WITH SPECIAL REQUIREMENTS) SUBSECTION (4) (FIREARM SALES); PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING A CODIFICATION CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * *

WHEREAS, the 2011 Florida Legislature, in House Bill 45, amended Section 790.33, Florida Statutes, to clarify the intent of the State and to more strongly asserts the State's preemption over the whole field of regulation of firearms and ammunition; and

WHEREAS, Section 790.33, Florida Statutes, expressly preempts municipal regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage and transportation thereof; and

WHEREAS, the Florida legislature amended Section 790.33, effective October 1, 2011, to provide severe penalties for any government official or employee who enacts or causes to be enforced any municipal regulation of firearms and ammunition; and

WHEREAS, all ordinances, administrative regulations or rules adopted by local or state government related to purchase, sale, transfer, taxation, manufacture, ownership, possession, storage and transportation of firearms and ammunition are declared null and void; and

WHEREAS, it is deemed prudent to amend or repeal City ordinances regulating firearms and ammunition; and

(Additions to text are indicated by underline; deletions by ~~strikeout~~.)

Asterisks ***** indicate language not amended which has been omitted to save space.

WHEREAS, the City desires to repeal or amend sections of the City of West Palm Beach Code of Ordinances relating to the regulation of firearms and ammunition in recognition of the state preemption of this field and to ensure compliance with the new state law; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: Chapter 58 (Parks and Recreation Facilities), Article III (Conduct in Parks and Recreation Facilities), Section 58-84 (Recreational activities) subsection (c) (Hunting and firearms) of the Code of Ordinances of the City of West Palm Beach, Florida, is hereby amended and replaced as follows:

Sec. 58-84. Recreational Activities

* * *

~~(e) *Hunting and firearms.* No person shall hunt, trap or pursue wildlife at any time. No person shall use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings or any other form of weapons potentially hostile to wildlife and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device. Shooting into park areas from beyond park boundaries is forbidden. The following exceptions shall apply to this subsection:~~

~~(1) — The parks and recreation director may make special exceptions for organized recreational programs involving archery, rifle, or pistol ranges, etc., in designated areas.~~

~~(2) — This provision shall not apply to the use of starter pistols firing blanks in connection with sports events.~~

(c) *Wildlife.* The killing, wounding, frightening, capture, feeding, touching, teasing, molesting or intentional disturbance of at any time of any wildlife or the activities or phenomena of wildlife is prohibited, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury.

* * *

SECTION 2: Chapter 54 (Offenses), Article V (Offenses Involving Weapons), Section 54-171 (Discharging firearms other than at shooting galleries, etc., prohibited), Section 54-172 (Requirements for discharging firearms in shooting galleries or upon rifle or pistol ranges), Section 54-173 (Slungshots and slingshots), Section 54-174 (Air Rifles and BB guns) and Section 54-175 (Article

(Additions to text are indicated by underline; deletions by ~~strikeout~~.)

Asterisks ***** indicate language not amended which has been omitted to save space.

not applicable to law officers, etc.) of the Code of Ordinances of the City of West Palm Beach, Florida are hereby repealed in their entirety as follows:

Sec. 54-171. – Discharging firearms other than at shooting galleries, etc., prohibited.

~~It shall be unlawful for any person to shoot or discharge any pistol, revolver, rifle, shotgun or other firearm within the city, except within a shooting gallery or upon a pistol or rifle range which the police chief shall have examined and found and determined to be located, constructed and equipped in such a manner as not to endanger the safety of others while the shooting gallery or pistol range is in use.~~

Sec. 54-172. – Requirements for discharging firearms in shooting galleries or upon rifle or pistol ranges.

~~It shall be unlawful for any person to shoot or discharge any pistol, revolver, rifle, shotgun or other firearm within a shooting gallery or upon a pistol or rifle range within the city, unless the shooting or discharge shall be performed in the presence and under the supervision of some person who shall have been examined by the police chief of the city and found and determined to be skilled and efficient in the use of such firearms.~~

Sec. 54-173. – Slungshots and slingshots.

~~No person shall carry, use or have in his possession any slungshot or slingshot within the city.~~

Sec. 54-174. – Air rifles and BB guns.

~~It shall be unlawful for any person to shoot or discharge any air rifle or any BB gun within the city, except upon a range theretofore approved in writing by the police chief as being constructed and equipped in such manner as not to endanger the safety of others while such range is in use.~~

Sec. 54-175. – Article not applicable to law officers, etc.

~~The provisions of this article shall not apply to officers of the law while in the performance of their duties, nor to persons engaged in protecting their homes.~~

(Additions to text are indicated by underline; deletions by ~~strikeout~~.)

Asterisks ***** indicate language not amended which has been omitted to save space.

SECTION 3: Chapter 54 (Offenses), Article I (In general), Section 54-1 of the Code of Ordinances of the City of West Palm Beach, Florida, is hereby amended to read as follows:

Sec. 54-1. Adoption of state laws relating to misdemeanors.

(a) It shall be unlawful to commit, within the city, any act which is or shall be recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden. Those acts set forth in Chapter 790, Florida Statutes, pertaining to or regulating guns, weapons, firearms, and ammunition shall be enforced pursuant to applicable state laws.

* * *

SECTION 4: Chapter 94 (Zoning and Land Development Regulations), Article IV (Downtown Master Plan Urban Regulations), Section 94-106 (General Uses with special requirements) subsection (4) (Firearm sales) of the Code of Ordinances of the City of West Palm Beach, Florida, is hereby amended and shall read as follows:

Sec. 94-106 General Uses with special requirements

* * *

(4) *Firearms sales.* Retail establishments dedicated to the sale of firearms shall be permitted in the urban core planning area, and the special district planning area, provided ~~the following conditions are met:~~

- ~~a. Maximum 50 percent of the square footage of the retail establishment shall be used for the display and sale of firearms.~~
- ~~b. There shall be no sale or purchase of any assault weapons. Assault weapons means all firearms included in the former Federal Assault Weapons Ban.~~
- ~~c. There shall be no purchase of handguns over the counter by the retail establishment, and no sales of handguns except by special order whereby a handgun is ordered by a customer for future delivery at the retail establishment.~~
- ~~d. No firearms shall be displayed within the retail establishment except in a locked room with is separate from the space generally open to the public.~~
- ~~e. There shall be no signage advertising the sale of firearms.~~

* * *

SECTION 5: The provisions of this Ordinance shall be deemed to be severable. If any part of this Ordinance is deemed unconstitutional, it shall not affect the constitutionality of other portions of this Ordinance.

(Additions to text are indicated by underline; deletions by ~~strikeout~~.)

Asterisks ***** indicate language not amended which has been omitted to save space.

ORDINANCE NO. 4368-11

SECTION 6: Specific authority is hereby granted to codify this Ordinance.

SECTION 7: This Ordinance shall become effective immediately upon final passage and adoption.

FIRST READING THIS ____ DAY OF _____, 2011.

SECOND READING AND FINAL PASSAGE THIS ____ DAY OF _____, 2011.

(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY ITS CITY COMMISSION

ATTEST:

PRESIDING OFFICER

CITY CLERK

CITY ATTORNEY'S OFFICE
Approved as to form and legal sufficiency
By: _____
Date: _____

(Additions to text are indicated by underline; deletions by ~~strikeout~~.)

Asterisks ***** indicate language not amended which has been omitted to save space.