

ORDINANCE 2022-06

AN ORDINANCE OF THE CITY OF OLDSMAR, FLORIDA, REPEALING § 38-3 OF THE CODE OF ORDINANCES OF THE CITY OF OLDSMAR CONCERNING DISCHARGE OF FIREARMS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, § 38-3 of the Code of Ordinances of the City of Oldsmar (hereinafter “Code”) provides that it is a code violation for any person to discharge a firearm and BB guns within the City limits except in licensed shooting gallery, gun club or rifle range, or lawfully defending life and property; and

WHEREAS, Article I, § 8(a) of the Florida Constitution provides that the “right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”; and

WHEREAS, Florida Statutes §790.33(1) provides: “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.”; and

WHEREAS, Florida Statutes §790.33(3) provides that 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...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 subject to a judicial declaration that the ordinance is improper and invalid, a permanent injunction against the local government prohibiting it from enforcing such ordinance, and, 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 under whose jurisdiction the violation occurred; and

WHEREAS, Florida Statutes §790.33(3)(d) provides that public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated the statutory preemption of the field of firearms; and

WHEREAS, Florida Statutes §790.33(3)(e) provides that a knowing and willful violation of the statutory preemption of the field of firearms by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance prohibited by the statutory preemption shall be cause for termination of employment or contract or removal from office by the Governor; and

WHEREAS, the City has recently received a formal notice and claim under Florida Statutes § 57.112 that Code § 3-38 is expressly preempted by Florida Statutes §790.33 and demanding that the City revise its code to remedy the preemption violation; and

WHEREAS, Florida Statutes § 57.112 requires a court to award attorney fees to any party who or which successfully challenges a local ordinance as regulating a topic which has been expressly preempted

to the State; and

WHEREAS, Florida Statutes § 57.112 provides that the City cannot be sued for a preemption violation if, in the case of an adopted ordinance, the City notices an intent to repeal the preempted code provision(s) within 30 days of receipt of the notice and repeals the preempted provisions within 30 days thereafter; and

WHEREAS, the Florida Attorney General opined in AGO 11-17 that a Florida county may not regulate the recreational discharge of firearms in residentially zoned areas as the regulation of firearms is preempted to the state pursuant to Florida Statutes § 790.33, and in AGO 05-40, opined that a county ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county would be preempted by Florida Statutes § 790.33; and

WHEREAS, in *Broward County v. Florida Carry, Inc.*, 313 So.3d 635 (Fla. 4th DCA 2021), the court found a county ordinance prohibiting the carrying or discharge of a gun at the county's airport property, and prohibiting the selling or giving a gun at the airport, was preempted by Florida Statutes § 790.33; and

WHEREAS, the Florida Legislature has already addressed much of this topic in the Florida Criminal Code by, for instance, adopting Florida Statutes § 790.15 criminalizing discharging a firearm in public or on residential property, and Florida Statutes § 790.22, which criminalizes possession and unsupervised use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; and

WHEREAS, the City Council therefore finds that adoption of this Ordinance is required to ensure compliance with the Florida Legislature's regulatory preemption of firearms regulations.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Oldsmar, Florida, that:

Section 1. That Section 38-3 of the Oldsmar City Code is hereby repealed as follows:

~~Sec. 38-3. Discharge of firearms and other weapons prohibited.~~

~~It shall be unlawful for any person to discharge or fire within the corporate limits of the city any shotgun, rifle, pistol or any other firearm; and it shall be unlawful for any person to discharge or fire any gun or pistol or any slingshot or sling type device, including those in which the projectile is propelled by the action of compressed air, expansion of gas, spring or other mechanical means, within the limits of the city, except in a duly licensed shooting gallery, gun club or rifle range, or lawfully defending life and property.~~

Section 2. For purposes of codification of any existing section of the Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING:

June 21, 2022.

PASSED ON SECOND READING AND ADOPTED:

July 19, 2022.

Daniel M. Saracki, Mayor
City of Oldsmar

ATTEST:

Ann Nixon, City Clerk, MMC
City of Oldsmar

APPROVED AS TO FORM:

Thomas J. Trask, B.C.S.
City Attorney, City of Oldsmar