

ORDINANCE 2011-20

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, REPEALING, PARTIALLY REPEALING, OR AMENDING CERTAIN PROVISIONS OF THE LAKE WALES CODE OF ORDINANCES WHICH CONFLICT WITH OR MAY CONFLICT WITH THE PROVISIONS OF §790.33, FLORIDA STATUTES, WHICH PREEMPTS TO THE STATE OF FLORIDA THE WHOLE OR ENTIRE FIELD OF REGULATION OF FIREARMS AND AMMUNITION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Legislature during its 2011 Session adopted HB45 amending §790.33, Florida Statutes; and

WHEREAS, the bill was subsequently approved by the Governor of the State of Florida and will become effective on October 1, 2011; and

WHEREAS, the intent of the Legislature was to clarify and reorganize provisions of §790.33, Florida Statutes, which preempt to the State the entire field of regulation of firearms; and

WHEREAS, §790.33, Florida Statutes, prohibits certain individuals or entities, including municipalities, from regulating or attempting to regulate firearms or ammunition in any manner except as specifically authorized by §790.33, Florida Statutes, or by general law; and

WHEREAS, §790.33, Florida Statutes, provides for penalties including fines, termination of employment or contract, removal from office, declarative and injunctive relief and certain specified damages and interest; and

WHEREAS, certain existing provisions of the Lake Wales Code of Ordinances run afoul of the provisions of §790.33, Florida Statutes, as amended, and their enforcement or attempted enforcement could subject elected or appointed officials and/or employees of the City to the penalties provided in §790.33, Florida Statutes; and

WHEREAS, the Legislature has declared any existing local ordinances or regulations which conflict with the provisions of §790.33, Florida Statutes, to be null and void; and

WHEREAS it is prudent to amend or repeal the existing provisions of the Lake Wales Code of Ordinances, the enforcement or attempted enforcement of which might subject elected or appointed officials and/or employees of the City to the penalties provided in §790.33, Florida Statutes.

NOW THEREFORE, the City of Lake Wales, by and through its City Commission, does hereby repeal, partially repeal, or amend certain enumerated provisions of the Lake Wales Code of Ordinances as follows:

- 1. Sec. 9-2. Powers to proclaim emergency and enact protective measures.**
An emergency is proclaimed whenever, in the judgment of the chief of police in accordance with the provisions of F. S. §870.043, a determination is made that a state of emergency exists causing or representing an immediate and present danger of injury to or danger to persons or property.
(Code 1962, §8 ½-2)
State law references - City to designate person to authorized to declare a state of emergency, F.S. §870.042(2); automatic emergency measures, F.S. §870.044.

2. **Sec. 9-3. Emergency measures.**

Whenever the chief of police declares that a state of emergency exists, pursuant to F.S. §§ 870.043 and as further defined in §252.34(2), the following acts enumerated in F.S. §870.044 ~~may~~ shall be prohibited during the period of the emergency throughout the city:

(1) The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description.

(2) The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description.

(3) The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of his or her duty.

~~State law reference - Similar provisions, F.S. §870.044.~~

3. **Sec. 9-4. Discretionary emergency measures.**

(a) Whenever the chief of police declares that a state of emergency exists, pursuant to F.S. §§ 870.043 and as further defined in §252.34(2), he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he or she may deem appropriate:

(1) The establishment of curfews, including but not limited to, the prohibition of or restrictions on pedestrians and vehicular movement, standing, and parking, except for the provision of designated essential services such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians;

(2) The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or consideration therefor;

(3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage;

(4) The closing of places of public assemblage with designated exceptions;

(5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane, and necessary for the propulsion thereof;

(6) The prohibition of the possession, in a public place of any portable container containing gasoline or any other flammable or combustible liquid;

~~(7) Order the discontinuance of selling, distributing, dispensing, or giving away of any firearms or ammunition of any character whatsoever;~~

~~(8) Order the closing of any or all establishments or portions thereof, the chief activity of which is the sale, distribution, dispensing or giving away of firearms and/or ammunition;~~

~~(7)(9) Order the closing of any or all other business establishments within all or a portion of the corporate limits of the city as the preservation of the public~~

safety and health requires;

(8)(10) Order and designate any public street, thoroughfare or vehicle parking areas, or portions thereof, to be closed to motor vehicles and pedestrian traffic;

(9)(11) Call upon regular and auxiliary law enforcement agencies and organizations within or without the city to assist in preserving and keeping the peace within the city.

(b) Any such emergency measure so ordered and promulgated shall be in effect during the period of the emergency in the area or areas for which the emergency has been declared.

(Code 1962, § 8½-2)

State law reference—Similar provisions, F.S. § 870.045

4. **Sec. 15-2. Airguns, BB guns, bows and arrows, firearms, fireworks, sling shots and slung shots prohibited; exceptions; penalties.**

It shall be unlawful for any person to discharge an airgun, BB gun, bow and arrow, ~~firearm~~, fireworks, sling shot or slung shot within the city, except as follows:

(a) During a bona fide training or safety course or class offered in the use of bows and arrows ~~or firearms~~;

(b) By law enforcement officers, military personnel or security officers in the course and scope of their duties;

(c) By wildlife trappers lawfully taking fish, game or nongame animals.

The discharge of fireworks within the city is prohibited unless a permit is obtained from the fire department. Issuance of a permit to discharge fireworks at a public event will require prior approval of the city commission.

A law enforcement officer may seize any airgun, BB gun, bow and arrow, ~~firearm~~, fireworks, sling shot or slung shot used in violation of this section.

A code or law enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of this section. The person shall pay within thirty (30) days from the date a citation was issued a civil penalty of fifty dollars \$50.00 to the police department in full satisfaction of the violation. If the person chooses to contest the citation, he or she must contact the clerk of the county court within the thirty (30) days and request a hearing.

(Ord. No. 2007-27, §1, 8-7-07)

5. **Sec. 18-82. Prohibited activities in city parks and facilities.**

It shall be unlawful for any person using city parks and facilities to either perform or allow the performance of any of the following acts, unless such activity is authorized, permitted or supervised by the city:

(l) *Possessing or discharging weapons, explosives, etc.*

(1) No person shall carry or discharge ~~firearms~~, firecrackers, rockets, torpedoes, or other types of explosives, nor shall any person carry or use any

object calculated to make a noise sufficient to disturb the peace or quiet of the park or facility. No person shall carry or discharge any ~~gun, pistol~~, sling shot, slung shot or similar device, or any bows and arrows, or carry or use any other object capable of propelling a projectile in any park or facility, nor shall any person carry on his or her person, in plain view, any knife or dagger.

NOTE: (Except for the changes to subparagraph (l)(1) as shown above, the provisions of Sec. 18-82 remain unchanged.)

6. **Sec. 2-211.07. Types of offenses.**

NOTE: (This section of the Lake Wales Code outlines offenses for which an employee of the city may be disciplined. The only change is found in Group II Offenses at subparagraph (8). The remainder of the section remains unchanged.)

(8) Use, possession, or display of ~~firearms~~, explosives, or weapons on or in city property, unless specifically permitted by law or by the city.

7. **Sec. 2-655. Miscellaneous rules of conduct.**

NOTE: (This section of the Lake Wales Code concerns the city's cemeteries and rules of conduct therein. The only change is the deletion of subparagraph (j)).

~~(j) No firearms shall be permitted in the cemetery except for ceremonial purposes by a military escort accompanying the funeral of a veteran or a law enforcement officer or attending memorial services.~~

8. The provisions of this Ordinance are severable, and if any of its provisions shall be held unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

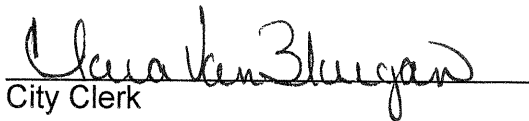
9. This Ordinance shall become effective immediately upon adoption.

CERTIFIED AS TO PASSAGE this 20th day of September, 2011.



Michael S. Carter, Mayor/Commissioner

Attest:



City Clerk

Prepared by:
Albert C. Galloway, Jr.
City Attorney
Albert C. Galloway, Jr., P.A.
P.O. Box 3339
Lake Wales, FL 33859-3339