

**CITY OF ST. PETE BEACH, FLORIDA  
ORDINANCE NO. 2011-29**

**AN ORDINANCE OF THE CITY OF ST. PETE BEACH, FLORIDA, ADOPTING NEW ORDINANCES AND MODIFYING EXISTING ORDINANCES AND REPEALING EXISTING ORDINANCES SO AS TO COMPLY WITH LAWS OF FLORIDA CHAPTER 2011-109, CLARIFYING THAT NO PROVISIONS OF THE CODE ARE INTENDED TO AND SHALL NOT BE CONSTRUED TO BE IN CONFLICT OR INCONSISTENT WITH FLORIDA STATUTES SECTION 790.33, INCLUDING REVISIONS THERETO AS CONTEMPLATED BY CHAPTER 2011-109, LAWS OF FLORIDA; REVISING SECTIONS 34-38 AND 54-4 OF THE CODE OF ORDINANCES OF THE CITY OF ST. PETE BEACH, TO CONFORM TO STATE LAW REGARDING FIREARMS; REPEALING SECTION 54-3; CREATING SECTIONS 54-9 AND 54-10; CLARIFYING THAT NO PORTIONS OF THE CITY'S CODE OF ORDINANCES ARE INTENDED OR IN ANY MANNER SHALL BE DEEMED TO BE IN CONFLICT OR INCONSISTENT WITH THE PROVISIONS OF FLORIDA STATUTES SECTION 790.33, INCLUDING REVISIONS THERETO TO CONTEMPLATED BY CHAPTER 2011-109, LAWS OF FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida has enacted Laws of Florida Chapter 2011-109 amending the provisions of Florida Statutes Section 790.33, also known as the "Joe Carlucci Uniform Firearms Act;" and

**WHEREAS**, Laws of Florida Chapter 2011-109 establishes that it is the intent of the Legislature through Florida Statutes Section 790.33 to deter and prevent violations thereof and violations of rights protected under the Constitution and laws of the State of Florida relating to firearms, ammunitions, or components thereof, by official authority that occurs when enactments are passed in violations of state law or under code of local or state authority; and

**WHEREAS**, Laws of Florida Chapter 2011-109 expressly preempts unto the State the entire field of regulation of firearms and ammunitions, 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. Thus, unless expressly authorized by the Florida Constitution or general State law, local governments will be preempted from any manner of regulation of firearms and ammunitions.

**WHEREAS**, Laws of Florida Chapter 2011-109 establishes various penalties for violating Florida Statutes Section 790.33, including provisions that:

(a) require a court to declare ordinances, regulations, or rules that violate Florida Statutes Section 790.33 invalid and issue a permanent injunction against the local government from enforcing such ordinances, regulations, or rules;

(b) require a court to assess a civil fine of up to \$5,000.00 against the elected or appointed local government official or administrative agency head under whose jurisdiction a violation occurred if the court determines that a violation was knowing and willful;

(c) specify that a knowing and willful violation of the statute by a person acting in an official capacity is cause for immediate termination of employment; and

(d) authorize a person or organization whose membership is adversely affected by the ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated in violation of the statute to file for declaratory and injunctive relief and for all actual damages attributed to the violation; and in such suits, courts shall award the prevailing plaintiff (i) reasonable attorney's fees and costs, including a contingency fee multiplier as authorized by law, and (ii) the actual damages incurred up to \$100,000.00.

**WHEREAS**, Laws of Florida Chapter 2011-109 also significantly limits the use of public funds to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated Florida Statutes Section 790.33, and provides that such a violation shall be cause for termination of employment or contract or removal from office by the Governor.

**WHEREAS**, prior to adoption of Laws of Florida Chapter 2011-109, it had been accepted practice of numerous local governments through the State of Florida to use their home rule powers to enact ordinances that did not specifically regular firearms, but which, like ordinances addressing noise and excessive sounds, could impact the use of firearms in the same manner that it would impact other activities generally regulated by such police power ordinances.

**WHEREAS**, the City Commission of the City of St. Pete Beach intends by this Ordinance to take all actions necessary so as to assure that no provisions of the Code of Ordinances of the City of St. Pete Beach, shall be deemed, interpreted, construed, implemented, administered, enforced, etc., in any manner whatsoever to be a violation of Florida Statutes Section 790.33, including as the statute has been amended by Laws of Florida Chapter 2011-109,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. PETE BEACH, FLORIDA:**

**Section 1.** Section 34-38, City Code, is amended to read:

Sec. 34-38. **Declaration of state of emergency.**

(a) In the following order, the mayor, vice-mayor, commissioner, city manager or assistant city manager shall have the authority to declare a state of emergency by proclamation. Upon the absence or unavailability of the mayor, the vice-mayor may issue such a declaration, and upon the absence or unavailability of the mayor and the vice-mayor, a city commissioner or the city manager or, upon the absence or unavailability of the city manager, an assistant city manager may issue such a declaration.

(b) Any declaration of a state of emergency and all emergency regulations activated under this article shall be confirmed by the city commission by resolution within five working days of such declaration or at the next regularly scheduled meeting of the city commission, whichever occurs first, unless the nature of the emergency renders a meeting of the city commission extremely impractical. Confirmation of the emergency declaration shall disclose the reasons for, anticipated impacts of, actions proposed and taken to manage the emergency and other pertinent data relating to the declaration of emergency.

(c) The state of emergency shall continue until there is a finding by the official declaring the emergency that the emergency no longer exists or until a meeting of a quorum of the board of city commissioners can take place and terminate the state of emergency by proclamation.

(d) Upon the determination of an emergency, the mayor, vice-mayor or city manager shall have the power to issue and rescind executive orders, proclamations and rules. Such executive orders, proclamations and rules shall have the force and effect of law and may deal with the following matters:

(1) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, ~~firearms~~, explosives and combustibles (except for ammunition whether City has the authority to \_\_\_\_\_ pursuant to Florida Statutes Section 790.33, including amendments thereto enacted by Laws of Florida Chapter 2011-109.

(2) Establish curfews, including but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated, essential services, such as fire, police, emergency medical services and hospital services, including the transportation of patients, utility emergency repairs and emergency calls by physicians.

(3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including emergency expenditures, not to exceed \$50,000.00.

- (4) Declare certain areas off limits.
  - (5) Make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
  - (6) Establish emergency operating centers and shelters, in addition to or in place of those provided for in the city's emergency plan.
  - (7) Declare that during an emergency, it shall be unlawful and an offense against the city for any person to use the fresh water supplied by the city or the county, for any purpose other than cooking, drinking or bathing.
  - (8) Declare that during an emergency, it shall be unlawful and an offense against the city for any person operating within the city to charge more than the normal average retail price for any merchandise, goods or services sold during the emergency. The average retail price, as used in this subsection is defined to be that price at which similar merchandise, goods, or services were being sold during the 90 days immediately preceding the emergency or a markup which is a larger percentage over wholesale cost than was being added to wholesale cost prior to the emergency.
  - (9) Confiscate merchandise, equipment, vehicles or property needed to alleviate the emergency. Reimbursement shall be within 60 days and at customary value charged for the items during 90 days previous to the emergency.
  - (10) Make provisions for rationing of fuel, ice and other essentials.
  - (11) Evacuation planning.
- (e) A state of emergency, when declared as provided in this section, shall continue in effect from day to day until declared to be terminated.
  - (f) Upon the declaration of a state of emergency, the city manager shall post written notice of such declaration upon the main bulletin board in the city hall and shall notify by telephone not less than two newspapers of general circulation with the city, at least three television stations and at least three radio stations broadcasting in Pinellas or Hillsborough Counties. When practicable, the city manager shall also cause the written notice to be published, in its entirety, at least four days each week in a newspaper of general circulation in the city until the state of emergency is declared to be terminated.

**Section 2.** Section 54-4 Code is amended to read:

Sec. 54-4 **Discharge of spear guns.**

It shall be unlawful for any person to use, discharge or cause to be discharged any spear or harpoon by or with a spring gun, mechanic gun, power gun or any mechanic device whatsoever within the corporate limits except for firearms which the City has the authority to regulate pursuant to Florida Statutes Section 790.33, including amendments thereto enacted by Laws of Florida Chapter 2011-109

**Section 3.** Section 54-3 City Code is repealed.

**Section 4.** Section 54-9 is hereby created to be part of Chapter 54 of the Code of Ordinances of the City of St. Pete Beach, Florida, and shall read as follows:

Section 54-9. **Ordinances Regulating Firearms and Ammunitions.**

As established by Florida Statutes Section 790.33, including amendments thereto enacted by Laws of Florida Chapter 2011-109, except as expressly provided by the Florida Constitution or by general law, the Florida Legislature is occupying the whole field of regulation of firearms and ammunitions, 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 are any administrative regulations or rules adopted by local or state government relating thereto. Accordingly, all ordinances, regulations, and rules set forth in or contemplated by this Code which in any manner regulate firearms or ammunitions to the extent that the subject matter thereof has been properly occupied by, reserved to, or preempted by the Florida Legislature (i) are hereby declared to be null and void; and (ii) shall not be interpreted, construed, implemented, enforced or the like in any manner so as to conflict with, be inconsistent with, or • violate Florida Statutes Section 790.33, including any subsequent amendments thereto,

The City acknowledges that the whole field of regulation of firearms and ammunitions, including any components thereof, are being occupied by the Florida Legislature and that, except as expressly provided by the Florida Constitution or by general law, the City is preempted from adopting, enacting, implementing, or enforcing any ordinances, regulations, and rules pertaining thereto to the extent that the subject matter thereof has been preempted by the Florida Legislature. Accordingly, as a rule of construction and interpretation applicable to all provisions of this Code, it is hereby directed that no provision of this Code shall be deemed or interpreted in any manner to violate state law, including Florida Statutes Section 790.33; rather, the provisions of this Code shall be interpreted and constructed in a manner so as to not cause or result in a violation of state law, including Florida Statutes Section 790.33.

**Section 5.** Section 54-10 is hereby created to be part of Chapter 54 of the Code of Ordinances of the City of St. Pete Beach, Florida, and shall read as follows:

**Section 54-10. No Regulation of Firearms or Ammunitions.**

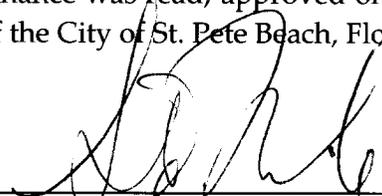
No provisions in this Article are intended to be, nor shall any provision of this Article be in any manner interpreted or construed to be, a regulation of firearms or ammunitions in violation of Florida Statutes Section 790.33, including all subsequent amendments thereto. Notwithstanding any term or provision of this Article which might appear or suggest otherwise, it is hereby expressly acknowledged that the Florida Legislature is occupying the whole field of regulation of firearms and ammunitions, 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 governments relating thereto and, correspondingly, no provision of this Article shall apply to firearms and ammunitions.

**Section 6. Conflict.** The provisions of this Ordinance shall be deemed to control and prevail over any ordinance, regulation, rule, or portion thereof in conflict with the terms hereof.

**Section 7. Effective Date.** This Ordinance shall become effective upon its adoption by the City Committee of the City of St. Pete Beach.

**Section 8.** If any phrase or portion of this ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, then the remainder thereof shall not be affected thereby.

**Section 9.** The above and foregoing Ordinance was read, approved on first reading at a duly convened meeting of the City Committee of the City of St. Pete Beach, Florida, the 27th day of September, 2011.

  
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**STEVE McFARLIN, Mayor**

**FIRST READING** : September 14, 2011  
**PUBLISHED** : September 17, 2011  
**SECOND READING** : September 27, 2011  
**PUBLIC HEARING** : September 27, 2011

I, Rebecca Haynes, City Clerk of the City of St. Pete Beach, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of applicable law this 27th day of September, 2011.

  
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Rebecca C. Haynes, City Clerk