

RESOLUTION NO. 14-47

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, URGING THE STATE OF FLORIDA TO ADDRESS FLORIDA STATUTES THAT ALLOW UNRESTRICTED AND UNREGULATED FIREARM TARGET RANGES AND DISCHARGES IN URBAN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR DISTRIBUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1987, the Florida Legislature passed Chapter 87-23, Laws of Florida, which created Florida Statutes section 790.33 and declared the preemption of the whole field of regulation of firearms and ammunition, reserving the exclusive right to regulate and/or enforce any laws involving firearms and ammunition to the Florida Legislature and the State of Florida; and

WHEREAS, in 2011, the Florida Legislature passed and Governor Scott signed Chapter 2011-109, Laws of Florida, to allow the Governor to remove from office, without due process of law, any person acting in an official capacity for a local authority, including an elected official, who passes an ordinance or causes to be enforced a local ordinance, administrative rule or regulation impinging on the exclusive authority of Florida legislature to regulate firearms and ammunition in all respects; and

WHEREAS, the 2011 Amendment to Florida Statutes section 790.33 provides for personal liability of any person who enacts or causes to be enforced any local ordinance impinging upon the Legislature's occupation of the whole field of regulation of firearms and ammunition; and

WHEREAS, the 2011 Amendment to Florida Statutes section 790.33 also provides that if a Court finds a willful or knowing violation of the prohibition on the ability of local government to regulate or enforce firearms or ammunition in any regard, the Court may impose a personal fine of up to \$5,000 on the elected or appointed local government official(s) or administrative agency head and cause the county, agency, municipality, district or other entity to reimburse the legal cost of those who sue to overturn the ordinance, rule, regulation and/or enforcement effort and to pay their actual damages; and

WHEREAS, Section 790.15, Florida Statutes, provides that it is a misdemeanor of the first degree for any person who “recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013 or zoned exclusively for residential use;” and

WHEREAS, the enforcement parameters of Section 790.15, Florida Statutes, for what is a reckless or negligent discharge of a firearm in an urban residential neighborhood is without any definition and therefore potentially unconstitutionally vague; and

WHEREAS, efforts of local counties and communities to place reasonable restrictions on the discharge of firearms in urban residential neighborhoods have been determined by the Florida Attorney General, as evidenced by AGO 2005-40 and AGO 2011-17, to be in violation of the Florida Statutes section 790.33 prohibition on the regulation of firearms and ammunition and therefore beyond the power of local communities to regulate or enforce reasonable restrictions; and

WHEREAS, as reported by the *Miami Herald*, the existing laws would permit a firearm target range in an urban residential neighborhood; and

WHEREAS, the existing Florida Statutes prevent a municipality from implementing reasonable restrictions on the circumstances surrounding the discharge of firearms with regard to urban residential firearm target ranges or discharges to address:

- a) the type of backstop or safety protection;
- b) the type of firearm which can be used;
- c) the type of ammunition which can be used;
- d) requirements to notify the police department in advance of a firearm discharge in a residential neighborhood;
- e) restrictions on time of day or length of time such discharges may occur;

- f) restrictions on how close the firearm discharge can be to a neighboring residential dwelling, school, place of worship, government building, park, or commercial development; or
- g) the environmental impact from the accumulation of lead or other materials; and

WHEREAS, Florida Statutes section 790.15 does not define what constitutes a reckless or negligent discharge of a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use; and

WHEREAS, there are standards of care employed in the firearm industry for the establishment of target ranges, but pursuant to Florida Statutes section 790.33, local communities are prevented from adopting an ordinance, rules and/or regulations to ensure that any outdoor firearm target range meets reasonable standards; and

WHEREAS, while there is an argument that the establishment of a firearm target range of any sort in an urban residential neighborhood or area is *per se* negligent, the Attorney General opinions rejecting the ability of a local community to place "buffers" between residential areas involving the discharge of firearms undermine the ability of a local community to make a *per se* finding of a violation of Florida Statute section 790.15(1); and

WHEREAS, establishing what is a negligent or reckless discharge of a firearm in an urban residential setting requires the enumeration of those elements of the standard of care involving firearm ranges which, if not met, would cause a violation of Florida Statutes section 790.15(1); and

WHEREAS, pursuant to Florida Statutes section 790.33, local communities are powerless to enumerate elements of the standard of care which should be met to protect the community and thereby serve as the basis for establishing identifiable restrictions on the discharge of firearms in an urban residential neighborhood; and

WHEREAS, the City Commission of the City of Fort Lauderdale urgently requests the Governor and Legislature of the State of Florida to address this deficit in law by enacting legislation that would allow municipalities the ability to address these public health, safety and welfare items by enacting local legislation without fear of removal from office, in accordance with the unique local characteristics of a community and with due respect to the risk to public safety of such unrestricted firearm discharges in urban residential neighborhoods; and

WHEREAS, local governments have a duty to protect their residents, visitors, tourists and businesses and that such duty should not be infringed upon by State government;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified as true and correct, and incorporated herein by reference.


Section 2. The City Commission of the City of Fort Lauderdale urgently requests the Governor and the Legislature of the State of Florida to amend Florida Statutes section 790.33 to allow local governments to tailor reasonable legislation and enforcement efforts to meet their duty to protect the community from firearm discharges in urban residential neighborhoods.

Section 3. Alternatively, the City Commission of the City of Fort Lauderdale urgently requests the Governor and the Legislature of the State of Florida to amend Florida Statutes section 790.15 to define what type of firearm discharges in urban residential neighborhoods and areas zoned residential constitute "recklessly or negligently" with sufficient clarity to provide both meaningful notice and enforcement guidelines.


Section 4. The City Clerk is hereby directed to distribute copies of this Resolution to the Broward Legislative Delegation, the Broward League of Cities, the Florida League of Cities, the Speaker of the House of Representatives, the Senate President and Governor Scott.

Section 5. Effective Date. This Resolution shall be effective immediately upon its passage.

ADOPTED this the 4th day of March, 2014.

  
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Mayor  
JOHN P. "JACK" SEILER

ATTEST:

  
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City Clerk  
JONDA K. JOSEPH