



**CITY OF FORT LAUDERDALE  
City Commission Agenda Memo  
REGULAR MEETING**

**#14-0343**

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**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** Lee R. Feldman, ICMA-CM, City Manager

**DATE:** March 4, 2014

**TITLE:** Resolution Urging the State of Florida to Address Florida Statutes that  
Allow Unrestricted and Unregulated Firearm Target Ranges and  
Discharges in Urban Residential Neighborhoods.

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**Recommendation**

The City Commission adopt the attached resolution requesting the Governor and the Legislature of the State of Florida to amend Section 790.33, Florida Statutes 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; or, alternatively to amend Section 790.15, Florida Statutes 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.

**Background**

In 1987, the Florida Legislature passed Chapter 87-23, Laws of Florida, which created Section 790.33 Florida Statutes, 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.

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. The 2011 Amendment to Section 790.33, Florida Statutes 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 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

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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.

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 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 the 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 Attorney General Opinions 2005-40 and 2011-17, to be in violation of the Section 790.33, Florida Statutes prohibition on the regulation of firearms and ammunition and therefore beyond the power of local communities to regulate or enforce reasonable restrictions.

As reported by the *Miami Herald*, the existing laws would permit a firearm target range in an urban residential neighborhood; and 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: the type of backstop or safety protection; the type of firearm which can be used; the type of ammunition which can be used; requirements to notify the police department in advance of a firearm discharge in a residential neighborhood; restrictions on time of day or length of time such discharges may occur; 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 the environmental impact from the accumulation of lead or other materials.

In addition, Section 790.15, Florida Statutes 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 there are standards of care employed in the firearm industry for the establishment of target ranges, but pursuant to Section 790.33, Florida Statutes, local communities are prevented from adopting an ordinance, rules and/or regulations to ensure that any outdoor firearm target range meets reasonable standards; and 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 Section 790.15(1), Florida Statutes.

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 Section 790.15(1), Florida Statutes; and pursuant to Section 790.33, Florida Statutes, 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 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 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.

### **Resource Impact**

There is no resource impact associated with this action.

### **Strategic Connections:**

1. This item is a *Press Play Fort Lauderdale Strategic Plan 2018* initiative, included within the **Public Safety** Cylinders of Excellence, specifically advancing:
  - Goal 9: Be the safest urban coastal City in South Florida through preventative and responsive police and fire protection.
2. This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Community*.

Attachments:

Exhibit 1: Resolution

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