CITY OF RIVIERA BEACH CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: November 2, 2011 **AGENDA ITEM SUMMARY NO.** L11-111-1

[ ] AWARDS / PRESENTATIONS / PETITIONS
[ ] CONSENT
[ ] PUBLIC HEARING
[ ] ORDINANCE ON SECOND READING
[ ] PUBLIC HEARING
[X] ORDINANCE ON FIRST READING

[ ] REGULAR
[ ] RESOLUTION
[ ] DISCUSSION & DELIBERATION
[ ] BOARD APPOINTMENT
[ ] WORKSHOP

SUBJECT: An Ordinance amending Chapter 11, Article IV, Section 11-174(8), entitled "Explosives, Firearms and similar Devices" and Amending Chapter 12, Article I, Section 12-9, entitled "Discharging Firearms" of the city's code of ordinances to comply with the State's new gun law.

RECOMMENDATION / MOTION: Motion to Approve Ordinance.

DEPARTMENTAL APPROVAL REVIEW & DATE

Assistant City Manager	Library – N/A
• City Attorney PH Ry	Marina – N/A
• City Clerk	• Police CAW 10/19/11
Community Development – N/A	Public Works – N/A
• Finance PH J for K Hockins 10/19/11	Purchasing – N/A
Fire – N/A	Recreation & Parks – N/A
Human Resources - N/A	Water & Sewer – N/A
Information Technology – N/A	Other

APPROVED BY CITY MANAGER: Ruth C Jones **DATE:** 10-25-11

Originating Dept. City Attorney's Office PH Ry	Costs: $ NA Current FY: $_____ Funding Source: [ ] Capital Improvement [ ] Operating [ ] Other: Budget Account Number:	City Council Actions: [ ] Approved [ ] Approved w/conditions [ ] Denied_____ [ ] Tabled to_____ [ ] Referred to Staff_____
User Dept. ALL		
Advertised: Date: Paper: [x] Not Required Affected Parties [ ] Notified [X] Not Required		Attachments: 1. Ordinance 2. Section 11.174(8) 3. Section 12-9 4. Gun law (FL Statutes Section 790.33)

BACKGROUND/SUMMARY: The City of Riviera Beach previously enacted Section 11-174(8), Chapter 11, Article IV, regarding noise disturbances caused by explosives, firearms and similar devices within the city's limits and also enacted Section 12-9, Chapter 12, Article I, regarding the discharge of firearms within the city's limits. Florida Statutes Section 790.33 was amended by House Bill 45, as adopted by the 2011 Florida Legislature and was signed into law by Governor Scott on October 1, 2011, which directly preempts all local government regulation of firearms and firearm-related ordinances. Therefore, the City must amend its ordinances to comply with the State's new gun laws.

Item No. 16

EXHIBIT A-1

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (City)	_____	_____	_____	_____	_____
In-Kind Match (City)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	N/A	N/A	N/A	N/A	N/A
NO. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes ____ No X

Budget Account No.: Fund___ Dept/Division____ Org.____ Object____ Reporting Category_____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:

_____ Finance Department

_____ Purchasing and Grants

B. Other Department Review:

_____ Department Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 11, ARTICLE IV, SECTION 11-174(8), ENTITLED "EXPLOSIVES, FIREARMS AND SIMILAR DEVICES" AND AMENDING CHAPTER 12, ARTICLE I, SECTION 12-9, ENTITLED "DISCHARGING FIREARMS" OF THE CITY'S CODE OF ORDINANCES TO COMPLY WITH THE STATE'S NEW GUN LAW; PROVIDING FOR SEVERABILITY, CONFLICTS AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach previously enacted Section 11-174(8), of Chapter 11, Article IV, regarding noise disturbances caused by explosives, firearms and similar devices within the city's limits; and

WHEREAS, the City of Riviera Beach previously enacted Section 12-9 of Chapter 12, Article I, regarding the discharge of firearms within the city's limits; and

WHEREAS, Florida Statutes Section 790.33 was amended by House Bill 45, as adopted by the 2011 Florida Legislature and signed into law by Governor Scott (Chapter 2011-109), and became effective October 1, 2011, and directly preempts all local government regulation of firearms and firearm-related ordinances; and

WHEREAS, the City must amend its ordinances to comply with the state's new gun law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY FLORIDA, THAT:

SECTION 1. That Chapter 11, Article IV, Section 11-174(8) of the City's Code of Ordinances entitled "Explosives, Firearms and Similar Devices" is amended as follows:

Section 11-174. Explosives, firearms and similar devices.

* * *

(8) Using or firing explosives, firearms or similar devices such that the sound therefrom creates a noise disturbance across a real property line, or within a noise-sensitive zone, public space or public right-of-way, without first obtaining a variance issued by the city council. Nothing in this section shall be construed to prohibit, restrict or regulate in any manner the use or firing of explosive firearms or similar devices when the action is performed by, at the

direction of or under the supervision of the city manager or ~~his~~ designee or a person defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry.

* * *

SECTION 2. That Chapter 12, Article I, Section 12-9 of the City's Code of Ordinances entitled "Discharging Firearms" is amended as follows:

Section 12-9. Discharging Firearms.

It shall be unlawful for any person other than an authorized officer in the line of duty to discharge a gun, pistol or other firearm within the City. However, the provision of this section shall not apply to any person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties as expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry as set forth in Section 790.15, Florida Statutes.

SECTION 3. It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Riviera Beach.

SECTION 4. If any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

SECTION 5. All sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

SECTION 6. Specific authority is hereby granted to codify this ordinance.

SECTION 7. This ordinance shall be in full force and effect immediately upon its final passage and adoption.

PASSED AND APPROVED on first reading this _____day of _____, 2011.

PASSED AND ADOPTED on second and final reading this _____ day of _____, 2011.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

APPROVED:

_____
THOMAS A. MASTERS
MAYOR

MUNICIPAL SEAL

ATTEST:

_____
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

_____
JUDY L. DAVIS
CHAIRPERSON

_____
BILLIE E. BROOKS
CHAIR PRO TEM

_____
CEDRICK A. THOMAS
COUNCIL PERSON

_____
DAWN PARDO
COUNCIL PERSON

_____
SHELBY LOWE
COUNCIL PERSON

1st READING		2nd & FINAL READING	
MOTIONED BY: _____		MOTIONED BY: _____	
SECONDED BY: _____		SECONDED BY: _____	
J. DAVIS	_____	J. DAVIS	_____
B. BROOKS	_____	B. BROOKS	_____
C. THOMAS	_____	C. THOMAS	_____
D. PARDO	_____	D. PARDO	_____
S. LOWE	_____	S. LOWE	_____

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala H. Ryan

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/19/11

CERTIFICATION OF PUBLICATION

I hereby certify that notice of the proposed enactment of this ordinance was duly published in a newspaper of general circulation within the City of Riviera Beach as required by the applicable Florida Statutes.

_____ _____

DATE Carrie E. Ward, Master Municipal Clerk
City Clerk

tween the hours of 8:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance across a real property line or at any time to violate the provisions of section 11-171 or subsection (13) of this section.

(6) *Construction.* Operating or causing the operation of any tools or equipment used in construction, drilling, repair, alteration or demolition work or related construction activity between the hours of 6:00 p.m. or 8:00 a.m. the following day on weekdays, or at any time on Sundays or holidays, such that the sound therefrom creates a noise disturbance across a real property line or at any time violates the provisions of section 11-171 or subsection (13) of this section except for emergency work of the public service utilities or by variance issued by the city council. This subsection shall not apply to the use of domestic power tools as specified in subsection (14) of this section.

(7) *Vehicle, motorboat or aircraft repairs and testing.*

a. Repairing, rebuilding, modifying or testing any motor vehicle, motorboat or aircraft in such a manner as to create a noise disturbance across a real property line or at any time to violate the provisions of section 11-171 or subsection (13) of this section.

b. Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with or pursuant to applicable federal laws or regulations.

(8) *Explosives, firearms and similar devices.* Using or firing explosives, firearms or similar devices such that the sound therefrom creates a noise disturbance across a real property line, or within a noise-sensitive zone, public space or public right-of-way, without first obtaining a variance issued by the city council. Nothing in this section shall be construed to prohibit, restrict or regulate in any manner the use or firing of explosive firearms or similar devices when the action is performed by, at the direction of or under the supervision of the city manager or his designee.

(9) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles:

a. Between the hours of 8:00 p.m. and 7:00 a.m. the following day so as to create a noise disturbance across a residential or commercial real property line or at any time to violate the provisions of section 11-171 or subsection (13) of this section.

b. In such a manner as to exceed the levels set forth for public space land use in section 11-171 measured at a distance not less than 100 feet (30 meters) from any point on the path of a vehicle operating on public space or public right-of-way.

(10) *Stationary nonemergency signal devices.*

a. Sounding or permitting the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes, from any place, for more than ten seconds in any hourly period.

b. Houses of religious worship shall be exempt from the operation of this provision.

c. Sound sources covered by this provision and not exempted under subsection (10)b of this section shall be exempted by a variance issued by the city council.

(11) *Emergency signaling devices.*

a. The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil alarm, siren, whistle or similar stationary emergency signaling device except for emergency purposes or for testing, as provided in subsection (11)b of this section.

public conveyance, in or upon the grounds of any business establishment, vacant or abandoned property.

(b) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia as defined under F.S. ch. 893, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this section.

(c) It is unlawful for any person to sell or deliver, possess with intent to sell or manufacture with intent to sell drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this section.
(Code 1957, § 13-6)

Sec. 12-7. Consumption of alcoholic beverages in public places.

It shall be unlawful for any person to drink or consume any alcoholic beverage on any public street, in any public park, in or upon any public conveyance, vacant or abandoned property, the parking lot of any business establishment, or in any public place, unless the location of such consumption is licensed for sale of alcoholic beverages in accordance with state law.
(Code 1957, § 13-7)

Cross reference—Drinking intoxicating beverages on streets, public ways or places, § 3-10.

Sec. 12-8. Sale of fireworks and explosives.

It shall be unlawful for any person to sell or explode fireworks as defined by F.S. § 791.01, within the city, except as permitted by F.S. §§ 791.01, 791.04, and 791.07. The sale of fireworks will be permitted under the supplemental regulations, section 31-566, Riviera Beach Code of Ordinances.
(Code 1957, § 13-8; Ord. No. 2918, § 1, 6-5-02)

Sec. 12-9. Discharging firearms.

It shall be unlawful for any person other than an authorized officer in the line of duty to discharge a gun, pistol or other firearm within the city.
(Code 1957, § 13-9)

Cross reference—Weapons control, § 16-81 et seq.

Sec. 12-10. Gambling.

It shall be unlawful for any person to play or engage in any game of cards, keno, roulette, faro or other game of chance, at any place, by any device whatsoever, for money or other thing of value whereby any player can acquire more than the cost paid by any player to engage in any such game of chance.
(Code 1957, § 13-10)

Sec. 12-11. Larceny and retail theft.

It shall be unlawful for any person to carry away any merchandise, money or negotiable documents; to alter or remove a label or price tag; transfer merchandise from one container to another; or remove the property of another with the intent to deprive the owner thereof of possession, use, benefit or full retail value.
(Code 1957, § 13-11)

Sec. 12-12. Obtaining food or lodging with intent to defraud.

It shall be unlawful for any person to obtain food, lodging or other accommodations having any value at any food service establishment, or at any lodging, with intent not to pay the full price thereof.
(Code 1957, § 13-12)

Sec. 12-13. Loitering or prowling.

(a) It shall be unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety or persons or property in the vicinity. Any such person who, when questioned by a police officer, fails to give a legitimate reason for his presence

Effective: October 1, 2011

West's Florida Statutes Annotated Currentness
Title XLVI. Crimes (Chapters 775-899)
Chapter 790. Weapons and Firearms (Refs & Annos)
→ **790.33. Field of regulation of firearms and ammunition preempted**

(1) Preemption.--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.

(2) Policy and intent.--

(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.

(b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

(3) Prohibitions; penalties.--

(a) 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, as declared in subsection (1), 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 liable as set forth herein.

(b) If any county, city, town, or other local government violates this section, the court shall declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. It is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.

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(c) 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 or administrative agency head under whose jurisdiction the violation occurred.

(d) Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.

(e) A knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.

(f) A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:

1. Reasonable attorney's fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and

2. The actual damages incurred, but not more than $100,000.

Interest on the sums awarded pursuant to this subsection shall accrue at the legal rate from the date on which suit was filed.

(4) Exceptions.--This section does not prohibit:

(a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

(b) A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties;

(c) Except as provided in s. 790.251, any entity subject to the prohibitions of this section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties;

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