

## **ORDINANCE 2022-08**

### **AN ORDINANCE OF THE CITY OF OLDSMAR, FLORIDA, AMENDING § 2-1 OF THE TOWN CENTER DEVELOPMENT CODE OF THE CITY OF OLDSMAR DEFINING RESTRICTIVE USES; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, § 2-1 of the Town Center Development Code of the City of Oldsmar (“Code”) provides for a definition of the term “restrictive use”, and includes “gun shops” as a form of restrictive use which the definition characterizes as “poorly maintained facilities, loitering and other indices of neighborhood deterioration”; and

**WHEREAS**, § 3.2.1 of the Code in turn prohibits “restrictive uses” within the Town Center, and zoning code § 5.5.3.2 prohibits “restrictive uses...located within the Tampa Road Corridor”; and

**WHEREAS**, Article I, § 8(a) of the Florida Constitution provides that the “right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”; and

**WHEREAS**, Florida Statutes §790.33(1) provides: “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.”; and

**WHEREAS**, while Florida Statutes §790.33(4)(a) provides that “zoning ordinances that encompass firearms businesses along with other businesses” are not preempted by the statute, the same subsection does preempt “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...”; and

**WHEREAS**, were the City to decide to retain “gun shops” as a “restrictive use” which is prohibited from being located in certain zones in the City, a court may find this restriction on the location of a gun shop is preempted by the statutory language because the restriction on location of such commercial businesses is “designed to prohibit the sale and purchase of firearms and ammunition”; and

**WHEREAS**, in addition to the potential for preemption, the designation of gun shops as a restrictive use may be subject to a constitutional equal protection challenge such as that raised in *Illinois Sporting Goods Ass'n v. County of Cook*, 845 F. Supp. 582 (N.D. Ill. 1994), wherein the court found a county’s ordinance establishing licensing procedures for firearms dealers, which prohibited the issuance of a license to any person engaged in the business of dealing in firearms or

ammunition within .5 miles of a school or park, was a violation of gun shop owners' equal protection rights since the ordinance was not rationally related to the stated public purpose because it was underinclusive since it did not regulate the selling of firearms by pawn shops or other retailers which sold many products, including but not limited to firearms and ammunition; and

**WHEREAS**, Florida Statutes §790.33(3) provides that 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...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 subject to a judicial declaration that the ordinance is improper and invalid, a permanent injunction against the local government prohibiting it from enforcing such ordinance, and, 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 under whose jurisdiction the violation occurred; and

**WHEREAS**, Florida Statutes §790.33(3)(d) provides that public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated the statutory preemption of the field of firearms; and

**WHEREAS**, Florida Statutes §790.33(3)(e) provides that a knowing and willful violation of the statutory preemption of the field of firearms by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance prohibited by the statutory preemption shall be cause for termination of employment or contract or removal from office by the Governor; and

**WHEREAS**, the City has recently received a formal notice and claim under Florida Statutes § 57.112 that Code § 3-38 and 42-116 are expressly preempted by Florida Statutes §790.33 and demanding that the City revise its code to remedy the preemption violation; and

**WHEREAS**, Florida Statutes § 57.112 requires a court to award attorney fees to any party who or which successfully challenges a local ordinance as regulating a topic which has been expressly preempted to the State; and

**WHEREAS**, Florida Statutes § 57.112 provides that the City cannot be sued for a preemption violation if, in the case of an adopted ordinance, the City notices an intent to repeal the preempted code provision(s) within 30 days of receipt of the notice and repeals the preempted provisions within 30 days thereafter; and

**WHEREAS**, the City Council therefore finds that adoption of this Ordinance is required to ensure compliance with the Florida Legislature's regulatory preemption of firearms regulations.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Oldsmar, Florida, that:

**Section 1.** The definition of Restrictive uses in § 2-1 of the Oldsmar Town Center Development Code is hereby amended to read as follows:

*Restrictive uses.* Retail sales and service uses, including but not limited to, day labor operations, pawn shops, check cashing centers, ~~gun shops~~ and blood plasma centers which are typically characterized by poorly maintained facilities, loitering and other indices of neighborhood deterioration.

**Section 2.** For purposes of codification of any existing section of the Oldsmar Town Center Development Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 3.** If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

**Section 4.** The Codifier shall codify the substantive amendments to the Oldsmar Town Center Development Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 5.** Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING:

July 19, 2022.

PASSED ON SECOND READING AND ADOPTED:

August 2, 2022

\_\_\_\_\_  
**Daniel M. Saracki, Mayor**  
**City of Oldsmar**

ATTEST:

\_\_\_\_\_  
**Ann Nixon, City Clerk, MMC**  
**City of Oldsmar**

APPROVED AS TO FORM:

\_\_\_\_\_  
**Thomas J. Trask, B.C.S.**  
**City Attorney, City of Oldsmar**