

ORDINANCE NO. 28 - 2017

AN ORDINANCE OF THE CITY OF SEMINOLE AMENDING SECTION 38-2 – WEAPONS PROHIBITED, OF THE CODE OF ORDINANCES, CITY OF SEMINOLE, FLORIDA, MAKING IT UNLAWFUL TO DISCHARGE OR SHOOT BB GUNS OR SIMILAR WEAPONS IN ANY MANNER THAT IS POTENTIALLY DANGEROUS TO ANIMALS OR WILDLIFE; CREATING SECTION 38-3, PROHIBITED ACTIVITY, ACT OR PRACTICE SUBJECT TO CODE ENFORCEMENT; CREATING SECTION 38-4, CITATION/FINE AUTHORITY AND SCHEDULE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 790.33, Florida Statutes, expressly preempts municipal regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof; and

WHEREAS, pursuant to the plain language of the statute and the authority announced by *Mitchell v. State*, 698 So. 2d 555, 558–59 (Fla. 2d DCA 1997), *approved*, 703 So. 2d 1062 (Fla. 1997) and other cases, such preemption does not include regulation of airsoft, BB guns, or similar type weapons because such weapons do not use the action of an explosive; and

WHEREAS, the City Council has determined it to be in the best interest of the public health, safety, and welfare to amend Section 38-2. Weapons prohibited, of the Code of Ordinances, City of Seminole to make it unlawful to discharge or shoot any airsoft, BB gun, or similar type weapon in any manner that is potentially dangerous to animals or wildlife;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEMINOLE, FLORIDA CITY COUNCIL, AS FOLLOWS;

Section 1. Section 38-2 of the Code of Ordinances is amended to read as follows:

Sec. 38-2. Weapons prohibited.

- (1) It shall be unlawful for any person, other than law enforcement officers, to bring into any public facility, park, or building a weapon that is potentially harmful to human safety. "Weapon" shall be defined consistently with state law, and shall also include BB guns, air or gas operated guns, and projectile weapons. This definition specifically excludes firearms, the regulation of which is preempted to the state pursuant to § 790.33, Florida Statutes.
- (2) No person shall shoot or shoot at any animal or fowl in the city, with a BB gun, airgun or gas operated gun, or with bows and arrows, slingshots, or other weapons potentially dangerous to animals or wildlife.

- (3) This section does not apply to a person lawfully defending life or property, to a person discharging the weapon on properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry, or to a person spear fishing in any area where such activity has been designated as being permissible either by the city, the state, or the United States.
- (4) For purposes of this section, airgun or BB gun means any device designed or intended to expel a BB, pellet, or similar metallic projectile by means of compressed air or other compressed gas or the action of a spring, not including any nailgun or any firearm as defined in F.S. § 790.001.
- (3) This section is not intended to regulate the discharge of firearms, which is regulated by F.S. § 790.15.

Section 2. Section 38-3 of the Code of Ordinances is created to read as follows:

Sec. 38-3. Prohibited Activity, Act, or Practice subject to code enforcement.

The activities, acts or practices listed in Section 38-2 are hereby prohibited within the City limits and may be subject to code enforcement pursuant to Chapter 2 of the City's Code of Ordinances.

Section 3. Section 38-4 of the Code of Ordinances is created to read as follows:

Sec. 38-4. Civil Citation/Fine Authority and Schedule.

A civil citation/fine may levied by a sworn law enforcement officer who has probable cause to believe a violation of Section 38-2 has occurred, against the party or parties in violation of Section 38-2.

The civil citation/fine levied for each offense resulting from a civil infraction/ticket issued by a sworn law enforcement officer shall be fifty (\$50.00).

If the offender does not contest the citation in county court, the civil fine shall be twenty-five (\$25.00).

The alleged offender shall have the right to contest any citation issued under this section in county court. If a person fails to pay the civil penalty, fails to appear in court to contest the citation, or fails to appear in court as required by subsection, the court may issue an order to show cause upon the request of the governing body of the county or municipality. This order shall require such persons to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.

Section 4. The provisions of this Ordinance shall be deemed to severable. If any part of this Ordinance is deemed unconstitutional, it shall not affect the constitutionality of the other portions of this Ordinance.

Section 5. This Ordinance shall become effective immediately upon final passage and adoption.

APPROVED ON FIRST READING: October 24, 2017

PUBLISHED: December 8, 2017

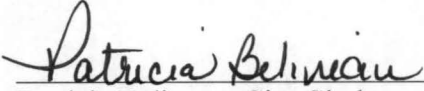
PASSED AND ADOPTED ON

SECOND AND FINAL READING AT PUBLIC HEARING: December 19, 2017


LESLIE WATERS, MAYOR

I, Patricia Beliveau, City Clerk of the City of Seminole, Florida, County of Pinellas, State of Florida, a municipal corporation, do hereby certify the foregoing and hereto attached is a true and correct copy of Ordinance No. 28-2017 which is on file in the City Clerk's Office:

IN WITNESS WHEREOF, I hereunto set my hand and affixed the seal of the City of Seminole, Pinellas County, Florida, this 19 day of Dec., 2017.


Patricia Beliveau, City Clerk

