



**CITY OF OLDSMAR  
CITY COUNCIL  
AGENDA ITEM  
COVER MEMO**

**TO:** City Council

**FROM:** Ann Nixon, City Clerk

**DATE:** July 19, 2022

**AIR #:** AIR-1984

**SUBJECT:** PUBLIC HEARING for Second Reading of Ordinance 2022-09, amending Section 18-33 of the Code of Ordinances of the City of Oldsmar regarding authority during declared emergencies; making related findings

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**BACKGROUND**

June 21, 2022, Council passed the First Reading of Ordinance 2022-09.

**STRATEGIC GOAL**

Quality of Place

**RECOMMENDED MOTION**

Adopt Ordinance 2022-09, amending Section 18-33 of the Code of Ordinances of the City of Oldsmar regarding authority during declared emergencies; making related findings; providing for codification, severability, and an effective date.

**ATTACHMENTS**

[Ordinance 2022-09 \(PDF\)](#)

**ORDINANCE 2022-09**

**AN ORDINANCE OF THE CITY OF OLDSMAR, FLORIDA, AMENDING § 18-33 OF THE CODE OF ORDINANCES OF THE CITY OF OLDSMAR REGARDING AUTHORITY DURING DECLARED EMERGENCIES; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 18 of the Code of Ordinances of the City of Oldsmar (“Code”) addresses civil emergencies; and

**WHEREAS**, § 18.33(e)(1) of the Code provides in relevant part that the Mayor or City Manager may, during a declared state of emergency, suspend or limit the sale, dispensing or transportation of firearms; 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**, Florida Statutes § 870.043, entitled *Declaration of emergency*, provides that, whenever “the sheriff or designated city official determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof, he or she may declare that a state of emergency exists within that jurisdiction or any part or parts thereof”; and

**WHEREAS**, subsection (1) of Florida Statutes § 870.044, entitled *Automatic emergency measures*, automatically prohibits the sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description” during a riot/public disorder type emergency declared pursuant to Florida Statutes § 870.043; and

**WHEREAS**, apart from this automatic statutory limit on the sale of firearms, Florida Statutes Chapter 252 (Emergency Management) no longer authorizes local suspension of firearms sales which, by virtue of Florida Statutes § 252.36, is a power solely vested in the Governor; 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 § 18-33(e)'s firearms sale suspension provision is 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.** That § 18-33 of the Oldsmar City Code is hereby amended to read as follows:

**Sec. 18-33. - Declaration.**

(a) *Statutory authority.* Pursuant to F.S. ch. 252, which authorizes the waiver of procedures

and formalities otherwise required of a political subdivision to take whatever prudent actions necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency, when a quorum of the city council is unable to meet, the mayor, or vice-mayor in the absence of the mayor, or the city manager, or their designee, is empowered to declare a local state of emergency whenever it is determined that a natural or manmade disaster or emergency has occurred or that the occurrence or threat of one is imminent and requires immediate and expeditious action.

- (b) *Declaration by proclamation.* A state of emergency shall be declared by proclamation of the mayor, or vice-mayor in the absence of the mayor, or by the city manager or their designee in the absence of the mayor and vice-mayor. The state of emergency shall continue until the mayor or vice-mayor in their absence, or city manager or designee in the absence of the mayor and vice-mayor, finds that the threat or danger no longer exists and/or until an emergency meeting of a quorum of the city council can take place and determine the state of emergency by proclamation.
- (c) *Activation of city disaster emergency plans.* A proclamation declaring a state of emergency shall activate the disaster emergency plans applicable to the city and shall be the authority for the use or distribution of any supplies, equipment, materials and facilities assembled or arranged to be made available pursuant to such plans.
- (d) *Immediate efficacy of emergency provisions.* Upon the declaration of a state of emergency pursuant to this section, such ordinances, or portions thereof, as the city council, or the designated city official, may deem necessary, shall be effective during the period of such emergency to protect the health, safety and welfare of the community.
- (e) *Authority and enforcement.* The purpose of this subsection is to provide authority and enforcement power to whatever action is necessary during a state of emergency. Such powers shall include but are not limited to the following:
  - (1) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, ~~firearms~~, explosives and combustibles.
  - (2) Establish curfews, including but not limited to the prohibition or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated, essential services such as fire, law enforcement, emergency medical and hospital services, including the transportation of patients, utility emergency repairs and emergency calls by physicians.
  - (3) Utilize all available resources of the city government as reasonably necessary to cope with the disaster or emergency, including emergency expenditures not to exceed \$50,000.00.
  - (4) Declare certain areas of the city off limits.
  - (5) Make provisions for availability and use of temporary emergency housing and

emergency warehousing of materials.

- (6) Establish emergency operating centers and shelters in addition to or in place of those provided for in the city's emergency plan.
- (7) Declare that during an emergency it shall be unlawful and an offense against the city for any person to use the potable water supplied by the city for any purpose other than for cooking, drinking or bathing.
- (8) Declare that during an emergency it shall be unlawful and an offense against the city for any person within the city to charge more than the normal average retail price for any merchandise, goods, or services sold during the emergency. The "average retail price" as used in this subsection is defined to be that price at which similar merchandise, goods, or services was being sold during the 90 days immediately preceding the emergency or a markup which is a larger percentage over wholesale cost than was being added to wholesale cost prior to the emergency.
- (9) Confiscate merchandise, equipment, vehicles or property needed to alleviate the emergency. Reimbursement shall be within 60 days and at a customary value charged for the items during the 90 days previous to the emergency.
- (10) Allow the mayor, vice-mayor, or in their absence the city manager, or their designees, on behalf of the city, to request the National Guard, Coast Guard, or other law enforcement divisions as may be necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

**Section 2.** For purposes of codification of any existing section of the 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 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:

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PASSED ON SECOND READING AND ADOPTED:

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

ATTEST:

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

APPROVED AS TO FORM:

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