

Replacement Agenda Item #9 for meeting of April 10, 2018

SCHEDULED PUBLIC HEARINGS, 6:00 P.M.


9. First and Only Public Hearing to Consider an Ordinance Amending Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, adding Article III, Entitled “Criminal History Records Check and Waiting Period for Purchase of Firearms”
(County Attorney)

This document distributed April 5, 2018.

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: Honorable Chairman and Members of the Board of County Commissioners

FROM: Herbert W. A. Thiele, Esq. 
County Attorney

DATE: April 5, 2018

SUBJECT: Clarification of Agenda Item #9, First and Only Public Hearing to Consider an Ordinance Amending Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, adding Article III, Entitled "Criminal History Records Check and Waiting Period for Purchase of Firearms"

The purpose of the memorandum is to provide the Board with a summary of changes made to Agenda Item #9.

In the Background section, paragraph two was changed to provide clarity. The paragraph originally read:

In Florida, background checks are **not** required by the state. However, county governments have the authority to require background checks and a 3- to 5-day waiting period for private firearms transfers (holders of concealed carry permits are exempt from any such county requirements). Currently, seven counties, Broward, Hillsborough, Miami-Dade, Palm Beach, Pinellas, Sarasota and Volusia have ordinances requiring background checks and waiting periods for private gun sales.

It now reads:

Florida law currently does not restrict private firearm transactions. However, county governments have the authority to require background checks and a 3- to 5-day waiting period for firearm sales when any part of a firearm sale is conducted on property to which the public has the "right of access" (holders of concealed carry permits are exempt from any such county requirements). Currently, seven counties, Broward, Hillsborough, Miami-Dade, Palm Beach, Pinellas, Sarasota and Volusia have ordinances requiring background checks and waiting periods for private gun sales.

The language was changed to clarify that it is specific to the private sales of firearms which the state does not regulate. Additionally, the language was added directly from the Florida Constitution to show the applicability of the criminal history check and the 3- to 5-day waiting period.

In the Analysis section, paragraph three was changed to provide clarity. The paragraph originally read:

As stated previously, seven Florida counties have ordinances that require background checks for the private sale of firearms when any part of the transaction is conducted on property to which the public has the right of access. This includes, but is not limited to gun shows, flea markets, firearms exhibitions, wholesale and retail stores and garage and estate sales where the private property has been opened to public access.

It now reads:

As stated previously, seven Florida counties have ordinances that require background checks for the private sale of firearms when any part of the transaction is conducted on property to which the public has the right of access. This includes, but is not limited to gun shows, flea markets, firearms exhibitions, garage and estate sales where the private property has been opened to public access.

The words "wholesale and retail stores" were deleted. The words were deleted to eliminate the confusion that this was referring to commercial sales taking place inside wholesale and retail stores. The original intent was to show that if a private sale between individuals was conducted on the property of a retail store, such as in their parking lot, then the ordinance would be applicable.

Likewise, in the proposed ordinance (Attachment #1), page 3, line 6, the words "wholesale and retail stores" were also deleted from the definition of *property to which the public has the right of access* for the above noted reason.

Should you have any questions or need additional information, please contact the County Attorney's Office.

HWAT/LDR


Leon County Board of County Commissioners

Replacement

Agenda Item #9

April 10, 2018

To: Honorable Chairman and Members of the Board

From: Herbert W. A. Thiele, County Attorney 

Title: First and Only Public Hearing to Consider an Ordinance Amending Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, adding Article III, Entitled "Criminal History Records Check and Waiting Period for Purchase of Firearms"

Review and Approval:	Herbert W. A. Thiele, County Attorney
Department/ Division Review:	Herbert W. A. Thiele, County Attorney
Lead Staff/ Project Team:	LaShawn D. Riggans, Deputy County Attorney

Statement of Issue:

As requested by the Board at the March 27, 2018 meeting, this item requests the Board conduct the first and only public hearing to consider an Ordinance (Attachment #1) that will amend Chapter 12 (Offenses - Miscellaneous) of the Leon County Code of Laws to require a criminal history records check and waiting period for the purchase of firearms conducted on property to which the public has the right of access.

Fiscal Impact:

This item has no current fiscal impact.

Staff Recommendation:

Option #3: Board Direction.

Report and Discussion

Background:

During the February 27, 2018, regularly scheduled Board meeting, Commissioner Lindley brought back before the Board the idea of closing the gun show "loophole." The Board voted unanimously for staff to bring back an agenda item further discussing the regulation of firearm sales at gun shows and to close the gun show loophole. In 2013, the Commission had previously looked into closing the gun show loophole and directed the County Attorney's Office to bring back a status report to the Board.

Florida law currently does not restrict private firearm transactions. However, county governments have the authority to require background checks and a 3- to 5-day waiting period for firearm sales when any part of a firearm sale is conducted on property to which the public has the "right of access" (holders of concealed carry permits are exempt from any such county requirements). Currently, seven counties, Broward, Hillsborough, Miami-Dade, Palm Beach, Pinellas, Sarasota and Volusia have ordinances requiring background checks and waiting periods for private gun sales.

On March 9, 2018, the Governor signed into law the "Marjory Stoneman Douglas High School Public Safety Act." Section 790.0655, F. S. currently imposes a mandatory waiting period between the "retail" purchase and delivery of a firearm of 3 days, excluding weekends and legal holidays, or expires upon the completion the records check, whichever occurs later. However, as previously stated the 1998 Amendment to the Florida Constitution gives counties the authority to extend the waiting period up to 5 days. Currently, of the counties that require background checks four have enacted a 3 day waiting period (Hillsborough, Pinellas, Sarasota and Volusia), while Broward, Miami-Dade and Palm Beach have opted to enact the 5 day waiting period in which to transfer a firearm.

On March 27, 2018, at a regularly scheduled Leon County Board of County Commissioners meeting, the Board voted unanimously to move forward with scheduling the first and only public hearing on April 10, 2018, to consider a proposed Ordinance (Attachment #1) amending Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, by adding a new Article III, Entitled "Criminal History Records Check and Waiting Period for Purchase of Firearms" and requiring the waiting period to be five days. The Board directed that language be included within the proposed Ordinance to address the authority of proactive enforcement of the Ordinance by Leon County Code Inspectors. Additionally, the Board requested that there be a "whereas" clause to address the concerns of the Leon County Sheriff surrounding Fourth Amendment implications.

Analysis:

The proposed Ordinance (Attachment #1) will amend Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, by adding a new Article III, Entitled "Criminal History Records Check and Waiting Period for Purchase of Firearms. "

As this is constitutional law, it should be noted that Section 790.33, Florida Statutes, has no impact on a county's ability to require a criminal history records check or waiting period in the sale of a firearm within the County when any part of the transaction is conducted on property to which the public has the right of access.

As stated previously, seven Florida counties have ordinances that require background checks for the private sale of firearms when any part of the transaction is conducted on property to which the public has the right of access. This includes, but is not limited to gun shows, flea markets, firearms exhibitions, garage and estate sales where the private property has been opened to public access.

If the County were to enact an ordinance requiring a background check for the private sale of firearms, conducting background checks on private gun buyers would involve several steps according to Florida Department of Law Enforcement (FDLE). Unlike Federal Firearms License (FFL) dealers, the private sellers regulated by county gun law have no direct access to buyers' criminal histories. Under the proposed ordinance, a private seller would first sign the firearm over into the inventory of a FFL dealer. The dealer would then conduct the background check for the private seller. FDLE for a nominal fee checks the potential purchaser's name in a database that tracks nationwide criminal records, lists of people declared "mentally defective" in court and individuals subject to domestic violence restraining orders. If the buyer is not approved, the dealer must also perform a background check on the seller before returning the gun. If the seller is not approved, the dealer takes control of the weapon.

Additionally, the proposed Ordinance at the request of the Board, requires a 5 day waiting period between the sale of the firearm and the transfer of the firearm to the buyer. This waiting period is applicable to all firearm sales in the County when any part of the transaction is conducted on property to which the public has the right of access. This would also include retail sales conducted through FFL dealers and would effectively change their current 3 day waiting period requirement to 5 days.

Enforcement of any ordinance regulating the sale of any firearm occurring within the boundaries of the County on property to which the public has the right of access, would be enforced by local law enforcement officers and code inspectors within their jurisdiction. Law enforcement under the ordinance would make arrests or issue a Notices to Appear (NTAs) for those individuals not in compliance. Code Inspectors would attend gun shows and if a violation of the Ordinance is witnessed the inspector would immediately contact law enforcement. To help to facilitate compliance any unlicensed seller would be required to prominently display next to any firearms being sold, if any part of the transactions takes place on property to which the public has the right of access the following information: (1) legal name of the seller; (2) the name of the FFL dealer who will be facilitating the transaction for the seller and (3) the license number of the FFL dealer who will be facilitating the transaction of behalf of the seller.

Additionally, any events in which firearms are permitted to be sold and/or transferred by persons other than FFL dealers would be required to prominently display the ordinance at all entrances of the venue.

Pursuant to Section 125.66(2)(a), Florida Statutes, the Board must conduct one public hearing to consider and adopt the proposed Ordinance. Notice of the public hearing was timely published as required by the statute (Attachment #3).

Options:

1. Conduct first and only public hearing and adopt Ordinance to amend Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, adding Article III, Entitled "Criminal History Records Check and Waiting Period for Purchase of Firearms" (Attachment #1).
2. Conduct first and only public hearing and do not adopt Ordinance to amend Chapter 12 (Offenses - Miscellaneous) of the Code of Laws of Leon County, adding Article III, Entitled "Criminal History Records Check and Waiting Period for Purchase of Firearms."
3. Board direction.

Recommendation:

Option #3 Board Direction.

Attachments:

1. Proposed Ordinance (clean version)
2. Proposed Ordinance (redline version)
3. Public Notice

ORDINANCE NO. 18-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 12, OF THE LEON COUNTY CODE OF LAWS ENTITLED "OFFENSES – MISCELLANEOUS," GENERALLY; ADDING A NEW ARTICLE III TO BE ENTITLED “CRIMINAL HISTORY RECORDS CHECK AND WAITING PERIOD FOR PURCHASE OF FIREARMS”; PROVIDING FOR DEFINITIONS; PROVIDING FOR POSTING OF ORDINANCE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1998, an amendment to the Florida Constitution, Article VIII, Section 5(b), was adopted which gave counties the authority to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within the county; and

WHEREAS, the Leon County Board of County Commissioners desire to implement their Constitutional authority to enact an ordinance providing for a criminal history records check and a five day waiting period in connection with the sale of any firearm occurring within the county; and

WHEREAS, this Ordinance is not intended to deprive any person of their Fourth Amendment right against unreasonable searches and seizures; enforcement shall be in accordance and compliance with all local, state, or federal laws.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

SECTION 1. Chapter 12, of the Code of Laws of Leon County, Florida, is hereby amended by adding an Article III, entitled, Criminal History Records Check and Waiting Period For Purchase of Firearms, which is to read as follows:

**ARTICLE III. CRIMINAL HISTORY RECORDS CHECK
AND WAITING PERIOD FOR PURCHASE OF FIREARMS**

Sec. 12-81. – Intent and purpose.

It is the intent of this Ordinance to implement countywide the constitutionally granted authority to ensure that no firearm is sold, offered for sale, transferred or delivered where any part of the transaction is conducted on property to which the public has a right of access unless there is a full five day waiting period and a national criminal history background check of the potential purchaser is conducted. This Ordinance applies to both seller and purchasers of firearms.

1 Any violation of Article III. Criminal History Records Check and Waiting Period for
2 Purchase of Firearms, presents a serious threat to the public health, safety, or welfare and the
3 violation is considered irreparable or irreversible.

4 Sec. 12-82. – Definitions.

5 The following words, terms and phrases, when used in this article, shall have the
6 meanings ascribed to them in this section, except where the context clearly indicates a different
7 meaning:

8 *Antique firearms* means any firearm (including any firearm with a matchlock, flintlock,
9 percussion cap, or similar type of ignition system) manufactured in or before 1898; and any
10 replica of any such firearm if such replica (i) is not designed or redesigned for using rimfire or
11 conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed
12 ammunition which is no longer manufactured in the United States and which is not readily
13 available in the ordinary channels of commercial trade.

14 *Any part of the transaction* means any part of the sales transaction, including but not
15 limited to, the offer of sale, negotiations, the agreement to sell, the transfer of consideration, or
16 the transfer or delivery of the firearm.

17 *Business day* means a 24-hour day (beginning at 12:01 a.m.), excluding weekends and
18 legal holidays.

19 *Buyer* means the person or persons taking delivery of or transferring money or other
20 valuable consideration for a firearm in any sale.

21 *FDLE* means the Florida Department of Law Enforcement.

22 *Firearm* means any weapon, including a starter gun or handgun, which will or is designed
23 to or may readily be converted to expel a projectile by the action of an explosive; the frame or
24 receiver of any such weapon; any firearm muffler or firearm silencer; and destructive device; or
25 any machine gun.

26 *Handgun* means a firearm capable of being carried and used by one hand, such as a pistol
27 or revolver.

28 *Licensed dealer* means a dealer licensed under the provisions of Title 27, Code of Federal
29 Regulations, Part 478, or any successor federal regulations requiring licenses for firearm dealers.

30 *Licensed importer* means an importer licensed under the provisions of Title 27, Code of
31 Federal Regulations, Part 478, or any successor federal regulations requiring licenses for firearm
32 importers.

33 *Licensed manufacturer* means a manufacturer licensed under the provisions of Title 27,
34 Code of Federal Regulations, Part 478, or any successor federal regulations requiring licenses for
35 firearm manufacturers.

36 *NICS* means the National Instant Criminal Background Check System established
37 pursuant to Title 18, United States Code, Section 922.

38 *Person* includes, but is not limited to, any individual, corporation, company, association,
39 firm partnership, society, or joint stock company.

1 Prominently displayed means standing out so as to be seen easily; conspicuous;
2 particularly noticeable.

3 Property to which the public has the right of access means any real or personal property
4 to which the public has a right of access, including property owned by either public or private
5 individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun
6 shows, garage and estate sales and firearms exhibitions.

7 Sale means the transfer of money or other valuable consideration for any firearm.

8 Seller means the person or persons delivering a firearm in any sale.

9 Sec. 12-83. – Mandatory five day waiting period.

10 There shall be a mandatory five day waiting period, which shall be five full days,
11 excluding weekends and legal holidays, in connection with the sale of firearms occurring within
12 the county when the sale involves a transfer of money or other valuable consideration, and any
13 part of the sale transaction is conducted on property to which the public has the right of access.
14 An uninterrupted, continuous, and cumulative aggregate of 120 hours must elapse between such
15 sale and receipt of the firearm, excluding the hours of weekends and legal holidays. A person
16 who violates the prohibition of this section is guilty of a violation of a county ordinance,
17 punishable as provided in F.S. § 125.69 (1), as it may be amended, and the violation shall be
18 prosecuted in the same manner as misdemeanors are prosecuted.

19 Sec. 12-84. – Mandatory criminal records check.

20 (a) No person, whether licensed or unlicensed, shall sell, offer for sale, transfer or
21 deliver any firearm to another person when any part of the transaction is conducted on property
22 to which the public has the right of access within Leon County until all procedures specified
23 under section 790.065, Florida Statutes, have been complied with by a person authorized by that
24 section to conduct a criminal history check of background information as specified in that
25 section, and the approval number set forth by that section has been obtained and documented. In
26 the event section 790.065, Florida Statutes is repealed, no person, whether licensed or
27 unlicensed, shall sell, offer for sale, transfer or deliver any firearm to another person when any
28 part of the transaction is conducted on property to which the public has the right of access until
29 all procedures specified under any other state or federal law which requires a national criminal
30 history information or national criminal history check on potential buyer or transferee of firearms
31 have been complied with by any person authorized by law to conduct the required national
32 criminal history or background records check and any required approval under such state or
33 federal law or rule has been obtained.

34 (b) In the case of a seller who is not a licensed importer, licensed manufacturer or
35 licensed dealer:

36 1. Compliance with section 790.065, F.S. or its state or federal successor
37 shall be achieved by the seller requesting that a licensed importer, licensed manufacturer or
38 licensed dealer complete all the requirements of section 790.065, F.S. or its state or federal
39 successor.

2. Licensed importers, manufacturers and dealers may charge a fee of an
unlicensed seller as established by the FDLE to cover costs associated with completing the
requirements of section 790.065, F.S.

3. An unlicensed seller must prominently display next to any firearms being
sold on property to which the public has the right of access the following information:

i. The full legal name of the seller.

ii. The name(s) of the licensed importer, licensed manufacturer, or
licensed dealer who will be completing the transaction of behalf of
the seller.

iii. The license number of the licensed importer, licensed manufacturer,
or licensed dealer who will be completing the transaction of behalf
of the seller.

(c) Sellers who conduct or cause to be conducted criminal history records checks
shall maintain records pursuant to Florida Statutes.

Sec. 12-85. – Posting of Ordinance.

Any activity or event in which firearms are permitted to be sold or transferred by persons
other than a licensed importer, licensed manufacturer or licensed dealer when any part of the
transaction is conducted on property to which the public has the right of access the person
hosting or putting on such activity or event must prominently display this Ordinance at all
entrances into the activity or event.

Sec. 12-86. – Exemptions.

(a) This division does not apply to the purchaser of firearms by holders of a Florida
concealed weapons or firearms permit or license issued pursuant to general law. However, this
exemption shall not relieve such purchasers from compliance with otherwise applicable state or
federal law requirements.

(b) Sales to a licensed importer, licensed manufacturer or licensed dealer shall not be
subject to the provisions of this section.

(c) Law enforcement officers, correctional officers or correctional probation officers
who are purchasing a handgun(s) for official use and who provide the seller with a certification
on agency letterhead, signed by a person in authority within the agency (other than the officer
purchasing the handgun) stating that the officer will use the handgun(s) in official duties and that
a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of
domestic violence.

1 Sec. 12-87. – Applicability.

2 This ordinance shall be effective in the incorporated as well as unincorporated areas of
3 the county.

4 Sec. 12-88. – Enforcement.

5 Law enforcement officers and code inspectors shall enforce the provisions of this section
6 against any person found violating these provisions within their jurisdiction.

7 For the purpose of enforcing the provisions contained herein the violator does not have to
8 be provided a reasonable time period to correct the violation and may immediately be cited or
9 issued a notice to appear, as any violation of the provisions contained in this Article presents a
10 serious threat to the public health, safety, or welfare, and the violation is irreparable or
11 irreversible.

12 Sec. 12-89. – Penalty.

13 Any violation by any person of any requirement or provision of this Article shall be
14 prosecuted in the same manner as misdemeanors are prosecuted. Upon conviction, any person
15 violating any requirement or provision of this section shall be punished by a fine not to exceed
16 \$500.00 or by imprisonment in the Leon County Detention Center not to exceed 60 days or by
17 both such fine and imprisonment as provided in F.S. § 125.069, as it may be amended.

18 Secs. 12-90—12-110. - Reserved.

19 **SECTION 2. Conflicts.** All ordinances or parts of ordinances in conflict with the
20 provisions of this ordinance are hereby repealed to the extent of such conflict.

21
22 **SECTION 3. Severability.** If any word, phrase, clause, section or portion of this
23 Ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such
24 portion or words shall be deemed a separate and independent provision and such holding shall
25 not affect the validity of the remaining portions thereof.

26
27 **SECTION 4. Effective date.** This Ordinance shall have effect upon becoming law.

28
29 DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon
30 County, Florida this _____ day of _____, 2018.

31
32
33
34
35 LEON COUNTY, FLORIDA

36
37
38 By: _____
39 Nick Maddox, Chairman
40 Board of County Commissioners

1 ATTESTED BY:
2 GWEN MARSHALL,
3 CLERK OF THE CIRCUIT COURT AND COMPTROLLER
4 LEON COUNTY, FLORIDA
5
6

7 By:_____

8
9
10 APPROVED AS TO FORM:
11 COUNTY ATTORNEY'S OFFICE
12 LEON COUNTY, FLORIDA
13
14

15 By:_____

16 HERBERT W. A. THIELE, ESQ.
17 COUNTY ATTORNEY
18

ORDINANCE NO. 18-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 12, OF THE LEON COUNTY CODE OF LAWS ENTITLED "OFFENSES – MISCELLANEOUS," GENERALLY; ADDING A NEW ARTICLE III TO BE ENTITLED “CRIMINAL HISTORY RECORDS CHECK AND WAITING PERIOD FOR PURCHASE OF FIREARMS”; PROVIDING FOR DEFINITIONS; PROVIDING FOR POSTING OF ORDINANCE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1998, an amendment to the Florida Constitution, Article VIII, Section 5(b), was adopted which gave counties the authority to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within the county; and

WHEREAS, the Leon County Board of County Commissioners desire to implement their Constitutional authority to enact an ordinance providing for a criminal history records check and a five day waiting period in connection with the sale of any firearm occurring within the county; and

WHEREAS, this Ordinance is not intended to deprive any person of their Fourth Amendment right against unreasonable searches and seizures; enforcement shall be in accordance and compliance with all local, state, or federal laws.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

SECTION 1. Chapter 12, of the Code of Laws of Leon County, Florida, is hereby amended by adding an Article III, entitled, Criminal History Records Check and Waiting Period For Purchase of Firearms, which is to read as follows:

**ARTICLE III. CRIMINAL HISTORY RECORDS CHECK
AND WAITING PERIOD FOR PURCHASE OF FIREARMS**

Sec. 12-81. – Intent and purpose.

It is the intent of this ~~ordinance~~ Ordinance to implement countywide the constitutionally granted authority to ensure that no firearm is sold, offered for sale, transferred or delivered where any part of the transaction is conducted on property to which the public has a right of access unless there is a full ~~3-or 5-~~ five day waiting period and a national criminal history background check of the potential purchaser is conducted. This ~~ordinance~~ Ordinance applies to both seller and purchasers of firearms.

Any violation of Article III. Criminal History Records Check and Waiting Period for Purchase of Firearms, presents a serious threat to the public health, safety, or welfare and the violation is considered irreparable or irreversible.

Sec. 12-82. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antique firearms means any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and any replica of any such firearm if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Any part of the transaction means any part of the sales transaction, including but not limited to, the offer of sale, negotiations, the agreement to sell, the transfer of consideration, or the transfer or delivery of the firearm.

Business day means a 24-hour day (beginning at 12:01 a.m.), excluding weekends and legal holidays.

Buyer means the person or persons taking delivery of or transferring money or other valuable consideration for a firearm in any sale.

FDLE means the Florida Department of Law Enforcement.

Firearm means any weapon, including a starter gun or handgun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; and destructive device; or any machine gun.

Handgun means a firearm capable of being carried and used by one ~~(1)~~ hand, such as a pistol or revolver.

Licensed dealer means a dealer licensed under the provisions of Title 27, Code of Federal Regulations, Part 478, or any successor federal regulations requiring licenses for firearm dealers.

Licensed importer means an importer licensed under the provisions of Title 27, Code of Federal Regulations, Part 478, or any successor federal regulations requiring licenses for firearm importers.

Licensed manufacturer means a manufacturer licensed under the provisions of Title 27, Code of Federal Regulations, Part 478, or any successor federal regulations requiring licenses for firearm manufacturers.

NICS means the National Instant Criminal Background Check System established pursuant to Title 18, United States Code, Section 922.

Person includes, but is not limited to, any individual, corporation, company, association, firm partnership, society, or joint stock company.

Prominently displayed means standing out so as to be seen easily; conspicuous; particularly noticeable.

Property to which the public has the right of access means any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows, garage and estate sales and firearms exhibitions.

Sale means the transfer of money or other valuable consideration for any firearm.

Seller means the person or persons delivering a firearm in any sale.

Sec. 12-83. – Mandatory ~~3-to-5~~ five day waiting period.

There shall be a mandatory ~~3-to-5~~ five day waiting period, which shall be ~~3-to-5~~ five full days, excluding weekends and legal holidays, in connection with the sale of firearms occurring within the county when the sale involves a transfer of money or other valuable consideration, and any part of the sale transaction is conducted on property to which the public has the right of access. ~~Some examples of properties to which the public has the right of access include but are not limited to: gun shows, firearm exhibits, wholesale and retail stores, garage and estate sales and flea markets.~~ An uninterrupted, continuous, and cumulative aggregate of ~~XXX~~ 120 hours must elapse between such sale and receipt of the firearm, excluding the hours of weekends and legal holidays. A person who violates the prohibition of this section is guilty of a violation of a county ordinance, punishable as provided in F.S. § 125.69 (1), as it may be amended, and the violation shall be prosecuted in the same manner as misdemeanors are prosecuted.

Sec. 12-84. – Mandatory criminal records check.

(a) No person, whether licensed or unlicensed, shall sell, offer for sale, transfer or deliver any firearm to another person when any part of the transaction is conducted on property to which the public has the right of access within Leon County until all procedures specified under section 790.065, Florida Statutes, have been complied with by a person authorized by that section to conduct a criminal history check of background information as specified in that section, and the approval number set forth by that section has been obtained and documented. In the event section 790.065, Florida Statutes is repealed, no person, whether licensed or unlicensed, shall sell, offer for sale, transfer or deliver any firearm to another person when any part of the transaction is conducted on property to which the public has the right of access until all procedures specified under any other state or federal law which requires a national criminal history information or national criminal history check on potential buyer or transferee of firearms have been complied with by any person authorized by law to conduct the required national criminal history or background records check and any required approval under such state or federal law or rule has been obtained.

(b) In the case of a seller who is not a licensed importer, licensed manufacturer or licensed dealer:

1. -Compliance with section 790.065, F.S. or its state or federal successor shall be achieved by the seller requesting that a licensed importer, licensed manufacturer or licensed dealer complete all the requirements of section 790.065, F.S. -or its state or federal successor.

2. Licensed importers, manufacturers and dealers may charge a ~~fee~~ reasonable fee of an unlicensed seller as established by the FDLE to cover costs associated with completing the requirements of section 790.065, F.S.:

3. An unlicensed seller must prominently display next to any firearms being sold on property to which the public has the right of access the following information:

i. The full legal name of the seller.

ii. The name(s) of the licensed importer, licensed manufacturer, or licensed dealer who will be completing the transaction of behalf of the seller.

iii. The license number of the licensed importer, licensed manufacturer, or licensed dealer who will be completing the transaction of behalf of the seller.

(c) Sellers who conduct or cause to be conducted criminal history records checks shall maintain records pursuant to Florida Statutes.

Sec. 12-85. – Posting of Ordinance.

Any activity or event in which firearms are permitted to be sold or transferred by persons other than a licensed importer, licensed manufacturer or licensed dealer when any part of the transaction is conducted on property to which the public has the right of access the person hosting or putting on such activity or event must prominently display this Ordinance at all entrances into the activity or event.

Sec. 12-86. – Exemptions.

(a) This division does not apply to the purchaser of firearms by holders of a Florida concealed weapons or firearms permit or license issued pursuant to general law. However, this exemption shall not relieve such purchasers from compliance with otherwise applicable state or federal law requirements.

(b) Sales to a licensed importer, licensed manufacturer or licensed dealer shall not be subject to the provisions of this section.

(c) Law enforcement officers, correctional officers or correctional probation officers who are purchasing a handgun(s) for official use and who provide the seller with a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the handgun) stating that the officer will use the handgun(s) in official duties and that

1 a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of
2 domestic violence.

3
4
5 Sec. 12-87. – Applicability.

6 This ordinance shall be effective in the incorporated as well as unincorporated areas of
7 the county.

8 Sec. 12-88. – Enforcement.

9 Law enforcement officers and code inspectors shall enforce the provisions of this section
10 against any person found violating these provisions within their jurisdiction.

11 For the purpose of enforcing the provisions contained herein the violator does not have to
12 be provided a reasonable time period to correct the violation and may immediately be cited or
13 issued a notice to appear, as any violation of the provisions contained in this Article presents a
14 serious threat to the public health, safety, or welfare, and the violation is irreparable or
15 irreversible.

16
17 Sec. 12-89. – Penalty.

18 Any violation by any person of any requirement or provision of this Article shall be
19 prosecuted in the same manner as misdemeanors are prosecuted. Upon conviction, any person
20 violating any requirement or provision of this section shall be punished by a fine not to exceed
21 \$500.00 or by imprisonment in the Leon County Detention Center not to exceed 60 days or by
22 both such fine and imprisonment as provided in F.S. § 125.069, as it may be amended.

23 Secs. 12-90—12-110. - Reserved.

24 **SECTION 2. Conflicts.** All ordinances or parts of ordinances in conflict with the
25 provisions of this ordinance are hereby repealed to the extent of such conflict.

26
27 **SECTION 3. Severability.** If any word, phrase, clause, section or portion of this
28 Ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such
29 portion or words shall be deemed a separate and independent provision and such holding shall
30 not affect the validity of the remaining portions thereof.

31
32 **SECTION 4. Effective date.** This Ordinance shall have effect upon becoming law.

33
34 DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon
35 County, Florida this _____ day of _____, 2018.
36

LEON COUNTY, FLORIDA

By: _____
Nick Maddox, Chairman
Board of County Commissioners

ATTESTED BY:
GWEN MARSHALL,
CLERK OF THE CIRCUIT COURT AND COMPTROLLER
LEON COUNTY, FLORIDA

By: _____

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: _____
HERBERT W. A. THIELE, ESQ.
COUNTY ATTORNEY

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of County Commissioners of Leon County, Florida (the "County") will conduct a public hearing on Tuesday, April 10, 2018, at 6:00 p.m., or as soon thereafter as such matter may be heard, at the County Commission Chambers, 5th Floor, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida, to consider adoption of an ordinance entitled to wit:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 12, OF THE LEON COUNTY CODE OF LAWS ENTITLED "OFFENSES – MISCELLANEOUS," GENERALLY; ADDING A NEW ARTICLE III TO BE ENTITLED "CRIMINAL HISTORY RECORDS CHECK AND WAITING PERIOD FOR PURCHASE OF FIREARMS"; PROVIDING FOR DEFINITIONS; PROVIDING FOR POSTING OF ORDINANCE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

All interested parties are invited to present their comments at the public hearing at the time and place set out above.

Anyone wishing to appeal the action of the Board with regard to this matter will need a record of the proceedings and should ensure that a verbatim record is made. Such record should include the testimony and evidence upon which the appeal is to be based, pursuant to Section 286.0105, Florida Statutes.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing a special accommodation to participate in this proceeding should contact Mathieu Cavell or Facilities Management, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32301, by written request at least 48 hours prior to the proceeding. Telephone: 850-606-5300 or 850-606-5000; 1-800-955-8771 (TTY), 1-800-955-8770 (Voice), or 711 via Florida Relay Service.

Copies of said ordinance may be inspected at the following locations during regular business hours:

Leon County Courthouse
301 S. Monroe St., 5th Floor Reception Desk
Tallahassee, FL 32301

and

Leon County Clerk's Office
315 S. Calhoun Street, Room 750
Tallahassee, Florida 32301

Advertise: March 30, 2018