

ORDINANCE NO. 1030-2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS REPEALING CHAPTER NO. 134, WEAPONS; WHICH INCLUDES CODE SECTION 134-01, FIREARMS AND AIR RIFLES; DISCHARGE PROHIBITED; 134-02, CARELESS EXHIBITION OF WEAPONS; 134-03, FORFEITURE OF WEAPONS AND ARMS; 134-04, RETURN OF WEAPONS AND ARMS AND FORFEITURE ON FAILURE TO RECEIVE SAME; 134-05, DISPOSAL OF WEAPONS AND ARMS; AND 134-06, TAKING POSSESSION OF WEAPONS AND ARMS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; DIRECTIONS TO CODIFIERS; EFFECTIVE DATE.

WHEREAS, the provisions contained in Chapter 134 of the City Code relating to “Firearms, Weapons and Arms” have not been revised, corrected, updated or amended since 1969; and,

WHEREAS, the City Police Department does not customarily cite the provisions of Chapter 134 for “Firearms, Weapons and Arms” violations charged by the Department; and,

WHEREAS, the Florida Legislature recently passed HB45 which amends the provisions of Florida Statute Section 790.33 and provides for the state preemption of local ordinances and regulations governing the use of firearms in the state; and,

WHEREAS, the aforesaid legislation, which became effective on October 1, 2011, declares local firearms ordinances and regulations null and void, prohibits the enactment of any such future ordinances and regulations and requires local jurisdictions to only enforce the state firearms laws; and,

WHEREAS, severe penalties are provided within the provisions of the amended statute for violations by local governments and local government officials; and,

WHEREAS, in light of the new legislation preempting the regulation of firearms and ammunition to the state, the out of date “Firearms, Weapons and Arms” provisions currently contained in the Code, and the Police Department’s customary and continuing policy of charging firearms violations under the state statute, the City Council has determined that it is both proper and appropriate to repeal the provisions contained within Chapter No. 134 of the City Code of Ordinances:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA:

Section 1: That Chapter No. 134, Weapons, of the Code of Ordinances and the specific Code of Ordinance Sections contained therein, are hereby repealed as follows:

**CHAPTER 134
WEAPONS**

~~Sec. 134.01. Firearms and air rifles; discharge prohibited.
It shall be unlawful to discharge any firearm or air rifle within the limits of the City.~~

~~Sec. 134.02. Careless exhibition of weapons.
It shall be unlawful for any person having a weapon in his possession to exhibit the same in a rude, careless, angry or threatening manner, no in necessary self-defense.~~

~~Sec. 134.03. Forfeiture of weapons and arms.~~

~~If the person arrested is convicted under any ordinance of the City involving the use of, or the attempted use of such weapons or arms, the weapons or arms shall become forfeited to the City without any order of forfeiture being necessary.~~

~~Sec. 134.04. Return of weapons and arms and forfeiture on failure to receive same.~~

~~If the person is acquitted of any offense involving the use of, or attempted use of, any weapon or arm, the weapon or arms taken from him as aforesaid shall be returned to him. However, if he fails to call for, or to receive same within 60 days from and after his acquittal or dismissal of charges against him, the weapon or arms shall be forfeited to the City.~~

~~Sec. 134.05. Disposal of weapons and arms.~~

~~Weapons or arms coming into the hands of the Chief of Police or the Commander of the property unit of the Police Department of the City, which are forfeited under the foregoing provisions of Sections 134.03-134.04, suitable for use by the Police Department, may be so used, or any weapon or arm which is not needed, or which is useless or unfit for use shall be destroyed or otherwise disposed of by the Chief of Police. Any such arms or weapons may be used as a trade-in or payment for weapons or arms needed for use by the Police Department. In the event that any of the arms or weapons are sold, the proceeds from the sale shall be transferred to the general fund of the City.~~

~~Sec. 134.06. Taking possession of weapons and arms.~~

~~Whenever any person is arrested while committing an offense, which is a violation of any ordinance of the City, and at the time of the arrest is armed with, or has on his person, any slingshot, metallic knuckles, billies, firearms, or any other dangerous weapons, the arresting office shall take possession of the weapon or arms in the possession of, or found upon, the person arrested, and shall deliver them to the Chief of Police, or the Commander of the property unit of the Police department of the City.~~

Section 2: That all Ordinances or parts of Ordinances in conflict herewith are hereby repealed insofar as they are in conflict.

Section 3: That the codifiers are hereby directed to codify this Ordinance in the proper manner and format of the City of Miami Springs Code of Ordinances.

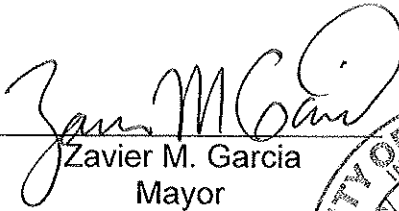
Section 4: That the provisions of this Ordinance shall be effective immediately upon adoption by the City Council.

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PASSED AND ADOPTED by the City Council of the City of Miami Springs, Florida this 28th day of November, 2011.

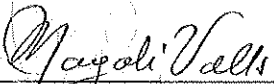
The motion to adopt the foregoing ordinance was offered on second reading by Councilman Lob, seconded by Vice Mayor Espino, and on roll call the following vote ensued:

| | |
|-------------------|----------|
| Vice Mayor Espino | "aye" |
| Councilman Best | "absent" |
| Councilman Lob | "aye" |
| Councilwoman Ator | "aye" |
| Mayor Garcia | "aye" |



Zavier M. Garcia
Mayor



ATTEST:


Magali Valls, CMC
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


Jan K. Seiden, Esquire
City Attorney

First reading: 11/14/2011
Second reading: 11/28/2011

Words ~~stricken through~~ shall be deleted. Underscored words constitute the amendment proposed. Words remaining are now in effect and remain unchanged.