

Agenda Item #: **5B-1**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: October 17, 2006

☐ Consent

☒ Regular

☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on November 21, 2006 at 10:30 AM, An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, Amending Chapter 28 of the Palm Beach County Code (Ordinance 92-15, as amended by Ordinance No. 99-5 and Ordinance 99-40); Pertaining to the Discharge of Firearms and Firearm Sales in Palm Beach County, Florida; Amending Section 28-21 of the Palm Beach County Code (Definitions); Amending Section 28-23 of the Palm Beach County Code (Mandatory Waiting Period; Criminal History Records Check Requirement); Providing for Repeal of Laws in Conflict; Providing for Severability; Providing for Inclusion in the Code of Laws and Ordinances; Providing for Captions; and Providing for an Effective Date.

**Summary:** On August 15, 2006, the Board of County Commissioners directed the County Attorney's Office to update Chapter 28 of the Palm Beach County Code relating to the sale of firearms at the request of the State Attorney's Office. Minor amendments are necessary as a result of the reorganization of federal firearm regulations and a codification error by the Municipal Code Corporation. The amending ordinance will not result in any substantive changes to the code provisions regulating firearm sales in the County. **Countywide (LMB)**

**Background and Policy Issues:** In 1998, the Florida Constitution was amended to allow counties to require criminal history records checks in connection with the sale of firearms and to adopt mandatory waiting periods. In 1999, the Board of County Commissioners adopted an ordinance regulating firearm sales, which provides for criminal history records checks in connection with the sale of firearms and a five-day mandatory waiting period. The State Attorney's Office requested a review of the code provisions applicable to firearm sales in the County in order to determine whether any updates are necessary based on changes to state or federal law.

**Attachments:**

1. Ordinance

Recommended by: \_\_\_\_\_

  
County Attorney

9/20/06  
Date

Approved by: \_\_\_\_\_

N/A

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	—	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	—	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_

Budget Account No.: Fund \_\_\_ Department \_\_\_ Unit \_\_\_ Object \_\_\_

Reporting Category \_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Dev. and Control Comments:

### B. Legal Sufficiency:

Laura Beebe  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

ORDINANCE NO. 2006-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 28 OF THE PALM BEACH COUNTY CODE (ORDINANCE 92-15, AS AMENDED BY ORDINANCE NO. 99-5 AND ORDINANCE 99-40); PERTAINING TO THE DISCHARGE OF FIREARMS AND FIREARM SALES IN PALM BEACH COUNTY, FLORIDA; AMENDING SECTION 28-21 OF THE PALM BEACH COUNTY CODE (DEFINITIONS); AMENDING SECTION 28-23 OF THE PALM BEACH COUNTY CODE (MANDATORY WAITING PERIOD; CRIMINAL HISTORY RECORDS CHECK REQUIREMENT); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 5 of the Constitution of the State of Florida authorizes counties to require criminal history records checks in connection with the sale of any firearm occurring within that county; and

WHEREAS, Article VIII, Section 5 of the Constitution of the State of Florida, authorizes counties to require mandatory waiting periods in connection with firearm sales; and

WHEREAS, the Board of County Commissioners adopted Ordinance 99-5, as amended by Ordinance 99-40, to implement the provisions of Article VIII, Section 5 of the Constitution of the State of Florida; and

WHEREAS, the Board of County Commissioners desires to update the Palm Beach County Code provisions applicable to firearm sales in Palm Beach County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

**Section 1.** Chapter 28, Article II, Division 1, Section 28-21 of the Palm Beach County Code is hereby amended as follows:

**Sec. 28-21. Definitions**

As used in this article:

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

*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 ~~has the same meaning as in~~ Title 27, Code of Federal Regulations, Part 178478, or any successor federal regulations requiring licenses for firearm dealers.

*Licensed importer* means an importer licensed under the provisions of ~~has the same meaning as in~~ Title 27, Code of Federal Regulations, Part 178478, or any successor federal regulations requiring licenses for firearm importers.

*Licensed manufacturer* means a manufacturer licensed under the provisions of ~~has the same meaning as in~~ Title 27, Code of Federal Regulations, Part 178478, 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.

*Sale* means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access, which includes, but is not limited to, flea markets, gun shows and gun exhibitions.

*Shotgun* means a shoulder-held firearm with a smooth bore designed primarily to fire shells containing multiple projectiles, (shotshells).

*Shotshell* means a metal, plastic or cardboard case containing a primer, propellant and multiple projectiles intended to be fired from a shotgun.

*Structure* means that which is three (3) feet or more in height which is built or constructed or erected or tied down having a fixed location on the ground such as buildings, homes and mobile homes.

**Section 2.** Chapter 28, Article II, Division 1, Section 28-23 of the Palm Beach County Code is hereby amended as follows:

**Sec. 28-23. Mandatory waiting period; Criminal history records check requirement.**

(a) No person shall deliver a firearm to another person, other than a licensed dealer, licensed manufacturer or licensed importer, in connection with the sale, ~~as defined in section 28-1,~~ of such firearm for a period of five (5) business days from the date of the sale.

(b) No person shall deliver a firearm to another person, other than a licensed dealer, licensed manufacturer or licensed importer, in connection with the sale, ~~as defined in section 28-1,~~ of such firearm until the seller, either directly or through a licensed dealer, licensed manufacturer or licensed importer, has:

(1) Requested a national criminal history records check of the potential purchaser or transferee of the firearm from FDLE or NICS, and

(2) Received an approval/identification number from FDLE or NICS signifying the potential purchaser or transferee of the firearm would not be prohibited by state or federal law from receiving or possessing a firearm.

(c) The provisions of this section shall not apply to holders of a concealed weapons permit issued pursuant to general law of the State of Florida when purchasing a firearm.

**Section 3. Repeal of Laws in Conflict.**

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Section 4. Severability.**

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**Section 5. Inclusion in the Code of Laws and Ordinances.**

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 6. Captions.**

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

**Section 7. Effective Date.**

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SHARON R. BOCK, CLERK  
& COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Tony Masilotti, Chairman

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**EFFECTIVE DATE:** Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.