

Agenda Item #:

## AGENDA ITEM SUMMARY

**Meeting Date:**      **August 16, 2011**                      ☐ **Consent**      ☒ **Regular**  
   ☐ **Workshop**      ☐ **Public Hearing**

**Department:** County Attorney

**Submitted By: County Attorney**

**Submitted For: County Attorney**

## I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on September 13, 2011 at 9:30 a.m.: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 17, ARTICLE 4, DIVISION 1, SECTION 17-128, SECTION 17-131 AND SECTION 17-136 OF THE PALM BEACH COUNTY CODE; PROVIDING FOR RECORDS OF TRANSACTION; PROVIDING FOR HOLDING PERIOD (SALE TRANSACTIONS); PROVIDING FOR SECONDHAND DEALERS; DISPOAL OF PROPERTY; 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:** The subject ordinance requires secondhand dealers to maintain their records and to hold second hand goods in accordance with Florida Statute chapters 538 and 539. This amendment is necessary due to a change in state law, which prohibits a county from adopting any ordinance, rule or regulation relating to the regulation of firearms and ammunition. Any existing ordinances, rules, or regulations not specifically authorized by the legislature are in violation of state law and must be amended. (AH; Countywide)

**Background and Policy Issues:** Chapter 2011-109 Laws of Florida, which amends Florida Statute, section 790.33, provides a preemption by the legislature 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 governments. Any such existing ordinances, rules or regulations are declared null and void. Additionally, Chapter 2011-109 Laws of Florida created penalties if any person, county, municipality, district or other entity violates the Legislature's occupation of the whole field of regulation of firearms and ammunition. Such penalties extend to elected or appointed local government officials under whose jurisdiction the violation occurred, and includes a civil fine up to \$5,000 against the elected or appointed local government official and could be cause for removal from office by the Governor. The above amendment is necessary to bring Chapter 17, Article 4, Division 1, Section 17-128, 17-131 and 17-136 of the Palm Beach County Code into statutory compliance.

**Attachments:** Proposed ordinance.

Recommended by:  8-1-11  
County Attorney Date

Approved by: \_\_\_\_\_ N/A \_\_\_\_\_  
Date \_\_\_\_\_

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	\$	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	<i>* see below</i> ~0~	-0-	-0-	-0-	-0-

# ADDITIONAL FTE

**POSITIONS (Cumulative)**\_\_\_\_\_

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_\_\_ Depart \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Program \_\_\_\_\_

**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:**

# No fiscal impact.  
OFMB  
8/2/11

Contract Dev. and Control

**B. Legal Sufficiency:** *2/11*

Anne Delgado 8/4/11  
Assistant County Attorney

### C. Other Department Review:

Department Director

ORDINANCE NO. 2011-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE IV SECONDHAND DEALERS; AMENDING SECTION 17-128. RECORDS OF TRANSACTION; AMENDING SECTION 17-131. HOLDING PERIOD (SALE TRANSACTIONS); AMENDING SECTION 17-136. SECONDHAND DEALERS; DISPOSAL OF PEROPERTY; 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, the Board of County Commissioners has determined that Chapter 17, Article IV of the Palm Beach County Code, Secondhand Dealers, Section 17-128, Records of Transaction, Section 17-131, Holding period (Sale Transactions) and Section 17-136, Secondhand dealers; disposal of property need to be amended in order to comply with Chapter 2011-109 Laws of Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that: Chapter 17 of the Palm Beach County Code of Law and Ordinances, Article IV, Secondhand Dealers, is hereby amended as follows:

**Section 1.**

Sec. 17-128. Records of Transaction, is hereby amended as follows:

- (a) Secondhand dealers shall keep, on the premises, a record of all transactions of secondhand goods by completing the form required by Florida Statutes, ch. 538 and 539, whichever is applicable. Within twenty-four (24) hours of the acquisition of any secondhand goods by purchase, or pledge as security for a loan, a second hand dealer shall deliver to the sheriff's office for the municipal police department in the municipality where the premises are located a copy of the transaction on the designated form. Such record shall contain:

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**Section 2.**

Sec. 17-131. Holding Period (sale transactions), is hereby amended as follows:

- (a) In accordance with Florida Statute, section 538.06, A secondhand dealer shall not sell, barter, exchange, alter, adulterate or in any way dispose of any secondhand goods within fifteen (15) calendar days of the acquisition of the goods. Such holding periods are not applicable when the person, known by the secondhand dealer to be the person from whom the goods were originally acquired, desires to redeem, repurchase, or recover the goods, provided the secondhand dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired and provided that upon redemption the secondhand dealer's record reflects the signature of the redeemer and the date and time of the redemption.

- (b) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer may extend the holding period to a maximum of ~~sixty (60)~~ ninety (90) days beyond the expiration of the holding period required in subsection (a) of this section and Florida Statutes, section 538.06(1). However, the holding period may be extended beyond ~~sixty (60)~~ ninety (90) days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The secondhand dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

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### **Section 3.**

Sec. 17-136. Secondhand dealers; disposal of property is hereby amended as follows:

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- (c) When dealing with firearms, pawnbrokers shall comply with the holding periods in Florida Statute, section 539.001.

### **Section 4. 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 5. 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 6. 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 7. 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 8. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective on 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 AND  
COMPTROLLER**

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

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

By: \_\_\_\_\_  
Karen T. Marcus, Chair

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: Anne Helgeson  
County Attorney

Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.