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**Public Hearing
Agenda Item**

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Sawsan K. Mohiuddin, Assistant County Attorney *SKM*
Contact: (407) 836-7320

DATE: April 30, 2018

RE: **Public Hearing for Board Meeting on May 8, 2018**
Ordinance for Firearms 3-Day Waiting Period

I. EXPLANATION & SUMMARY:

In 2011, the Florida Legislature amended section 790.33, Florida Statutes, to preempt the regulation of firearms, ammunition and components thereof. As a result of the harsh penalties aimed at elected officials to deter violation of the preemption and rights related to firearms, the Board repealed firearm related provisions in several sections of the Orange County Code. Among those repealed were sections 26-91 through 26-98 of the Code ("The Handgun Ordinance") which contained a three-day waiting period and criminal background check in connection with the purchase of a handgun.

The proposed ordinance reinstates the three-day waiting period, criminal background check and enacts requirements connected with the purchase of any firearm consistent with Article VIII, Section 5(b) of the Florida Constitution.

Mayor Teresa Jacobs
and
County Commissioners
April 30, 2018
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II. ACTION REQUESTED:

**APPROVAL OF AN ORDINANCE
PERTAINING TO FIREARM PURCHASES
IN ORANGE COUNTY, FLORIDA;
CREATING SECTION 26-91 THROUGH 26-
99; PROVIDING A TITLE FOR THE
DIVISION; PROVIDING AUTHORITY AND
PURPOSE; SPECIFYING JURISDICTION;
PROVIDING FOR CONSTRUCTION;
PROVIDING DEFINITIONS; PROVIDING
FOR A WAITING PERIOD AND CRIMINAL
HISTORY CHECK; PROVIDING
EXEMPTIONS FROM THE WAITING
PERIOD; PROVIDING FOR INSPECTION
OF RECORDS OF FIREARM SALES;
PROVIDING FOR PENALTIES; AND
PROVIDING AN EFFECTIVE DATE.**

SKM/eh
Attachment

c: Ajit Lalchandani, County Administrator

ORDINANCE NO. 2018-_____

AN ORDINANCE PERTAINING TO FIREARM
PURCHASES IN ORANGE COUNTY, FLORIDA;
CREATING SECTIONS 26-91 THROUGH 26-99;
PROVIDING A TITLE FOR THE DIVISION; PROVIDING
AUTHORITY AND PURPOSE; SPECIFYING
JURISDICTION; PROVIDING FOR CONSTRUCTION;
PROVIDING DEFINITIONS; PROVIDING FOR A
WAITING PERIOD AND CRIMINAL HISTORY CHECK;
PROVIDING EXEMPTIONS FROM THE WAITING
PERIOD; PROVIDING FOR INSPECTION OF RECORDS
OF FIREARM SALES; PROVIDING FOR PENALTIES;
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2011 the Florida Legislature amended section 790.33, Florida Statutes,
to preempt the regulation of firearms, ammunition and components thereof; and

WHEREAS, as a result of the draconian penalties aimed at elected officials to deter
violation of the preemption and rights related to firearms, the Board amended/repealed firearm
related provisions in several sections of the Orange County Code, including sections 26-91
through 26-98 ("The Handgun Ordinance") which contained a 3-day waiting period for the
purchase of a handgun; and

WHEREAS, Art. VIII, Sec. 5(b), Florida Constitution, provides counties with the
authority to require a criminal history records check and waiting period in connection with the
purchase of any firearm occurring within such county; and

WHEREAS, it is the intent of this ordinance to enact requirements connected with the
purchase of any firearm consistent with Art. VIII, Sec. 5(b), Florida Constitution.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE

32 COUNTY, FLORIDA:

Section 1. Recreation of Division 2, Firearm Purchase Waiting Period, Orange

34 *County Code.* Division 2, Firearm Purchase Waiting Period, of the Orange County Code is
recreated to read as follows:

36 DIVISION 2

FIREARM PURCHASE WAITING PERIOD

38 Sec. 26-91. Title.

This division may be cited as "The Firearm Ordinance."

40 Sec. 26-92. Authority and purpose.

42 This division is enacted pursuant to the home rule powers
44 granted to the county pursuant to Article VIII, Section 1(g) and
Article VIII, Section 5 of the Florida Constitution, subsection
46 125.01(1)(t), Florida Statutes, and Article I, Section 103, Orange
County Charter, to provide a waiting period between the purchase
48 and delivery of firearms in the interest of the health, safety and
welfare of the citizens of the county.

50 Sec. 26-93. Jurisdiction.

52 This division shall be effective in the incorporated and
unincorporated areas of the county.

54 Sec. 26-94. Construction.

56 The provisions of this division shall be liberally construed
58 to effectuate the purposes of this division.

60 Sec. 26-95. Definitions.

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

66 *Firearm* means any weapon, including a starter gun or
handgun, which will or is designed to or may readily be converted

68 to expel a projectile by the action of an explosive; the frame or
70 receiver of any such weapon; any firearm muffler or firearm
72 silencer; any destructive device; or any machine gun. The term
"firearm" does not include an antique firearm as defined in section
790.001, Florida Statutes.

74 *Property to which the public has a right of access* means
76 any real or personal property to which the public has a right of
access, including property owned by either public or private
78 individuals, firms and entities and expressly includes flea markets,
gun shows and firearms exhibitions.

80 *Sale* shall mean the transfer of money or other valuable
82 consideration for any firearm when any part of the transaction is
conducted on property to which the public has the right of access.
84 For purposes of the foregoing, private residences shall be deemed
property to which the public does not have the right of access.

86 **Sec. 26-96. Waiting period; criminal history background**
88 **check.**

(a) No firearm shall be delivered to any person for a
90 period of three (3) working days after the sale of such firearm.

92 (b) No person shall deliver a firearm to another person
to consummate a sale when the transaction is subject to the waiting
94 period in subsection (a) until the seller has complied with all of the
provisions set forth in section 790.065, Florida Statutes, requiring a
96 criminal history check of the potential buyer.

98 **Sec. 26-97. Exemptions from waiting period.**

100 The following shall be exempt from the waiting period set
102 forth in Section 26-96 above.

(1) Individuals who are licensed to carry concealed
104 firearms under the provisions of section 790.06, Florida Statutes,
or who are licensed to carry concealed firearms under any other
106 provision of state law and who show a valid license.

(2) A law enforcement or correctional officer as
108 defined in section 943.10, Florida Statutes.

(3) A law enforcement agency as defined in section
110 934.02, Florida Statutes.

112 (4) Sales to a licensed dealer, licensed importer or
licensed manufacturer.

(5) A trade-in of another firearm.

114 **Sec. 36-98. Inspection of records of firearm sales.**

116 Records of firearm sales must be available for inspection,
during normal business hours, by any law enforcement agency as
defined in section 934.02, Florida Statutes.

118 **Sec. 26-99. Penalty.**

120 Violation of any requirement or provision of this division
shall be punishable by a fine not to exceed \$500.00 or by
122 imprisonment in the county jail not to exceed 60 days or by both
such a fine and imprisonment as provided in Section 1-9, Orange
County Code.

124 **Secs. 26-100-26-110. Reserved.**

Section 2. Effective date. This ordinance shall become effective pursuant to general

126 law.

ADOPTED THIS _____ DAY OF _____, 2018.

128 **ORANGE COUNTY, FLORIDA**

130 By: Board of County Commissioners

132 By: _____
134 Teresa Jacobs,
136 Orange County Mayor

138 **ATTEST:** Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

140 By: _____
142 Deputy Clerk