



# **Ordinance Pertaining to Firearm Purchases Waiting Period and Criminal Background Check**

**Orange County Board of  
County Commissioners**

**May 8, 2018**



# Presentation Outline

- **Background**
- **Preemption and Penalties**
- **Firearm Ordinance**
- **Requested Action**



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# Background

## **Article I, § 8, Florida Constitution**

There shall be a mandatory period of three days between the purchase and delivery at retail of any handgun. Purchase means the transfer of money or other valuable consideration to the retailer . . .

The legislature shall enact legislation implementing the mandatory waiting period.



# Background

## **Article VIII, § 5(b), Florida Constitution – Local option for Counties to regulate firearms**

Counties shall have 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.

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.



# Background (Cont.)

## Chapter 26, Division 2 – Handgun Waiting Period —Definitions

- *Handgun* – firearm capable of being carried and used by one (1) hand, such as a pistol or revolver
- *Sale* – transfer of money or other valuable consideration for any **handgun** when any part of transaction is conducted on property to which the public has a right of access

— **3-day waiting period**

— **Criminal background check pursuant to section 790.065, Florida Statutes**



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# Preemption and Penalties

- Legislature Amended § 790.33, Florida Statutes in 2011
- Preempted by state of regulation of firearms and ammunition
- Preempted all existing and future County ordinances or administrative regulations or, rules relating to firearms and ammunition
- Any existing ordinances, regulations or rules were declared null and void





## Preemption and Penalties *(Cont.)*

- Significant sanctions for willful violation of new law by County, including civil fines
- The court shall assess a civil fine up to \$5,000.00 against the elected or appointed local government officials or administrative agency head
- Governor may remove official from office, terminate employment or contract
- Award of damages up to \$100,000 against County plus attorney's fees and costs
- Public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated the state law



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# Firearm Ordinance

## — Chapter 26, Division 2, Firearm Purchase Waiting period

## — Definitions

- *Firearm* – identical to state statute, *i.e.*, any weapon, including a starter gun or handgun which will or is designed to or may readily be converted to expel a projectile by action of an explosive . . .
- *Property to which the public has right of access* – identical phrase in Florida Constitution – expressly includes flea markets, gun shows and firearms exhibitions
- *Sale* – transfer of money or other valuable consideration for any **firearm** when any part of the transaction is conducted on property to which public has the right of access.



# **Firearm Ordinance** *(Cont.)*

- **3-day waiting period**
- **Criminal background check pursuant to section 790.065, Florida Statutes**
- **Exemptions from Waiting Period**
  - License to carry concealed firearm
  - Law enforcement and correctional officers and agencies
  - Licensed dealer sales and trade-in of firearms
  - Person who has completed hunter safety course and has safety certification
  - Person who holds valid Florida hunting license



## Firearm Ordinance *(Cont.)*

- **Inspection** – Record of sales must be available for inspection by law enforcement agency
- **Violation of ordinance**
  - \$500 fine or 60 days imprisonment or both



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# **Requested Action**

**Approval of the  
Ordinance pertaining to Firearm  
Purchases in  
Orange County, Florida**



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