

January 30, 2014

Attorney General
Office of Attorney General
State of Florida
The Capitol PL01
Tallahassee, Florida 32399-1050

**Re: Request for Attorney General Opinion
Outdoor Firearm Ranges in Urban Residential Neighborhoods**

Dear Honorable Attorney General Bondi:

As Mayor of the City of Sunrise, I am requesting an Attorney General Opinion regarding the authority and ability of a municipality to limit outdoor firearm ranges in urban residential neighborhoods and/or the discharge of firearms for the purposes of shooting practice. In summary, the limitation on such would be based either upon new ordinances setting forth reasonable restrictions for the protection of the health, safety and welfare of the community and/or interpretation of Florida Statue Section 790.15 and/or enforcement of existing municipal based code restrictions, such as noise ordinances, and those powers reserved through Florida Statute Sections 823.16(2), 823.16(3) and 823.16(5)

The Miami Herald reported that outdoor backyard gun ranges in urban neighborhoods are legally permissible. See <http://www.miamiherald.com/2014/01/26/3895027/big-pine-key-homeowner-has-gun.html>

Florida Statute Section 790.15, which regulates discharge of firearms in public or on residential property, provided in Section 1:

Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street, who knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises, or who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013 or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.

Therefore, under Florida law, an individual is prohibited from discharging a firearm “in any public place or on the right-of-way of any paved public road, highway, or street... [or] over the right-of-way of any paved public road, highway, or street or over any occupied premises...” Additionally, an individual is prohibited from discharging a firearm “on any property used primarily as the site of a dwelling ...or zoned exclusively for residential use...” if such discharge is performed “recklessly or negligently.”

Assuming the firearm discharge is “on any property used primarily as the site of a dwelling ...or zoned exclusively for residential use...” and is not “in any public place or on the right-of-way of any paved public road, highway, or street... [or] over the right-of-way of any paved public road, highway, or street or over any occupied premises...” (and assuming the firearm is not discharged in defense of life or property or performing official duties and not expressly approved for hunting by Fish and Wildlife Conservation Commission or Florida Forest Service), is a municipality in an urban setting such as Sunrise, Florida permitted to:

- (1) implement reasonable requirements on the circumstances surrounding the discharge of firearms with regards to urban residential firearm ranges to address
 - (a) the type of backstop or safety protection;
 - (b) the type of firearm which can be used;
 - (c) the type of ammunition which can be used;
 - (d) requirements to notify the police department in advance of discharge;
 - (e) restrictions on time of day or for how long;
 - (f) restrictions on how close to a neighboring residential dwelling, school, church, government building or park and/or commercial development;
 - (g) environmental impact of accumulation of lead or other materials.

- (2) make a finding that, in an urban setting where residential dwellings are within 500 feet of urban residential shift firearm range,
 - (a) the establishment of such a firearm range (due to the distance projectiles can travel, propensity for misfirings and misdirected discharges, failure to meet the standard of care for back stop and safety measures) is *per se* negligent and thereby enforce Florida Statute Section 790.15 to arrest those who discharge a firearm in such circumstances; or

 - (b) the establishment of a firearm range lacking enumerated standard of care protections developed in the firearm range industry (e.g., type of firearm, type of backstop and overhead protections from misfires and misdirected discharges; distance from nearest residential dwelling; distance from nearest commercial development, type of ammunition) is negligent and thereby enforce Florida Statute Section 790.15 to arrest those who discharge a firearm in such circumstances where they fail meet to those standard of care criteria.

- (3) enforce existing municipal code based noise restrictions to prohibit discharge of firearms in urban residential neighborhoods either in the entirety or during certain hours both based upon the municipality authority and those powers reserved through Florida Statute Sections 823.16(2), 823.16(3) and 823.16(5).

Relevant is of the overlap of Florida Statute Section 790.33, which in the pertinent part states as follows:

Except as expressly provided by the State Constitution or general law, the Legislature hereby declares 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 government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

The “discharge” of a firearm is not one of the enumerated areas (the clause states “including purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation”). But see AGO 2005-40; AGO 2011-17.

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I would note that Sunrise, Florida is already home to a County-owned public outdoor firearm range which is professionally supervised for safety, available to the public, and geographically separated from existing residential and commercial development.

Your timely response is necessary given the severe potential impact on health, safety and welfare of our community and surrounding communities.

Best regards,

A handwritten signature in black ink, appearing to read "MJ Ryan", with a long horizontal line extending to the right.

Michael J. Ryan
Mayor, City of Sunrise

cc: Kimberly A. Kisslan, City Attorney
Members of the Sunrise City Commission
Michael Satz, State Attorney, 17th Judicial Circuit