STATE PREEMPTION OF FIREARM REGULATION

On June 2, 2011, a new law came into effect which serves to preempt local government from regulating the case of firearms in the State of Florida. This new law (Chapter 2011-109, Laws of Florida) gives the state preemption rights to regulate the use of firearms and ammunition anywhere in the State. As enacted, Chapter 2011-109, Laws of Florida, (the “Act”), amends §790.33, Florida Statutes, to provide for state preemption of any regulation related to the use of firearms or ammunition within the State. Pursuant to the Act, as of October 1, 2011, anyone who impinges on the State’s preemption of the field of firearm regulation is subject to substantial penalties. As a result of this new law, municipalities and counties must review their codes in order to insure compliance with new statutory provisions.

The new law provides that the State is the only authority authorized to regulate firearms and ammunition, to the exclusion of all existing and future City ordinances, or regulations or rules adopted by local government. The new law declares all local ordinances regulating firearms and ammunition as being null and void as of October 1, 2011. The new law, however, does not prohibit:

- Zoning ordinances that encompass firearms businesses along with other businesses, unless the zoning ordinance is designed for the purpose of restricting or prohibiting the sale, purchase, transfer or manufacture of firearms or ammunition as a method of regulating firearms or ammunition in conflict with the new law;
- A duly organized law enforcement agency enacting and enforcing regulations pertaining to firearms, ammunition, or accessories issued to or used by peace officers in the course of their official duties;
- Except as provided in Section 790.251, Fla. Stat, any entity subject to the prohibitions of this section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee’s official duties;
- A court or administrative law judge from hearing or resolving any case or controversy on a matter within the jurisdiction of the court of the judge; or
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

The Act establishes penalties against all persons, agencies, or entities that violate the State’s preemption of the field of firearm regulation. The legislation specifically provides that if any person or entity violates this section:

- The Court shall declare the ordinance invalid;
- If the Court deems the violation to be knowing and willful, assess a fine of up to $5,000 against the violating party;
- That public funds may not be used to defend the violating party;
- That a violation of the law shall be cause for termination of employment or removal from office; and
- That the City may be liable for attorney’s fees and costs of a challenging party, and actual damages incurred up to $100,000.

The substantial penalties listed above provide ample justification for a review and/or repeal of existing code provisions related to the regulation of firearms and ammunition. Therefore, we would recommend that local governments review their code of ordinances and repeal any applicable regulation so that an individual is not cited for violating such a provision. If you require any additional information regarding this matter, please contact our office.