MEMORANDUM

Agenda Item No. 7(R)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 1, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Ordinance relating to electronic control devices

The accompanying ordinance was prepared and placed on the agenda at the request of Dr. Barbara Carey-Shuler, Commissioner Sally A. Heyman, Commissioner Barbara J. Jordan, Commissioner Dorrin D. Rolle and Commissioner Katy Sorenson.

Murray A. Greenberg
County Attorney

MAG/bw

Memorandum

MIAMI-DADE COUNTY

Date: November 1, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance relating to Electronic Control Devices

This ordinance pertaining to Chapter 21 of the Code of Miami-Dade County creating division three "Electronic Control Devices" will not have a fiscal impact to Miami-Dade County.

This ordinance once implemented would require a five-day waiting period and a criminal history records check on electronic control device sales. In addition, the purchaser of the electronic control device will be required to complete the training course offered by the manufacturer of the device.

Enforcement of the provisions would be absorbed by current staff.

for Susanne M. Torriente
Assistant County Manager

fiscal08705

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: November 1, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 7(R)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(R)
11-1-05

ORDINANCE NO. _____

ORDINANCE PERTAINING TO CHAPTER 21 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS" AND ARTICLE III ENTITLED "WEAPONS"; CREATING DIVISION 3 "ELECTRONIC CONTROL DEVICES" SECTIONS 21-20.20, 21-20.21, 21-20.22, 21-20.23, 21-20.24, 21-20.25 AND 21-20.26; PROVIDING DEFINITIONS; IMPOSING A WAITING PERIOD AND A CRIMINAL HISTORY RECORDS CHECK IN CONNECTION WITH THE SALE OF ANY ELECTRONIC CONTROL DEVICE; IMPOSING MANDATORY TRAINING; PROHIBITING THE SALE OF ANY ELECTRONIC CONTROL DEVICE TO CERTAIN CLASSES OF PERSONS; PROVIDING FOR PENALTIES, SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

WHEREAS, there exist, within Miami-Dade County electronic control devices, which send electric charges to the body of individuals that they come into contact with; and

WHEREAS, without proper training, these electronic control devices have the potential for causing bodily harm; and

WHEREAS, there have been incidents involving the use of electronic control devices by criminals; and

WHEREAS, there have been expressions of concern within the community that even when used by law enforcement personnel, electronic control devices should be used with extreme caution; and

WHEREAS, the use of electronic control devices without proper training places a great risk to the health, welfare, and safety of citizens of Miami-Dade County; and

WHEREAS, this Board recognizes, presently, that electronic control devices are advertised for sale and sold in Miami-Dade County to untrained individuals without regulation,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Division 3, as set forth below, is hereby added to Article III of Chapter 21 of the Code of Miami-Dade County ("the Code"):

DIVISION 3. ELECTRONIC CONTROL DEVICES

Sec. 21-20.20. Definitions.

For purposes of this division, the following terms shall be defined as follows:

(a) The word "Electronic Control Device" as used in this division shall be construed to mean any portable device which is designed or intended by the manufacturer to be used, offensively or defensively, which fires one or more barbs attached to a length of wire and which, upon hitting a person, can send out an electric pulse or current capable of temporarily immobilizing or incapacitating a person by disrupting that person's nervous system.

(b) "Any part of the transaction" means any part of the sales transaction, including but not limited to, the offer of sale, negotiations, the agreement to sell, the transfer of consideration, or the transfer of the electronic control device.

(c) "Property to which the public has the right of access" means any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearm exhibitions.

(d) "Sale" means the transfer of money or other valuable consideration.

Sec. 21-20.21. Five-day Waiting Period and Criminal History Records Check on Electronic Control Device Sales.

(a) *Application and enforcement of section.* Law enforcement officers shall have the right to enforce the provisions of this section against any person found violating these provisions within their jurisdiction.

(b) *Sale and delivery of electronic control devices; mandatory five-day waiting period.* There shall be a mandatory five-day waiting period, which shall be five full days, excluding weekends and legal holidays, between the hour of the sale and the hour of the delivery of any electronic control device when any part of the transaction is conducted within Miami-Dade County on property to which the public has the right of access.

(c) *Sale and delivery of electronic control devices; mandatory criminal records check.* No person, whether licensed or unlicensed, shall sell, offer for sale, transfer or deliver any electronic control device to another person when any part of the transaction is conducted on property to which the public has the right of access within Miami-Dade County unless the buyer or the transferee has undergone the criminal history and background check procedures specified under section 790.065, Florida Statutes (2005) and has been provided with a unique approval number.

In the case of a seller who is not a licensed importer, licensed manufacturer or licensed dealer, compliance with section 790.065 or its state or federal successor shall be achieved by the seller requesting that a licensed importer, licensed manufacturer or licensed dealer complete all the requirements of section 790.065 or its state or federal successor. Licensed importers, manufacturers and dealers may charge a reasonable fee of an unlicensed seller to cover costs associated with completing the requirements of section 790.065.

(d) *Records available for inspection.* Records of electronic control device sales must be available for inspection by any law enforcement officer as defined in section 934.02(6), Florida Statutes (2005).

(e) *Exemptions.* Holders of a concealed weapons permit as prescribed by state law and holders of an active certification from the Criminal Justice Standards and Training officer, or a correctional probation officer as set forth in state law shall not be subject to the provisions of this section.

Sales to a licensed importer, licensed manufacturer or licensed dealer shall not be subject to the provisions of this section.

Sec. 21-20.22. Unlawful to sell electronic control devices to persons who have not had mandatory training on the proper use of electronic control devices.

(a) It shall be unlawful for any person to acquire an electronic control device in Miami-Dade County unless such person has received safety instruction and is otherwise qualified, pursuant to this section, or unless he is specifically exempted from the operation of this section.

(b) In order to qualify under this section the purchaser must complete the training course offered by the manufacturer of the electronic control device or any other instructor certified by the manufacturer. Persons who have successfully completed the training course offered by the manufacturer in the course of purchasing an electronic control device shall not be required to repeat the training in any given year in order to purchase another electronic control device.

(c) This section shall not apply to:

(1) Law enforcement officers or agents of any state of the United States, or any political subdivision, municipal corporation, department or agency of either, members of the organized militia of any state for the armed forces of the United States, or law enforcement officers of any political subdivision, municipal corporation, department or agency of either, while engaged in the discharge of their official duties.

(2) Wholesale dealers in their business intercourse with retail dealers or retail dealers in their business

intercourse with other retail dealers or to wholesale or retail dealers in the regular or ordinary transportation of electronic control devices by mail, express or other mode of shipment to points outside the country.

(3) Nonresidents of the United States having proper authorization from his or her consulate, acting consulate, commercial attaché, or such other authorized representative.

Sec. 21-20.23. Sale or delivery of electronic control devices to certain classes of persons is prohibited.

It shall be unlawful to sell or deliver any electronic control device to any person who the seller has reasonable grounds to believe is under the age of eighteen (18); is under the influence of intoxicating liquor, narcotic drugs, barbiturates, hallucinogens, other controlled substance; is addicted to the use of any narcotic drug, barbiturate, hallucinogens, or other controlled substance; is a habitual alcoholic; is of unsound mind; has been convicted of a felony; or is a fugitive from justice.

Sec. 21-20.24. Possession of electronic control device.

It shall be unlawful to possess an electronic control device in Miami-Dade County unless the person possessing the electronic control device has undergone the criminal history and background check procedures specified under section 790.065, Florida Statutes, and the mandatory training requirements specified in section 21-20.22 of this division. Upon request, a person possessing an electronic control device in Miami-Dade County must be able to provide proof of having undergone the criminal history and background check procedures specified under section 790.065, Florida Statutes, and the mandatory training requirements specified in section 21-20.22 of this division.

It shall be unlawful for a person who has been convicted of a felony to possess an electronic control device in Miami-Dade County.

Sec. 21-20.25. Electronic control device must be kept secure.

(a) If a person stores or leaves a firearm at any location where the person knows or reasonably should know that a minor might gain access to the electronic control device, the person shall secure the electronic control device in a securely locked box or container except when it is carried on his or her body or is located within such close proximity that the person can retrieve the electronic control device and prevent access to it by a minor.

(b) A violation of this section is a breach of a duty of safety owed by the person who owns or possesses the electronic control device to all minors who might gain access to it and to the general public.

Sec. 21-20.26. Penalties.

Any person violating any section of this division shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment. Nothing contained herein shall be construed to preempt the imposition of higher penalties imposed by state or federal law.

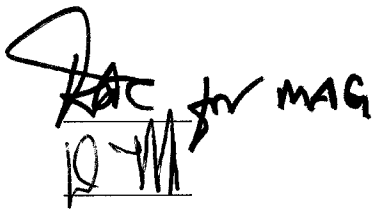
Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected thereby.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:

Daron Fitch

Sponsored by Dr. Barbara Carey-Shuler,
Commissioner Sally A. Heyman,
Commissioner Barbara J. Jordan,
Commissioner Dorrin D. Rolle, and
Commissioner Katy Sorenson