

RESOLUTION NO. 2018-053

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, CALLING ON THE STATE OF FLORIDA, GOVERNOR RICK SCOTT, THE FEDERAL GOVERNMENT, AND PRESIDENT DONALD TRUMP TO REDUCE GUN VIOLENCE IN THE UNITED STATES AND HELP PREVENT FUTURE SHOOTINGS BY BANNING MILITARY-STYLE WEAPONS AND HIGH-CAPACITY MAGAZINES; REQUIRING A BACKGROUND CHECK FOR EVERY FIREARM SALE; RAISING THE AGE FOR LEGAL PURCHASE OF FIREARMS, MAGAZINES AND AMMUNITION TO 21; SUPPORTING THE PASSAGE OF COMPREHENSIVE LAWS TO ADDRESS THE GROWING CONCERNS ASSOCIATED WITH GUN VIOLENCE; AUTHORIZING THE CITY CLERK TO TRANSMIT THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Coconut Creek City Commission has passed resolutions urging State and Federal elected bodies to strengthen gun laws meant to protect our community and has made lobbying for same a legislative priority over the past few years; and

WHEREAS, the City Commission urges national and state leaders to enact sensible gun law reforms that are supported by a majority of the nation; and

WHEREAS, the City Commission, at a minimum, urges Governor Rick Scott to take action to pass gun safety legislation, even if it means extending the 2018 Legislative Session in order to pass: 1) Senate Bill 196 and House Bill 219, in so far as they place constitutional restrictions on the sale and transfer of assault-style weapons and high-capacity magazines; 2) Senate Bill 838, in so far as it requires universal background checks for all gun sales; and 3) Senate Bill 456 and House Bill 321, to ban “bump-fire stock” and similar gun conversions used to alter the rate of fire of a firearm to mimic an automatic weapon fire; and

WHEREAS, an increase in the amount of hate groups, international and lone wolf domestic terrorism, underfunded community mental health programs, and easy access

to military-grade, high-capacity magazine assault weapons have created circumstances which have led to an unprecedented number of mass shootings in American communities in recent years; and

WHEREAS, over the past decade the following mass shootings have occurred: in 2012, twenty-seven (27) people were killed, including twenty (20) children, at Sandy Hook elementary school; in 2015, the attack at the Inland Regional Center in San Bernardino, California; in 2016, the attack on the Pulse nightclub in Orlando, Florida; and in 2017, both the shooting at the Route 91 Harvest Festival in Las Vegas, Nevada, and the shooting at the First Baptist Church in Sutherland Springs, Texas, resulting in devastating loss of life; and

WHEREAS, on February 14, 2018, a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida, killing seventeen (17) students, teachers, and coaches, and wounding fourteen (14) others; and

WHEREAS, an AR-15-style rifle was used in the mass shootings in Newton, Connecticut; Aurora, Colorado; San Bernardino, California; Las Vegas, Nevada; Sutherland Springs, Texas; and Parkland, Florida, according to an online USA Today article on the subject published on February 14, 2018 (see <https://www.usatoday.com/story/news/nation/2018/02/14/ar-15-mass-shootings/339519002/>, last viewed on 2/20/18); and

**RESTRICTIONS ON ASSAULT WEAPONS AND HIGH-CAPACITY MAGAZINE
HAVE BEEN HELD CONSTITUTIONAL**

WHEREAS, Maryland, Connecticut, and New York, in response to mass shootings resulting in the massacre of students, teachers, and others, passed prohibitions on sales of assault weapons and large capacity magazines; and

WHEREAS, after lengthy litigation, those laws were upheld by U.S. Federal Courts as constitutional, concluding that the Second Amendment to the U.S. Constitution does not reach to protect the purchase and sale of weapons of war. *Kolbe v. Hogan*, 849 F.3d

114 (4th Cir. 2017); *New York State Rifle and Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242 (2nd Cir. 2015); and

WHEREAS, in Maryland specifically, the legislature enacted the State’s Firearm Safety Act of 2013 (the “FSA”) in response to the Sandy Hook massacre and other mass shootings, wherein it bans the AR-15 and other military-style rifles and shotguns (referred to as “assault weapons”) and detachable large-capacity magazines, providing “that a person may neither ‘transport an assault weapon into the State’ nor ‘possess, sell, offer to sell, transfer, purchase, or receive an assault weapon.’ The banned assault weapons include ‘assault long gun[s]’ and ‘copycat weapon[s].’” See *Kolbe at 121 (4th Cir. 2017)*, citing to *Md. Code Ann., Crim. Law § 4-303(a) and 4-301(d)*; and

WHEREAS, in sum, the *Kolbe* Court held that the AR-15, along with similar weapons under the Maryland ban, “shares the military features—the very qualities and characteristics—that make the M16 a devastating and lethal weapon of war.” See *Id. at 136*; and

WHEREAS, in addition, the *Kolbe* Court found that “the large-capacity magazines prohibited by the FSA allow a shooter to fire more than ten (10) rounds without having to pause to reload, and thus ‘are particularly designed and most suitable for military and law enforcement applications’” and therefore not within the protections afforded by the Second Amendment to the U.S. Constitution. See *Id. at 125 citing to the Joint Appendix, Page 891, filed by the parties in the appeal*; and

WHEREAS, the *Kolbe* Court concluded that the banned assault weapons and large-capacity magazines are clearly most useful in military service, and pursuant to the legal precedent set forth by the U.S. Supreme Court in its holding in *District of Columbia et al. v. Heller*, 554 U.S. 570 (2008) such weapons and magazines are not constitutionally protected; and

WHEREAS, presently pending in the Florida Legislature are Senate Bill 196 and House Bill 219 which seek to prohibit the sale or transfer of an assault weapon or large-capacity magazine, and in so far as such laws prohibit military-style weapons possession by unauthorized individuals, the City Commission supports its passage; and

BACKGROUND CHECKS FOR ALL SALES AND TRANSFERS

WHEREAS, according to Everytown For Gun Safety, a not-for-profit 501(c)(3) organization dedicated to understanding and reducing gun violence in the U.S., background checks have blocked over three (3) million gun sales to dangerous people (see website for Everytown For Gun Safety at <https://everytown.org/issue/background-checks/>, last viewed on 2/20/18); and

WHEREAS, according to a study by the Department of Justice, between 1994 and 2014, federal, state, and local agencies conducted background checks on more than 180 million firearm applications and denied 2.82 million gun sales to prohibited purchasers (see website for Everytown For Gun Safety at <https://everytownresearch.org/gun-violence-by-the-numbers/>, last viewed on 2/20/18); and

WHEREAS, despite this success, the system is undermined by legal loopholes and missing records that still enable too many dangerous individuals to obtain weapons they later use in crimes; and

WHEREAS, on April 16, 2007, Seung-Hui Cho shot and killed thirty-two (32) people at Virginia Tech with guns that were legally purchased because records of his mental health status were missing from the National Instant Criminal Background Check System (“NICS”) (see ABC News online article published on August 19, 2009 at <http://abcnews.go.com/US/seung-hui-chos-mental-health-records-released/story?id=8278195>, last viewed on 2/20/18); and

WHEREAS, on January 8, 2011, Jared Loughner, someone with a reported history of drug abuse and serious mental illness who should have been in the NICS database but was not, shot and killed six (6) individuals and wounded thirteen (13) others, including

U.S. Congresswoman Gabrielle Giffords at a public event (see *Tuscan.com* online article published on March 28, 2013 at http://tucson.com/news/local/crime/what-loughner-s-parents-knew-they-watched-his-decline-but/article_fb334f4e-4d20-5d80-baac-b467e8f56cb9.html, last viewed on 2/20/18); and

WHEREAS, on July 20, 2012, James Holmes, using a semi-automatic rifle and other guns, shot and killed twelve (12) people and injured at least fifty-eight (58) others in a movie theater in Aurora, Colorado, using some of the thousands of rounds of ammunition that the shooter had recently purchased online without any background check (see *NY Times* online article published on July 22, 2012 at <http://www.nytimes.com/2012/07/23/us/online-ammunition-sales-highlighted-by-aurora-shootings.html>, last viewed 2/20/18); and

WHEREAS, on August 5, 2012, Wade Michael Page, using a semi-automatic handgun, shot and killed six (6) people and injured three (3) others at a Sikh temple in Oak Creek, Wisconsin, having been convicted of criminal mischief and “other than honorably discharged” from the Army (see *NY times* online article published on August 6, 2012 at <http://www.nytimes.com/2012/08/07/us/army-veteran-identified-as-suspect-in-wisconsin-shooting.html>, last viewed 2/20/18); and

WHEREAS, on October 21, 2012, Radcliffe Haughton, using a semi-automatic handgun, shot and killed his estranged wife and two (2) others; and though a restraining order had been issued against Haughton – making him a prohibited person under federal law – Haughton was able to avoid a background check by purchasing the gun from a private seller through *armslist.com* (see *Reuters* online article published on October 23, 2015 at <https://www.reuters.com/article/us-wisconsin-lawsuit/milwaukee-mass-shooting-victims-daughter-sues-website-idUSKCN0SH2MK20151023>, last viewed 2/20/28); and

WHEREAS, on December 14, 2012, Adam Lanza, using two (2) semi-automatic handguns, shot and killed twenty-seven (27) people, including twenty (20) children at Sandy Hook elementary school (see *USA Today* online article published on February 14,

2018 at <https://www.usatoday.com/story/news/nation/2018/02/14/ar-15-mass-shootings/339519002/>, last viewed on 2/20/18); and

WHEREAS, on November 5, 2017, Devin Kelley, the shooter in the Sutherland Springs, Texas massacre, should have been prevented from purchasing any firearm because of a domestic violence conviction and court-martial while in the United States Air Force; however, according to news reports, the Air Force did not provide the conviction to the FBI National Crime Information Center database (see *Washington Post online article published on November 28, 2017 at https://www.washingtonpost.com/news/checkpoint/wp/2017/11/28/the-air-force-failed-to-report-dozens-of-violent-service-members-to-fbi-gun-databases/?utm_term=.c950f3c6e4c6*, last viewed 2/20/18); and

WHEREAS, in the wake of the Virginia Tech shootings, Virginia and other states have submitted hundreds of thousands of new mental health records into the NICS database, yet six (6) states have each submitted fewer than 100 mental health records since that massacre (see *website for Everytown For Gun Safety at <https://everytown.org/press/new-fbi-data-montana-among-worst-performing-states-in-submitting-records-of-people-with-dangerous-mental-illness-to-national-gun-background-check-system/>*, last viewed on 2/20/18); and

WHEREAS, under federal law, licensed gun dealers are mandated to conduct NICS checks before proceeding with a sale, but this requirement does not apply to so-called private sellers who people who "make occasional sales of firearms from [their] personal collection" (see *CNN online article published on February 15, 2018 at <https://www.cnn.com/2018/02/15/us/gun-background-checks-florida-school-shooting/index.html>*, last viewed on 2/20/18); and

WHEREAS, more than 12,000 Americans are murdered with guns every year, and too many of these crimes are committed by individuals who are barred from purchasing or possessing guns under federal law (see *website for Everytown For Gun Safety at*

<https://everytown.org/wp-content/uploads/2014/08/U.S.-Gun-Violence-Trends.pdf>, last viewed 2/20/18); and

WHEREAS, other tragedies, including the 1999 Columbine High School shooting in Colorado, the 2010 attack on law enforcement at the Pentagon, and the 2012 mass shooting at a Pittsburgh psychiatric clinic were perpetrated by individuals who obtained guns through unregulated private sales, with no paperwork required and no questions asked; and

WHEREAS, the Fix Gun Checks Act of 2016, U.S. Senate Bill 2934, sought to address the two (2) major flaws in the nation's gun background check system by improving compliance with federal record reporting requirements, and by requiring background checks for all U.S. gun sales; however, it was read twice by the U.S. Senate and referred to the Committee on the Judiciary where it stalled; and

WHEREAS, results of a poll conducted in May 2012, published on Giffords Law Center To Prevent Gun Violence's website, show that 96% of respondents support a background check on anyone attempting to purchase a gun in order to determine whether the prospective buyer has been convicted of a felony, and 74% of National Rifle Association ("NRA") members and 87% of non-NRA gun owners support requiring criminal background checks of anyone purchasing a gun (see <http://lawcenter.giffords.org/facts/polling/>, last viewed on 2/20/18); and

WHEREAS, the City of Coconut Creek has been a strong advocate for common-sense policies that keep guns out of dangerous hands while respecting the rights of law-abiding gun owners, and strongly believes that Congress and state governments should take action to close deadly gaps in the NICS; and

WHEREAS, the City Commission supports and urges the passage of Senate Bill 838, currently pending in the Florida Legislature, in so far as it requires universal background checks for all gun sales; and

**THE CITY COMMISSION SUPPORTS RAISING THE LEGAL AGE TO 21 YEARS
OLD TO PURCHASE GUNS AND AMMUNITION**

WHEREAS, laws imposing minimum age requirements for the possession and purchase of firearms are intended to decrease access to firearms by young people and, correspondingly, to decrease the number of suicides, homicides, and unintentional shootings among that population; and

WHEREAS, “Firearm injuries are a leading cause of death among U.S. children aged one (1) to seventeen (17) years [old] and contribute substantially each year to premature death, illness and disability of children,” said representative for the U.S. Centers for Disease Control and Prevention (CDC) in Atlanta, Katherine Fowler, who led a 13-year study on firearm injuries in children (*see Reuters online article published June 19, 2017 at <https://www.reuters.com/article/us-health-children-gun-casualties/nearly-1300-u-s-kids-die-from-gunshot-wounds-each-year-idUSKBN19A2HF>, last viewed 2/20/18*); and

WHEREAS, Dr. Eliot Nelson, author of an accompanying editorial and a researcher at the University of Vermont Children’s Hospital in Burlington, Vermont, stated, “If kids didn’t have guns, the impulse to kill themselves [or others] might pass before they acted on it. Too many people assume that if [youngsters] didn’t have a gun they’d use something else, but the quick lethality of guns makes them especially dangerous for an impulsive teen whose moment of crisis might pass with a little time.” (*see Reuters online article published June 19, 2017 at <https://www.reuters.com/article/us-health-children-gun-casualties/nearly-1300-u-s-kids-die-from-gunshot-wounds-each-year-idUSKBN19A2HF>, last viewed 2/20/18*); and

WHEREAS, according the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Federal Gun Control Act (GCA) permits shotguns and rifles, commonly referred to as long guns, and ammunition for shotguns or rifles to be sold to individuals 18 years of age or older, while all other firearms and ammunition may be sold to individuals 21 years of age or older; and

WHEREAS, U.S. Senate Dianne Feinstein (D-California) has announced her intention to introduce federal legislation that requires all firearm purchases from gun dealers be restricted to individuals who are at least twenty-one (21) years old (see *U.S. Senator Dianne Feinstein's Official Twitter account at <https://twitter.com/SenFeinstein/status/964655634351206400>*, last viewed on 2/21/18); and

WHEREAS, in order to restrict such purchase and/or possession of long guns, high-capacity magazines, and ammunition, the Florida legislature would need to amend Sections 790.17, 790.18, and 790.22, Fla. Stat.; and

FLORIDA LAW INAPPROPRIATELY PUNISHES ELECTED OFFICIALS FOR TRYING TO PROTECT THEIR RESIDENTS

WHEREAS, in 1987, the Florida Legislature passed Chapter 87-23, Laws of Florida, which created Florida Statutes Section 790.33 and declared the preemption of the whole field of regulation of firearms and ammunition, reserving the exclusive right to regulate and/or enforce any laws involving firearms and ammunition to the Florida Legislature and the State of Florida; and

WHEREAS, in 2011, the Florida Legislature passed, and Governor Scott signed into law, Chapter 2011-109, Laws of Florida, to allow the Governor to remove from office any person acting in an official capacity for a local authority, including an elected official, who passes an ordinance or causes to be enforced a local ordinance, administrative rule, or regulation impinging on the exclusive authority of Florida legislature to regulate firearms and ammunition in all respects; and

WHEREAS, the 2011 Amendment to Florida Statutes Section 790.33 provides for personal liability of any person who enacts or causes to be enforced any local ordinance impinging upon the Legislature's occupation of the whole field of regulation of firearms and ammunition; and

WHEREAS, the 2011 Amendment to Florida Statutes Section 790.33 also provides that if a Court finds a willful or knowing violation of the prohibition on the ability of local government to regulate or enforce firearms or ammunition in any regard, the Court may impose a civil fine of up to \$5,000 against the elected or appointed local government official(s) or administrative agency head, and cause the county, agency, municipality, district, or other entity to reimburse the reasonable attorney's fees and costs of those who sue to overturn the ordinance, rule, regulation and/or enforcement effort and to pay their actual damages, but no more than \$100,000; and

WHEREAS, the City Commission submits that Florida Statutes Section 790.33 has chilled the actions of local community leaders by creating such extreme sanctions which appear to limit local advocacy and the development of common sense protections; and

WHEREAS, the City Commission of the City of Coconut Creek urgently requests the Governor and Legislature of the State of Florida to address gun violence by enacting legislation that would allow municipalities the ability to address these public health, safety, and welfare items by enacting local legislation without fear of removal from office, in accordance with the unique local characteristics of a community and with due respect to the risk to the public; and

WHEREAS, local governments have a duty to protect their residents, visitors, and business owners, and such duty should not be infringed upon by the state government in matters that concern life and death; and

WHEREAS, the mission of this Resolution is to encourage discussions that promote the passage of comprehensive laws, both state and federal, to address the growing concerns associated with gun violence in the United States, in the hope that the City of Coconut Creek, as well as neighboring communities and communities across the nation, will become a safer place to live, work, and play.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2: That the City Commission supports federal legislation that would require a background check for every firearm sale whether the legislation is enacted by passage of the Fix Gun Checks Act in the United States Congress or some other legislation.

Section 3: That the City Commission urges immediate amendment to Florida law and/or Federal law to raise the age for legal purchase of all guns, including long guns, high-capacity magazines, and ammunition, to twenty-one (21) years of age.

Section 4: That the City Commission urges immediate passage of legislation that would outright ban assault weapons, automatic weapons, military-style weapons, and high-capacity magazines in order to keep those types of weapons away from our government/community centers, parks, and especially our schools.

Section 5: That the City Commission urges the Florida Legislature to repeal the language punishing elected officials set forth in Section 790.33, Florida Statutes.

Section 6: That the City Commission urges Florida Governor Rick Scott to take action to pass gun law reform, even if it means extending the 2018 Legislative Session, to:

- a. At a minimum, enact the Gun Safety legislation set forth in: Senate Bill 196 and House Bill 219 in so far as the law places constitutional restrictions on the sale and transfer of assault-style weapons and high-capacity magazines; Senate Bill 838, in so far as it requires universal background checks for all gun sales; and Senate Bill 456 and House Bill 321, to ban “bump-fire stock” and similar gun conversions used to alter the rate of fire of a firearm to mimic an automatic weapon fire;
- b. Eliminate the loopholes in the private transfer of weapons and require full background checks for all sales and transfers of firearms;
- c. Raise the minimum age to allow the purchase of all guns and ammunition to twenty-one (21); and
- d. Repeal the prohibitions and penalties in Section 790.33, Florida Statutes.

Section 7: That the City Commission hereby directs the City Clerk, or designee, to transmit this Resolution to Governor Rick Scott, Florida Senate President Joe Negron, Florida Speaker of the House Richard Corcoran, U.S. President Donald Trump, U.S. Senate President and U.S. Vice President Michael Pence, U.S. Speaker of the House Paul Ryan, the Florida Delegation, the Broward Delegation, the Florida League of Cities, and the Broward League of Cities.

Section 8: That if any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this Resolution.

Section 9: That this Resolution shall be in full force and effect immediately upon its adoption.

Adopted this 22nd day of February, 2018.

Rebecca A. Tooley, Mayor

Attest:

Leslie Wallace May, City Clerk

Tooley	<u>Aye</u>
Rydell	<u>Aye</u>
Sarbone	<u>Aye</u>
Belvedere	<u>Aye</u>
Welch	<u>Aye</u>

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