

RESOLUTION NO. 2018-074

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO ENGAGE THE SERVICES OF OUTSIDE COUNSEL TO JOIN THE LAWSUIT TO BE FILED BY THE CITY OF CORAL SPRINGS SEEKING TO DECLARE THE PENALTY PROVISIONS WITHIN SECTION 790.33, FLORIDA STATUTES, INVALID UNDER THE LEGAL DOCTRINE OF LEGISLATIVE IMMUNITY AND SUCH OTHER COGNIZABLE LEGAL THEORIES AS MAY BE RELEVANT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 8, 2018, the City Commission of the City of Coconut Creek passed Resolution 2018-065, authorizing the City Attorney to engage the City in legal action as determined appropriate and necessary to vindicate the City's rights and remedies under certain provisions within Section 790.33, Florida Statutes; and

WHEREAS, on March 7, 2018, the City Commission of the City of Coral Springs, upon unanimous consent, voted to engage the free legal services of Everytown for Gun Safety ("Everytown"), a non-profit organization, in collaboration with the law firm of Proskauer Rose, LLP, to represent it in a declaratory action challenging the penalty provisions within Section 790.33, Florida Statutes, on the basis of legislative immunity and such other relevant legal theories; and

WHEREAS, throughout Broward County, other cities are considering taking similar actions to vindicate their rights and remedies under the statute; and

WHEREAS, to the extent that Section 790.33, Florida Statutes, creates personal liability (fines up to \$5,000 plus attorney's fees and costs), authorizes the recovery of damages against the City (damages up to \$100,000 plus attorney's fees and costs), and authorizes removal from office by the Governor without due process, the law is arguably invalid; and

WHEREAS, as a result of such severe preemption penalties, the City Commission

and its members fear taking any steps that could even remotely be viewed as a violation of the preemption, creating a chilling effect upon City action and preventing the City Commission from responding to the petitions and requests of the City's residents to do something even outside of the preemption to protect against the dangers of firearms; and

WHEREAS, the City Commission and its members desire to consider various reasonable measures related to firearms, including the regulation of firearm accessories (such as holsters and high capacity magazines), or other measures related to public safety, but have refrained from doing so because same could possibly be viewed as falling within the preemption and the City Commission, along with other persons acting in their official capacities to enforce such measures, may be subjected to the severe preemption penalties; and

WHEREAS, the City Commission desires to give direction to the City Attorney to engage the free legal services of Everytown and Proskauer Rose, LLP, to join the lawsuit to be filed by Everytown on behalf of the City of Coral Springs and name the City of Coconut Creek as an additional Plaintiff along with certain individual Commissioners, in their official capacity, as Plaintiffs in such lawsuit; and

WHEREAS, the City Commission believes it is in the best interest of the residents of the City to pursue its legal remedies by filing a legally cognizable lawsuit in a court of competent jurisdiction to vindicate the rights of the residents of Coconut Creek and to affirm the effectiveness of lawmakers, officials, directors, and department heads at a local level seeking to carry out the wishes of its local constituency.

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 hereby authorizes and directs the City Attorney, or designee, to engage the free legal services of outside counsel, Everytown,

in collaboration with the law firm of Proskauer Rose, LLP, to join the lawsuit to be filed on behalf of the City of Coral Springs, naming the City of Coconut Creek and certain individual members of the Commission who choose to participate (in their official capacity), as Plaintiffs, seeking declaratory relief from the penalty provisions within Section 790.33, Florida Statutes, and such other legal theories supporting invalidity as are appropriate and necessary.

Section 3: That the City Manager, or designee, is hereby authorized to execute legal representation agreement(s) and any other necessary documents pertaining to the litigation, subject to review and approval by the City Attorney, to effectuate the intent of this Resolution.

Section 4: 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 5: That this Resolution shall be in full force and effect immediately upon its adoption.

Adopted this 22nd day of March, 2018.

Joshua Rydell, Mayor

Attest:

Leslie Wallace May, City Clerk

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