

RESOLUTION NO. 2021-083

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO CONTINUE THE SERVICES OF OUTSIDE COUNSEL TO APPEAL THE APRIL 9, 2021, DECISION RENDERED BY THE FIRST DISTRICT COURT OF APPEALS IN AND FOR THE STATE OF FLORIDA, UNDER CASE NO. 1D19-2819, CAPTIONED AS STATE OF FLORIDA, ET AL., V. CITY OF WESTON, ET AL., TO THE FLORIDA SUPREME COURT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 22, 2018, the City Commission of the City of Coconut Creek passed Resolution No. 2018-074, authorizing the City Attorney to engage the legal services of Everytown for Gun Safety, a non-profit organization, in collaboration with the law firm of Proskauer Rose, LLP, (hereinafter collectively referred to as “outside counsel”), 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, on July 26, 2019, the Second Judicial Circuit Court in and for Leon County, Florida, issued its opinion in the original filing captioned City of Weston, et al., v. State of Florida, et al., granting Final Summary Judgment in favor of the City and the other local government party plaintiffs; and

WHEREAS, the Circuit Court found that “the legislature cannot change the fundamental aspects of separation of powers,” and invalidated certain aspects of Section 790.33 on that basis, and upholding localities’ rights to: 1) require documentation of compliance with the waiting period for firearms sales, 2) require documentation which demonstrates compliance with the criminal background history check, 3) require posting of conspicuous signs throughout gun shows of a waiting period and background screening, and 4) establish policies related to firearms in their capacities as employees and proprietors; and

WHEREAS, subsequent to that Order, an appeal was filed in the First District Court of Appeals in and for the State of Florida (“1st DCA”), in the appeal captioned State of Florida, et al. v. City of Weston, et al.; and

WHEREAS, on April 9, 2021, the 1st DCA overturned the Circuit Court’s Order (invalidating the lower court’s order) and upheld as valid all of the challenged provisions contained in Section 790.33, Florida Statutes, which broadly preempt all regulation of firearms and ammunition to the State and impose draconian penalties upon local officials for any violation; 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), the City firmly challenges the law as invalid; and

WHEREAS, as a result of such severe preemption penalties, the City Commission and its members continue to 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 believes it is in the best interest of the residents of the City to pursue its legal remedies by continuing the legally cognizable lawsuit in a court of competent jurisdiction by appealing the Order of the 1st DCA to the Florida Supreme Court 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 within the confines of the law; and

WHEREAS, throughout Broward County and the State of Florida, other cities and counties are considering taking similar actions to vindicate their rights and remedies under the law by appealing the recently issued 1st DCA Order to be reviewed by the

highest court in our State; and

WHEREAS, outside counsel has agreed to handle the appeal to the Florida Supreme Court at no cost to the City.

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 continue the legal services of outside counsel, Everytown, in collaboration with the law firm of Proskauer Rose, LLP, to join the appeal to be filed in the Florida Supreme Court on behalf of the City of Coconut Creek and certain individual members of the Commission, who choose to participate (in their official capacity, namely Rebecca A. Tooley), 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 April, 2021.

Rebecca A. Tooley, Mayor

Attest:

Leslie Wallace May, City Clerk

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

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