

## RESOLUTION NO. 2018-065

### **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO PURSUE THE CITY'S LEGAL RIGHTS AND REMEDIES BY FILING A LAWSUIT CHALLENGING THE VALIDITY OF SECTION 790.33, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, over the past several years, there have been an unprecedented number of mass shootings in communities throughout the nation including, most recently, at Marjory Stoneman Douglas High School in Parkland, Florida; and

**WHEREAS**, national and state lawmakers continue to avoid implementing sensible gun law reforms that are supported by a majority of the nation; and

**WHEREAS**, the residents of Coconut Creek have repeatedly expressed their concerns regarding gun violence, including requests that the City ban, restrict, or take other steps that would reduce the threat from firearms in City facilities and parks; and

**WHEREAS**, on February 22, 2018, the City Commission adopted Resolution No. 2018-053, urging federal and state leaders to impose reasonable limitations on the use and distribution of firearms, magazines, and ammunition; and

**WHEREAS**, pursuant to Chapter 790, Florida Statutes, the State of Florida declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or city ordinances, regulations or rules, and purports to prohibit the enactment of any future ordinances or regulations "relating to firearms," thereby rendering the City powerless to act to meet the demands of its residents; and

**WHEREAS**, specifically, Section 790.33, Florida Statutes, creates liability and damages for local officials' actions in promulgating ordinances and regulations, as well as supporting any "measure, directive, rule, enactment, order, or policy promulgated or

caused to be enforced” in the preempted area; and

**WHEREAS**, the potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences, including, but not limited to, damages up to \$100,000 plus attorneys’ fees and costs against the City, and fines up to \$5,000 per City official and removal from office by the Governor without due process of law; and

**WHEREAS**, to the extent that such laws, in particular Section 790.33, Florida Statutes, may be vulnerable to legal challenges rendering them null and void, it is the City’s prerogative to explore those options; 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 file a lawsuit naming the City and the individual members of the City Commission who choose to participate (in their official capacity), as plaintiffs, seeking the appropriate relief to challenge Section 790.33, Florida Statutes, based upon any appropriate legal theories.

**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 8<sup>th</sup> day of March, 2018.**

\_\_\_\_\_  
Rebecca A. Tooley, Mayor

Attest:

\_\_\_\_\_  
Leslie Wallace May, City Clerk

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