

**CITY OF WESTON, FLORIDA
RESOLUTION NO. 2018-__**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WESTON, FLORIDA, AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO FILE A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS PUNISHING ELECTED OFFICIALS SET FORTH IN SECTION 790.33, FLORIDA STATUTES, FOR VIOLATING THE PREEMPTION RELATED TO THE REGULATION OF FIREARMS AND AMMUNITION ARE INVALID, AND INVITING OTHER LOCAL GOVERNMENTS TO JOIN THE LAWSUIT.

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

WHEREAS, Second, National and State leaders continue to fail to act to implement sensible gun law reforms that are supported by a majority of the nation; and

WHEREAS, Third, the residents of Weston have repeatedly petitioned that the City Commission take action 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, Fifth, on January 22, 2013, the City Commission adopted Resolution No. 2013-03, urging the Florida Legislature to repeal certain sections of Florida Statutes that prevent local governments from exercising their Home Rule Authority to regulate and/or prohibit firearms in public parks and other local government-owned facilities and property; and

WHEREAS, Sixth, on April 7, 2014, the City Commission adopted Resolution No. 2014-34, supporting House Bill 305 and Senate Bill 492, which would have amended Florida Statutes to permit a local government to exercise its Home Rule Authority to regulate firearms and ammunition upon local government-owned property; and

WHEREAS, Seventh, the City's requests to the State Legislature to enact legislation relating to firearms in City facilities and parks, or to allow the City to do so, have been unsuccessful; and

WHEREAS, Eighth, in Section 790.33, Florida Statutes, the State of Florida (a) 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, (b) purports to prohibit the enactment of any future ordinances or regulations "relating to firearms," and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including any "measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced"; and

WHEREAS, Ninth, the purported preemption, by using the terms "relating to firearms" and "any measure, directive, rule, enactment, order or policy promulgated," is extremely broad and vague, and could apply to a panoply of measures that the City would like to consider enacting,

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1 including the restricting of guns in City facilities and parks, the placing of signs relating to guns in
2 City facilities and parks, the regulation of gun accessories (such as holsters or bump stocks) or the
3 creating of "gun free zones" or "gun safe zones"; and
4

5 WHEREAS, Tenth, the potential violation of the broad and vague preemption of firearm
6 regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences,
7 including but not limited to damages up to \$100,000 and fines up to \$5,000 (for which the official
8 may be personally liable), removal from office by the Governor without due process of law, and a
9 prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense
10 costs (collectively, the "Onerous Preemption Penalties"); and
11

12 WHEREAS, Eleventh, as a result of the Onerous Preemption Penalties, the City Commission
13 and its members fear taking any steps that could even remotely be viewed as a violation of the
14 preemption, creating a chilling effect upon City action and preventing the City Commission from
15 responding to the petitions and requests of the City's residents to do something to protect against the
16 dangers of firearms; and
17

18 WHEREAS, Twelfth, the City Commission and its members desire to consider various
19 reasonable measures related to firearms, including the restriction of guns in City facilities and parks,
20 the placing of signs related to guns in City facilities and parks, the regulation of gun accessories (such
21 as holsters or bump stocks), the creation of "gun free zones" or "gun safe zones," or other measures
22 related to guns, but have refrained from doing so because they could possibly be viewed as falling
23 under the preemption and be subjected to the Onerous Preemption Penalties; and
24

25 WHEREAS, Thirteenth, the Onerous Preemption Penalties strike at the core of the American
26 system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of
27 the local electorate through intimidation of local elected officials; and
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29 WHEREAS, Fourteenth, the Onerous Preemption Penalties infringe on the free speech rights
30 of the City Commission and its members, and interfere with their ability to perform their official
31 duties; and
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33 WHEREAS, Fifteenth, the Onerous Preemption Penalties infringe upon the legislative
34 immunity the members of the City Commission enjoy under law when casting votes in their official
35 capacities; and
36

37 WHEREAS, Sixteenth, the portion of the Onerous Preemption Penalties related to the removal
38 from office by the Governor conflicts with Article 4, Section 7 of the Florida Constitution, by allowing
39 the Governor to remove a municipal official who has not been indicted for any crime, and violates
40 due process; and
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1 WHEREAS, Seventeenth, the City Commission believes it is in the best interest of the residents
2 of the City to file a lawsuit seeking a declaration that the Onerous Preemption Penalties are invalid
3 and urging other local governments to join the lawsuit as plaintiffs with the City.
4

5 NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Weston, Florida:
6

7 Section 1: The foregoing recitals contained in the preamble to this Resolution are incorporated by
8 reference herein.
9

10 Section 2: The City Commission hereby authorizes and directs the City Attorney to file a lawsuit
11 naming the City and those any individual Members of the Commission (in their official capacity) who
12 choose to participate, as plaintiffs, seeking declaratory and other appropriate relief to challenge the
13 Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon any
14 appropriate legal theories, including those set forth above.
15

16 Section 3: The City Commission invites and urges other local governments and elected officials to
17 join the City as plaintiffs in the lawsuit and to coordinate their efforts with the City.
18

19 Section 4: The City Clerk is directed to distribute this Resolution to all local governments in Broward
20 County.
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22 Section 5: The appropriate City officials are authorized to execute all necessary documents and to
23 take any necessary action to effectuate the intent of this Resolution.
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25 Section 6: This Resolution shall take effect upon its adoption.
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ADOPTED by the City Commission of the City of Weston, Florida, this 26th day of February 2018.

Daniel J. Stermer, Mayor

ATTEST:

Patricia A. Bates, City Clerk

Approved as to form and legality
for the use of and reliance by the
City of Weston only:

Jamie A. Cole, City Attorney

Roll Call:

Commissioner Jaffe _____

Commissioner Feuer _____

Commissioner Kallman _____

Commissioner Brown _____

Mayor Stermer _____