



**City of Gainesville
Clerk of the Commission
Office of the City Commission**

PO Box 490, Station 19
Gainesville, FL 32627-0490
200 E. University Avenue
P: (352) 334-5015
F: (352) 334-2036

City of Gainesville Policy Program Preliminary Research & Analysis

TOPIC: Local Authority over Gun Violence Prevention in Florida
PREPARED BY: Morgan Spicer, Research and Prototyping Fellow
DATE: December 23, 2019
REQUESTED BY: Mayor Poe

EXECUTIVE SUMMARY

The State of Florida has historically had one of the most strict preemption measures relating to local authority over gun regulation in the country. Although the Florida statute which subjected local legislators to personal liability and removal from office if they were to violate the preemption law was overturned in court earlier this year, the State of Florida still occupies the entire field of firearms regulation.¹ This preemption law leaves little room for cities and counties to enact their own gun-related legislation, as such legislation has historically been struck down by the courts.

This report details the specifics of the preemption statute, including the exceptions that the State has authorized, and further outlines the current ordinances in regards to gun regulation in Gainesville and Alachua County. Finally, the report notes specific city policies that have been attempted in the realm of gun control that have been struck down under the preemption law.

HISTORY/BACKGROUND INFORMATION

Florida State Law

Florida Statutes 790.33 states "Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession,

¹ <https://www.miamiherald.com/news/local/community/miami-dade/article233188131.html>

City of Gainesville Policy Program Preliminary Research & Analysis
Local Authority Over Gun Regulation in Florida

storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void”.

In July, 2019, the Leon County Circuit Court struck down the portion of the statute which allowed Florida’s governor to remove local officials and implement a \$5,000 fine for violating the preemption law, however the preemption law itself still stands.² This ruling has been appealed by the State of Florida and the appeal has a stay of the decision, meaning that the potential penalties are still in place.

There are five, very narrow, exceptions to the preemption. Specifically, the Florida preemption law does not prohibit:

- Zoning ordinances that encompass firearms businesses along with other businesses (with the exception that zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are prohibited).
- A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties.
- Any city or county from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee’s official duties.
- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge.
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.³

Additionally, the Florida statutes provide an exception to local authority preemption under a state of emergency. Under this exception, certain city or county officials may declare a state of emergency under particular conditions. During that period of time the sale of firearms, intentional display of a firearm or ammunition in any store or shop, and the intentional possession of a firearm in a public place are all prohibited. However, these sections do not authorize the seizure or confiscation of firearms that are lawfully possessed, unless a person is engaged in a criminal act.⁴

Finally, the Florida Constitution permits counties to adopt laws which require background checks and a waiting period of 3-6 days for sales occurring in the county. This can be found in the Florida Constitution, Article VIII Section 5(b).⁵

² <https://www.miamiherald.com/news/local/community/miami-dade/article233188131.html>

³ <https://lawcenter.giffords.org/local-authority-to-regulate-firearms-in-florida/>

⁴ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0870/Sections/0870.044.html

⁵ <http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A8S05>

City of Gainesville Policy Program Preliminary Research & Analysis
Local Authority Over Gun Regulation in Florida

Alachua County Ordinances

Alachua County has several ordinances which regulate the sale of guns in Alachua County, however these regulations are explicitly allowed under the Florida Constitution and do not violate the state's preemption law. It appears that Alachua County has passed every regulating ordinance permitted by the Constitution.

In the Alachua County Code of Ordinances, Sec. 82.01 ensures that no firearm is sold, offered for sale, transferred or delivered where any part of the transaction is conducted on property to which the public has a right of access unless there is a waiting period of five full days and a criminal history records check of the potential purchaser is conducted.

Sec. 82.04 states that there shall be a mandatory five day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within the county.

Sec. 82.05 states that there shall be a criminal history records check conducted in connection with the sale of firearms occurring within the county. To note, these requirements do not apply if the purchaser in the sale of a firearm is a holder of a Florida concealed weapons or firearms permit or license, or a currently certified law enforcement officer.⁶

City of Gainesville Ordinances

Under the City of Gainesville Code of Ordinances, Section 17-5 prohibits the carrying of weapons, explosives, or destructive devices, either openly or concealed, into any building which is owned or leased by the city and which is operated for a government purpose.⁷

Section 30-5.24 regulates outdoor shooting ranges, specifically stating that outdoor shooting ranges must be located a minimum of 2,500 feet from any existing residence, school, hospital, or public park.⁸

PRELIMINARY RESEARCH AND FINDINGS

City Statutes and Policies That Have Been Struck Down Under Preemption

In *Penelas v. Arms Technology, Inc.* (2001), Miami-Dade County sued firearms manufacturers, alleging that the manufacturers' products were defective, ultra-hazardous, and created a public nuisance, seeking damages and injunctive relief. The Florida District Court of Appeals dismissed the County's

⁶https://library.municode.com/fl/alachua_county/codes/code_of_ordinances?nodeId=PTIADCO_TIT7H_ESA_CH82SAFI_S82.02DE

⁷https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH17OF_ARTIINGE_S17-5WEEXDEDECINECIASBU

⁸https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH30LADECO_ARTVUSST_DIV1PRUS_S30-5.24SHRAOU

City of Gainesville Policy Program Preliminary Research & Analysis Local Authority Over Gun Regulation in Florida

claims, holding that section 790.33 “expressly preempts to the state legislature the entire field of firearm and ammunition regulation” and stating that local governments cannot use the judiciary to attempt “to ‘enact’ regulatory measures in the guise of injunctive relief.”

In *National Rifle Association of Am., Inc. v. City of South Miami* (2002), the Florida District Court of Appeal found that an ordinance requiring the use of locking devices on firearms stored within the City was “null and void” due to a conflict with section 790.33, stating that the “legislature...has...expressly preempted the entire field of firearm and ammunition regulation.”

The Attorney General of Florida has concluded that counties are prevented by section 790.33 from enacting ordinances that prohibit the discharge of firearms “in proximity to persons or property,” even when the ordinance is adopted for public health and safety purposes.

The City of Coral Gables passed Florida’s first citywide ban on assault rifles in 2017, following the Parkland Massacre, however the City backed down from enacting the ban, with commissioners conceding that state sanctions for trying to regulate gun sales at the local level were too severe to ignore.⁹ Those sanctions have since been declared unconstitutional by the Leon County Circuit Court, although the decision is currently under appeal, and Mayor Raul Valdes-Fauli has stated that the city plans to push for a city ordinance to ban assault rifles if the State’s appeal of the decision is unsuccessful.¹⁰

Weston, Florida

The City of Weston, Florida led the lawsuit against the State of Florida which ultimately resulted in the preemption punishments being overturned. Now that city leaders no longer face the possibility of financial penalties when challenging Florida’s preemption statute, Weston’s mayor, Daniel Stermer, has announced that the City plans to introduce legislation which would ban guns from public facilities.

Weston commissioners additionally voted to move forward with filing a brief with the Florida Supreme Court to support a proposed ballot question that would ban assault weapons.¹¹ The proposal would prohibit possession of “semi-automatic rifles and shotguns capable of holding more than 10 rounds of ammunition at once, either in a fixed or detachable magazine, or any other ammunition feeding device” The Supreme Court is poised to decide whether the wording of the ballot proposal meets legal requirements in February of 2020. Regardless of the Supreme Court ruling, the initiative currently has not garnered the signatures necessary to put the initiative on the ballot, as it has submitted 115,529 signatures of the required 766,200.¹²

Palm Beach, Florida

⁹ <https://www.miamiherald.com/news/local/community/miami-dade/article206115859.html>

¹⁰ <https://www.sun-sentinel.com/news/florida/fl-ne-florida-appeals-gun-laws-20190731-pmy4tjyev5hw3pw56ubinjtzy-story.html>

¹¹ <https://www.wlrn.org/post/lawsuit-led-broward-city-may-transform-rules-enacting-local-gun-laws>

¹² <https://www.newsherald.com/news/20191104/gun-rights-groups-florida-ag-target-assault-rifle-ban>

The Palm Beach Police Chief and Mayor wrote a letter to Florida State Senator Bobby Powell in October of 2019, urging the State Senate to change the wording of Florida Statute 790.25(3)(h). Currently, this statute allows the use and possession of a firearm while engaged in fishing, camping, target shooting, or hunting, or going to and from lawful hunting, fishing, target shooting, or campus expeditions.

This loophole enables individuals to openly carry weapons while carrying fishing poles, a policy which has been exploited by gun rights activists. Across the state of Florida, this loophole has allowed for the gatherings of armed fisherman in highly public places, and earlier this year in Palm Beach, officials reported that these individuals openly carried weapons near local schools.

Palm Beach has thus proposed that the language in the statute be expanded to say a lawful activity “may not be conducted within 1,500 feet of the real property comprising any school, house of worship, government building, or guarded beach.”¹³ The amendment has been introduced to the Florida Senate as Senate Bill 634.¹⁴

The Florida Statutes currently has several exemptions to the State’s general prohibition on openly carrying weapons, including:

- Members of the military/armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization
- Persons carrying out or training for emergency management duties
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers, and other peace and law enforcement officials and their deputies/assistance and full time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.
- Officers or employees of the state or of the United States duly authorized to carry a concealed weapons
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state
- Regularly enrolled members of any organization authorized to purchase or receive weapons from the US or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors’ gun shows, conventions, or exhibits.

¹³ <https://www.wflx.com/2019/10/11/palm-beach-police-chief-calling-change-current-open-carry-statute/>

¹⁴ <https://www.flsenate.gov/Session/Bill/2020/634/ByCategory>

City of Gainesville Policy Program Preliminary Research & Analysis
Local Authority Over Gun Regulation in Florida

- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place
- A person firing weapons in a safe and secure indoor range for testing and target practice
- A person traveling by private conveyance when the weapon is safely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business
- Individuals are allowed to openly carry firearms when they are inside their homes or places of businesses
- Those engaged in camping, fishing, hunting, or attending shooting practice are exempt during the event, and while going to and from the activity.
- Those who are manufacturing or repairing firearms are exempt while engaged in the lawful course of such business
- Investigators employed by the several public defenders of the state, while actually carrying out official duties, provided the investigators meet certain training standards.¹⁵

¹⁵ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0790/Sections/0790.25.html