



Legislation Text

File #: 171005., **Version:** 1

Resolution authorizing intervention into a lawsuit challenging portions of the State Statute preempting municipal rules or regulation of firearms and ammunition. (B)

RESOLUTION NO. 171005

A Resolution of the City Commission of the City of Gainesville, Florida, authorizing and directing the intervention into 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 seeking a Declaration that the application of the general preemption to any rules relating to firearms and ammunition that a municipality may desire to enforce on municipally owned property is invalid and unconstitutional; authorizing the retention of outside legal counsel; inviting other cities to join the lawsuit; directing the Clerk to distribute this Resolution to all cities in Alachua County; authorizing City officials to carry out this Resolution and providing for an effective date.

At the March 1st City Commission meeting, Commissioner Harvey Ward placed an item on the agenda titled Discussion of Potential Resolution Regarding Firearms. After much discussion regarding the state preemption of local firearms regulation and the onerous personal penalties imposed on municipal officials who violate that preemption, a motion was made and seconded to direct the City Attorney to draft an ordinance banning assault rifles, high capacity gun magazines and bump stocks. That motion failed by a vote of 2-5, as the City Attorney advised she could not draft an ordinance that was clearly unlawful and City Commissioners were concerned about the onerous personal penalties they could face for taking such action. A subsequent motion was then made and approved by a vote of 7-0 to: 1) authorize the Mayor to draft a letter requesting the County to enact a five-day waiting period and require background checks for all gun sales in Alachua County; 2) direct the City Attorney to join other cities with an amicus brief to advocate legal challenges filed by Weston and Coral Gables on state law preemptions for gun regulation; 3) direct the City Attorney to draft a resolution in support of a ban on assault rifles, high capacity gun magazines, bump stocks and to oppose arming teachers in Florida schools and send copies of the resolution to the Legislative Delegation, and the Governor; and 4) direct staff to reach out to other cities who want to work on gun control to create a network for future action.

At the March 15th City Commission meeting, the Commission adopted, by a vote of 7-0, Resolution No. 170840 recognizing gun violence as a public health and safety emergency; requesting that the Florida Legislature take action to protect the citizens of Gainesville or relieve restrictions placed on Florida cities and counties to allow us to take action and expressing opposition to arming Florida teachers.

Since that time, the City Attorney's Office has reached out to Florida cities reported to be engaging in litigation regarding the State preemption of firearms and ammunition. The City Attorney's Office found that 10 South Florida cities and 31 of their elected officials filed litigation on April 2, 2018 challenging portions of the State Statute preempting municipal rules or regulation of firearms and ammunition. Such litigation is required to be filed in Leon County, Florida, as the named defendants are the Governor and other State Officials who in their official capacity have a role in enforcing and administering the firearms preemption statute. The lawsuit challenges two aspects of the State statute, the first is the personal penalties imposed on local officials who

violate the State Firearms preemption and the second is that the statute seems to leave cities (unlike other private property owners) without the authority to keep their premises, visitors and employees safe by imposing rules regarding firearms on property that the city owns. The lawsuit seeks a judgment declaring that these portions of the State Statute are unconstitutional and such other relief as the Court deems just and proper. A copy of the filed Complaint for Declaratory Relief is included in the back-up for this agenda item. Since the filing of the litigation, 4 additional cities have voted to intervene.

Since the legal issues are the same for all cities and any such lawsuit would have to be filed in Leon County, such a joint effort appears to be a prudent use of city resources and evidences a united front of action before the Court and State Officials. Based on the Commission direction on March 1st, the City Attorney's Office has prepared this Resolution authorizing the intervention of the City (and those individual Commissioners in their official capacity who choose to participate) into the lawsuit and authorizing the retention of the law firm of Weiss Serota Helfman Cole & Bierman (the "Firm") (who serves as the City Attorney for the City of Weston) to represent the City of Gainesville and named individual City Commissioners in this litigation, including all appeals, for a flat fee of \$10,000 to be further reduced when more than 15 cities join the lawsuit. If this Resolution is adopted, the City Attorney will enter into a retainer agreement with the Firm for the representation.

The cost of this unanticipated \$10,000 expense can be paid from funds available in the External Legal Services account in the City Attorney's Office budget, or such other funds as the Commission deems appropriate.

1) The City Commission determine if it desires for the City to intervene in the lawsuit as a named plaintiff and if so, adopt the Resolution; and 2) If the Resolution is adopted, each individual Commissioner should determine if he/she desires to be named (in their official capacity) as a plaintiff as provided in the Resolution.