



MEMORANDUM

To: The Honorable Mayor and City Council
Michael Etienne, Esq., City Clerk

From: Jeff P. H. Cazeau, City Attorney

Date: April 10, 2018

Subject: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, 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 RETAINING THE LAW FIRM OF WEISS SEROTA ET AL FOR THAT PURPOSE; AND PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

The accompanying Resolution was prepared and placed on the agenda at the request of Mayor Smith Joseph.

kp/jpc

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, 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 RETAINING THE LAW FIRM OF WEISS SEROTA ET AL FOR THAT PURPOSE; AND PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, 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, 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, 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, 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, including the restricting of guns in City facilities and parks, the placing of signs relating to guns in City facilities and parks, the regulation of gun accessories (such as holsters, high capacity magazines, or bump stocks) or the creating of “gun free zones” or “gun safe zones”; 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 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the “Onerous Preemption Penalties”); and

WHEREAS, as a result of the Onerous Preemption Penalties, the Mayor and City Council and its members 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 Mayor and City Council from responding to the petitions and requests of the City’s residents to do something to protect against the dangers of firearms; and

WHEREAS, the Mayor and City Council and its members desire to consider various reasonable measures related to firearms, including the restriction of guns in City facilities and parks, the placing of signs related to guns in City facilities and parks, the regulation of gun accessories (such as holsters, high capacity magazines, or bump stocks), the creation of “gun free zones” or “gun safe zones,” or other measures related to guns, but have refrained from doing so because they could possibly be viewed as falling under the preemption and be subjected to the Onerous Preemption Penalties; and

WHEREAS, the Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials; and

WHEREAS, the Onerous Preemption Penalties infringe on the free speech rights of the Mayor and City Council and its members, and interfere with their ability to perform their official duties; and

WHEREAS, the Onerous Preemption Penalties infringe upon the legislative immunity of the members of the Mayor and City Council enjoy under law when casting votes in their official capacities; and

WHEREAS, the portion of the Onerous Preemption Penalties related to the removal from office by the Governor conflicts with Article 4, Section 7 of the Florida Constitution, by

allowing the Governor to remove a municipal official who has not been indicted for any crime, and violates due process; and

WHEREAS, on February 26, 2018, the City of Weston passed Resolution 2018-30, authorizing and directing its City Attorney (Weiss Serota Helfman Cole & Bierman, the “Firm”) 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, as well as related provisions, are invalid, and invited other local governments to join the lawsuit; and

WHEREAS, on April 2, 2018, a lawsuit was filed with ten municipalities and thirty one elected officials as plaintiffs, in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, Case No. 2018 CA 0000699 (the “Lawsuit”); and

WHEREAS, the Mayor and City Council desires to join the Lawsuit and invite other local governments to join also; and

WHEREAS, the Mayor and City Council believes it is in the best interest of the citizens and residents of the City to file a lawsuit seeking a declaration that the Onerous Preemption Penalties are invalid and urging other local governments to join the lawsuit as plaintiffs with the City.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1: That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2: The Mayor and City Council of the City of North Miami, Florida hereby authorizes and directs the City Manager and those individual members of the city council (in their official capacity) who choose to participate, to move to intervene in the Lawsuit as plaintiffs, seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, and related provisions, based upon any appropriate legal theories, including those set forth above and those included in the complaint filed in the Lawsuit.

Section 3: The Firm is hereby retained to represent the City in this litigation. The Firm will charge the City a flat fee of \$10,000 to represent the City and the individual Members of the Commission (in their official capacity) who choose to participate as plaintiffs, for the litigation, including all appeals. If more than 15 cities choose to have the Firm represent them, the flat fee will be reduced by 1% for each city over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Firm represent them), and refund any amounts paid in excess of the flat fee. The City also acknowledges that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation. The Firm's retention is subject to execution of a retainer agreement between the City and the Firm consistent with the terms set forth herein and which addresses any conflict of interest waivers.

Section 4: The Mayor and City Council invites and urges other local governments and elected officials to join the City as plaintiffs in the lawsuit and to coordinate their efforts with the City.

Section 5: The City Clerk is directed to distribute this Resolution to all local governments in Miami-Dade County.

Section 6: The appropriate City Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

Section 7: This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of _____, 2018.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: MAYOR SMITH JOSEPH

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O. Pharm D.	_____ (Yes)	_____ (No)
Vice Mayor Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilman Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilman Alix Desulme	_____ (Yes)	_____ (No)