

RESOLUTION NO. 18-___

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CUTLER BAY, FLORIDA,
AUTHORIZING AND DIRECTING THE FILING OF 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; AND
PROVIDING FOR AN EFFECTIVE DATE.**

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 Town would like to consider enacting, including the restricting of guns in Town facilities and parks, the placing of signs relating to guns in Town 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 Town 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 Town action and preventing the Town Council from responding to the petitions and requests of the Town's residents to do something to protect against the dangers of firearms; and

WHEREAS, the Town Council and its members desire to consider various reasonable measures related to firearms, including the restriction of guns in Town facilities and parks, the placing of signs related to guns in Town 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 Town 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 the members of the Town 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 are invalid ("Lawsuit"), and invited other local governments to join the Lawsuit; and

WHEREAS, the Town desires to join the Lawsuit and invite other local governments to join also; and

WHEREAS, the Town Council believes it is in the best interest of the citizens and residents of the Town 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 Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AS FOLLOWS:

Section 1: **Recitals.** The above Recitals are true and correct and incorporated herein by this reference.

Section 2: **Authorization.** The Town Council hereby authorizes and directs the filing of a lawsuit naming the Town and those individual Members of the Council (in their official capacity) who choose to participate, as plaintiffs, seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon any appropriate legal theories, including those set forth above.

Section 3: **Attorneys' Fee.** The Firm is hereby retained to represent the Town in this litigation. The Firm will charge the Town a flat fee of \$10,000 to represent the Town and the individual Members of the Council (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 Town 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 Town and the Firm consistent with the terms set forth herein and which addresses any conflict of interest waivers.

Section 4: **Urging Other Local Governments.** The Town Council invites and urges other local governments and elected officials to join the Town as plaintiffs in the lawsuit and to coordinate their efforts with the Town.

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

Section 6: **Authority.** That the appropriate Town Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

Section 7: **Effective Date.** That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2018.

Attest:

PEGGY R. BELL
Mayor

DEBRA E. EASTMAN, MMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE
USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN
COLE & BIERMAN P.L.
Town Attorney

Moved By: _____
Seconded By: _____

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell _____

Vice Mayor Sue Ellen Loyzelle _____

Council Member Mary Ann Mixon _____

Council Member Michael P. Callahan _____

Council Member Roger Coriat _____