

MEMORANDUM

Amended
Agenda Item No. 11(A)(15)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners


DATE: May 1, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution requesting that the County Attorney research and evaluate potential legal theories and causes of action concerning the State of Florida's preemption of local government regulation of firearms and ammunition; and authorizing the County Attorney to take legal action should such research and analysis present a viable claim

Resolution No. R-473-18

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Barbara J. Jordan, Vice Chairwoman Audrey M. Edmonson, Commissioner Daniella Levine Cava and Commissioner Jean Monestime, and Co-Sponsors Commissioner Sally A. Heyman and Commissioner Dennis C. Moss.


Abigail Price-Williams
County Attorney

APW/smm




MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

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County Attorney

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved  Mayor
Veto _____
Override _____

Amended
Agenda Item No. 11(A)(15)
5-1-18

RESOLUTION NO. R-473-18

RESOLUTION REQUESTING THAT THE COUNTY ATTORNEY RESEARCH AND EVALUATE POTENTIAL LEGAL THEORIES AND CAUSES OF ACTION CONCERNING THE STATE OF FLORIDA'S PREEMPTION OF LOCAL GOVERNMENT REGULATION OF FIREARMS AND AMMUNITION; AND AUTHORIZING THE COUNTY ATTORNEY TO TAKE LEGAL ACTION SHOULD SUCH RESEARCH AND ANALYSIS PRESENT A VIABLE CLAIM

WHEREAS, mass shootings have plagued the nation and the state for years, with the most recent one occurring at Marjory Stoneman Douglas High School in our neighboring county, Broward; and

WHEREAS, local government officials in Florida are prohibited from enacting sensible gun reform that could help prevent these mass shootings; and

WHEREAS, pursuant to section 790.33, Florida Statutes, the State of Florida occupies the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation of firearms and ammunition; and

WHEREAS, section 790.33 provides that a knowing and willful violation of section 790.33, (1) authorizes a court to assess a civil fine of up to \$5,000 against elected or appointed local government officials or an administrative agency head, (2) authorizes the Governor to terminate the employment of or remove from office any person acting in their official capacity, and (3) prohibits the use of public funds to defend or reimburse the preempted conduct; and

WHEREAS, section 790.33 provides that attorney's fees and costs and damages up to \$100,000 may also be assessed for violating section 790.33; and

WHEREAS, this Board has adopted a number of resolutions urging the Florida Legislature to lift the preemption in section 790.33, including Resolution Nos. R-100-12, R-56-13, R-79-16, R-721-16 and R-180-18; and

WHEREAS, other cities and counties in the state have passed similar measures and are now considering legal action to challenge the provisions of section 790.33; and

WHEREAS, on February 26, 2018, the City of Weston passed Resolution No. 2018-30 authorizing its City Attorney to file a lawsuit seeking a declaration that the provisions punishing elected officials for violating the preemption statute are invalid and invited other local governments to join the lawsuit; and

WHEREAS, on April 2, 2018, the Cities of Weston, Miramar, Pompano Beach, South Miami, Miami Gardens, Miami Beach, Coral Gables, Lauderhill, as well as the Town of Cutler Bay, the Village of Pinecrest and a number of elected officials filed suit against the Governor, Attorney General and other members of the state cabinet challenging the preemption statute (“Weston litigation”); and

WHEREAS, the complaint filed in the Weston litigation is narrowly pled to apply to municipalities and municipal officers; and

WHEREAS, although there are no pending lawsuits filed by counties similar to Miami-Dade County, on April 10, 2018, the Broward County Board of County Commissioners directed the Broward County Attorney to file a lawsuit challenging the constitutionality of “Florida Gun laws, including Section 790.33, Florida Statutes”; and

WHEREAS, this Board would like the County Attorney to research and analyze potential legal theories and claims and take legal action upon finding that a viable claim exists,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Requests that the County Attorney research and evaluate potential legal theories and causes of action concerning the State of Florida's preemption of local government regulation of firearms and ammunition.

Section 2. Authorizes the County Attorney to challenge section 790.33, Florida Statutes, by (1) filing a lawsuit against the State of Florida or joining a lawsuit filed by Broward County or any similarly situated county, and/or (2) filing an amicus brief in support of a lawsuit filed by Broward County or any other similarly situated county should such research and analysis present a viable claim.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Barbara J. Jordan, Vice Chairwoman Audrey M. Edmonson, Commissioner Daniella Levine Cava, Commissioner Jean Monestime, and the Co-Sponsors are Commissioner Sally A. Heyman and Commissioner Dennis C. Moss. It was offered by Commissioner Rebeca Sosa, who moved its adoption. The motion was seconded by Commissioner Sally A. Heyman and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	aye		
Daniella Levine Cava	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent	Xavier L. Suarez	aye
District 5 - Vacant			

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of May, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: ***Christopher Agrippa***
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

APP

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