

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, AMENDING CHAPTER 14, "BUSINESSES," OF THE CITY OF CORAL GABLES CODE BY CREATING ARTICLE VIII "FIREARM SALES," TO PROVIDE RESTRICTIONS ON THE SALE OF "ASSAULT WEAPONS" WITH PRESCRIBED PENALTIES, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, ENFORCEABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 790.33, Florida Statutes, purports to impose severe personal penalties on local legislators or officials who enact or cause to be enforced any local ordinance or administrative rule or regulation relating to the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation of firearms and ammunition; and

WHEREAS, the Draconian personal penalties set forth in Section 790.33(3), Florida Statutes, include the levying of civil fines up to \$5,000 against the individual elected or appointed local officials and their removal from office by the Governor; and

WHEREAS, Section 790.33(3)(b) prohibits the use of public funds to defend local elected and appointed officials who are alleged to have violated Section 790.33, even though they have acted in their legislative capacity and regardless of whether they relied in good faith on the advice of counsel; and

WHEREAS, it is the good faith position of the City Commission that Section 790.33, as written, violates the well-settled legislative immunity principle that protects individual legislators from personal liability for their legislative acts, *see Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056, 1062 (11th Cir. 1992) (observing that the act of voting is a protected legislative act under legislative immunity principles) (citing *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880)); *Bogan v. Scott-Harris*, 523 U.S. 44, 44 (1998) ("Regardless of the level of government, the exercise of legislative discretion should not be ... distorted by the fear of personal liability."); *McNayr v. Kelly*, 184 So. 2d 428, 430 (Fla. 1966) ("Nor is it questioned that such absolute immunity in this State extends to county and municipal officials in legislative or quasi-legislative activities..."); *Hernandez v. City of Lafayette*, 643 F.2d 1188 (5th Cir. June 1981), *cert denied*, 455 U.S. 907 (1983) (holding that local officials acting in a legislative capacity are entitled to absolute immunity for such acts); *P.C.B. P'ship v. City of Largo*, 549 So. 2d 738, 740 (Fla. 2d DCA 1989) ("We can easily dispose of the issues regarding the liability of the individual appellees. City council members enjoy absolute immunity in civil rights actions when acting in a legislative capacity."); *Fla. House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 522-24 (Fla. 1st DCA 2012) ("[L]egislative privilege exists by virtue of the separation of powers provision of the Florida Constitution."); *Tenney v. Brandhove*, 341 U.S. 367, 375-77 (1951)

(“The holding of this Court ... that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned.”); and

WHEREAS, this well-settled legislative immunity principle has been recognized by U.S. legal commentators for over two hundred years, *see Bogan*, 523 U.S. at 51-52 (citing 1 J. Dillon, Law of Municipal Corporations § 313, pp. 326–327 (1881) (“Where the officers of a municipal corporation are invested with legislative powers, they are exempt from individual liability for the passage of any ordinance within their authority, and their motives in reference thereto will not be inquired into.”); T. Cooley, Law of Torts 376 (1880) (noting that the “rightful exemption” of legislators from liability is “very plain” and applied to members of “inferior legislative bodies, such as boards of supervisors, county commissioners, city councils, and the like”); J. Bishop, Commentaries on the Non-Contract Law § 744 (noting that municipal legislators are immune for their legislative functions); F. Mechem, Law of Public Offices and Officers §§ 644–646 (same); M. Throop, Law Relating to Public Officers § 709, at 671 (same)); *see also Tenney*, 341 U.S. at 372 (“The privilege of legislators to be free from arrest or civil process for what they say or do in legislative proceedings has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.”); and

WHEREAS, it is the good faith position of the City Commission that Section 790.33, as written, also violates local elected and appointed officials’ right of free expression under the First Amendment of the United States Constitution and under Art. I, Sec. 4 of the Florida Constitution, *see Miller v. Town of Hull, Mass.*, 878 F.2d 523, 532 (1st Cir. 1989) (“[T]he act of voting on public issues by a member of a public agency or board comes within the freedom of speech guarantee of the first amendment. This is especially true when the agency members are elected officials. There can be no more definite expression of opinion than by voting on a controversial public issue.”); and

WHEREAS, it is the good faith position of the City Commission that Section 790.33, as written, is unconstitutionally overbroad, *see State v. Catalano*, 104 So. 3d 1069, 1077 (Fla. 2012) (“The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.”) (quoting *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002)); and

WHEREAS, it is the good faith position of the City Commission that Section 790.33, as written, violates local elected and appointed officials’ substantive and procedural due process rights under the Fourteenth Amendment of the United States Constitution and Art. I, Sec. 9 of the Florida Constitution; and

WHEREAS, it is the good faith position of the City Commission that Section 790.33(3)(e)’s purported empowering of the Governor to remove local elected and appointed officials from office also violates Art. IV, Sec. 7 of the Florida Constitution, which authorizes the Governor only to suspend a public official and to recommend his or her removal by the state senate, and that such removal by the senate shall be for specified causes such as malfeasance, neglect of duty, and the like, *see Marcus v. Scott*, 2014 WL 3797314 at *4 (Fla.Cir.Ct. 2014) (declaring Section 790.33(3)(e)’s removal provision unconstitutional as applied to local commissioners seeking to pass firearms restrictions, and observing that “there is no reasonable

interpretation of the subject statute that would allow for a constitutional application [of] its removal provisions to [commissioners who pass local firearms restrictions]”); *Bruner v. State Commission on Ethics*, 384 So.2d 1339, 1340-41 (Fla. 1st DCA 1980) (holding that the Florida Legislature may not vary from the constitutional allocation of power relating to the gubernatorial suspension of public officials); and

WHEREAS, the State of Florida, while purporting to preempt regulation of firearms and ammunition at the local level, has abdicated its responsibility to reasonably regulate, at the State level, the possession, use, and sale of certain firearms and, thus, has failed to keep the public safe from a clear, present danger posed by semi-automatic, high-capacity, military-style weapons; and

WHEREAS, a majority of the deadliest mass shootings in modern American history involved the use of semi-automatic, high-capacity, military-style weapons, now commonly identified as “assault weapons”; and

WHEREAS, two of the top ten deadliest shootings in modern American history occurred in Florida in the span of less than two years; and

WHEREAS, according to the FBI, there have been 160 active shooter incidents in the United States between 2000-2013 which averages 11.4 incidents per year; and

WHEREAS, according to the FBI, of the 160 active shooter incidents in the United States between 2000-2013, 27 occurred in schools (pre-kindergarten through 12th grade) and 12 in institutes of higher education; and

WHEREAS, according to the FBI, as a result of the 160 active shooter incidents in the United States between 2000-2013, 486 persons have been killed and 557 persons have been wounded; and

WHEREAS, the Marjory Stoneman Douglas High School shooting, which involved an assault weapon, resulted in 17 deaths, including 14 students, and wounding 14 others; and

WHEREAS, the Pulse nightclub shooting, which involved an assault weapon, resulted in 49 deaths and wounding 58 others; and

WHEREAS, the Las Vegas shooting, which involved an assault weapon, resulted in 58 deaths and wounding 500 others; and

WHEREAS, the Sandy Hook Elementary School shooting, which involved an assault weapon, resulted in 26 deaths, including 20 children aged six and seven, and wounding 2 others; and

WHEREAS, the Columbine High School shooting, which involved assault weapons, resulted in 13 deaths, including 12 students, and wounding 21 others; and

WHEREAS, the Stockton schoolyard shooting, which involved an assault weapon, resulted in 6 deaths, including 5 children, and wounding 32 others using an assault weapon; and

WHEREAS, the Sutherland Springs church shooting, which involved an assault weapon, resulted in 26 deaths and wounding 20 others; and

WHEREAS, as a result of the San Bernardino shooting, which involved an assault weapon, resulted in 14 deaths and wounding 24 others; and

WHEREAS, as a result of the Aurora movie theatre shooting, which involved an assault weapon, resulted in 12 deaths and wounding 70 others; and

WHEREAS, the City Commission has determined that it is in the best interests of the citizenry and general public to provide appropriate business regulations related to the type of weapons that have inflicted mass casualties; and

WHEREAS, the City Commission desires to promote the safety of its law enforcement personnel by restricting the sale of dangerous assault weapons; and

WHEREAS, the City's mayor, vice mayor, and commissioners are duly elected officials acting in their capacity and role as government officials; and

WHEREAS, the City's mayor, vice mayor, and commissioners were elected by the citizens of Coral Gables to enact their will through ordinances.

SECTION 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The Official Code of Ordinances of the City of Coral Gables is hereby amended as follows:

CHAPTER 14 – BUSINESSES

* * *

ARTICLE VIII. FIREARM SALES

Sec. 14-142. Definitions.

The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

"Assault weapon" means:

1. A selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user or any of the following specified semiautomatic firearms:
 - a. All AK series, including, but not limited to, the following: AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, MISR, NHM90, NHM91, SA 85, SA 93, VEPR, WASR-10, WUM, Rock River Arms LAR-47, 47 and Vector Arms AK-47.
 - b. All AR series, including, but not limited to, the following: AR-10, AR-15, Bushmaster XM15, Armalite AR-180 and M15, Olympic Arms, AR70, DPMS Tactical Rifles, Smith & Wesson M&P15 Rifles, Colt AR-15, Rock River Arms LAR-15, and DoubleStar AR rifles.
 - c. Algimec AGM1.
 - d. Barrett 82A1 and REC7.
 - e. Beretta AR-70 and Beretta Storm.
 - f. Bushmaster Auto Rifle.
 - g. Calico Liberty series.
 - h. Chartered Industries of Singapore SR-88.
 - i. Colt Sporter.
 - j. Daewoo K-1, K-2, Max-1, and Max 2.
 - k. FAMAS MAS 223.
 - l. Federal XC-900 and SC-450.
 - m. Fabrique National FN/FAL, FN/LAR, or FNC.
 - n. FNH PS90, SCAR, and FS2000.
 - o. Goncz High Tech Carbine.
 - p. Hi-Point Carbine.
 - q. HK-91, HK-93, HK-94, SP-89, or HK-PSG-1.
 - r. Kel-Tec Sub-2000, SU series, RFB.

- s. M1 Carbine.
 - t. SAR-8, SAR-4800, SR9;
 - u. SIG 57 AMT and 500 Series.
 - v. Sig Sauer MCX Rifle.
 - w. SKS capable of accepting a detachable magazine.
 - x. SLG 95.
 - y. SLR 95 or 96.
 - z. Spectre Auto Carbine.
 - aa. Springfield Armory BM59, SAR-48, and G-3.
 - bb. Sterling MK-6 and MK-7.
 - cc. Steyr AUG.
 - dd. Sturm Ruger Mini-14 with folding stock.
 - ee. TNW M230, M2HB.
 - ff. Thompson types, including Thompson T5.
 - gg. UZI, Galil and UZI Sporter, Galil Sporter, Galil 84 Sniper Rifle (Galatz), or Vector Arms UZI.
 - hh. Weaver Arms Nighthawk.
2. All of the following handguns, copies, duplicates, or altered facsimiles with the capability of any such weapon thereof:
- a. AK-47 pistol, Mini AK-47 pistol.
 - b. AR-15 pistol.
 - c. Australian Automatic Arms SAP pistol.
 - d. Bushmaster Auto Pistol.

- e. Calico Liberty series pistols.
 - f. Encom MK-IV, MP-9, and MP-45.
 - g. Feather AT-9 and Mini-AT.
 - h. Goncz High Tech Long pistol.
 - i. Holmes MP-83.
 - j. Iver Johnson Enforcer.
 - k. MAC-10, MAC-11, Masterpiece Arms MPA pistol series, and 100 Velocity Arms VMA series.
 - l. Intratec TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10.
 - m. UZI pistol, Micro-UZI pistol.
 - n. Colefire Magnum.
 - o. Scarab Skorpion.
 - p. Spectre Auto pistol.
 - q. German Sport 522 PK.
 - r. Chiappa Firearms Mfour-22.
 - s. DSA SA58 PKP FAL.
 - t. I.O. Inc. PPS-43C.
 - u. Kel-Tec PLR-16 pistol.
 - v. Sig Sauer P556 pistol.
 - w. Thompson TA5 series pistols.
 - x. Wilkinson "Linda" pistol.
3. All of the following shotguns, copies, duplicates, or altered facsimiles with the capability of any such weapon thereof:
- a. Armscor 30 BG.

- b. Franchi SPAS-12 and Law-12.
 - c. Remington TAC-2 or TACB3 FS.
 - d. SPAS 12 or LAW 12.
 - e. Striker 12.
 - f. Streetsweeper.
 - g. Saiga.
 - h. USAS-12.
 - i. Kel-tec KSG.
4. A part or combination of parts that convert a firearm into an assault weapon or any combination of parts from which an assault weapon may be assembled if those parts are in the possession or under the control of the same person;
5. Any semiautomatic firearm not listed in subparagraphs 1.-4. that meets the following criteria:
- a. A semiautomatic rifle that has an ability to accept a detachable magazine and has one or more of the following:
 - i. A folding or telescoping stock;
 - ii. A pistol grip that protrudes conspicuously beneath the action of the weapon or any feature functioning as a protruding grip that can be held by the non-trigger hand or a thumbhole stock;
 - iii. A bayonet mount;
 - iv. A flash suppressor or threaded barrel designed to accommodate a flash suppressor;
 - v. A grenade launcher;
 - vi. A shroud attached to the barrel, or that partially or completely encircles the barrel allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or
 - b. A semiautomatic pistol that has an ability to accept a detachable magazine and has one or more of the following:

- i. The capacity to accept an ammunition magazine that attaches to the pistol at any location outside of the pistol grip;
 - ii. A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
 - iii. A slide that encloses the barrel and that permits the shooter to hold the firearm with the non-trigger hand 156 without being burned;
 - iv. A manufactured weight of 50 ounces or more when the 158 pistol is unloaded;
 - v. A semiautomatic version of an automatic firearm;
 - vi. Any feature capable of functioning as a protruding 161 grip that can be held by the non-trigger hand;
 - vii. A folding, telescoping, or thumbhole stock; or
- c. A semiautomatic shotgun that has one or more of the following:
- i. A folding or telescoping stock;
 - ii. A pistol grip that protrudes conspicuously beneath the action of the weapon;
 - iii. A thumbhole stock;
 - iv. A fixed magazine capacity in excess of 5 rounds;
 - v. An ability to accept a detachable magazine; or
- d. Any semiautomatic pistol or any semiautomatic, centerfire, or rimfire rifle with a fixed magazine that has the capacity to accept more than 10 rounds of ammunition; or
- e. A part or combination of parts designed or intended to convert a firearm into an assault weapon or any combination of parts from which an assault weapon may be assembled if those parts are in the possession or under the control of the same person.

“Business” means an entity, authorized by the State of Florida and licensed by the City of Coral Gables, with the purpose of financial gain, benefit, or advantage, either direct or indirect on a temporary or permanent basis.

Sec. 14-143. – Unauthorized sale of assault weapons.

1. It shall be unlawful for any business to sell, barter, or otherwise exchange for any value or consideration or offer to sell, barter, or otherwise exchange for any value or consideration any assault weapon.
2. A violation of this section shall be punishable as provided in section 1-7(a), (b), and (c)(2).
3. Exemption: The sale of assault weapons to the Department of Law Enforcement, a law enforcement agency, as defined in Florida Statutes section 934.02, the Department of Corrections, or the military or naval forces of this state or of the United States for use in the discharge of their official duties shall be exempt from the provisions of this Ordinance.

SECTION 3. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 4. All ordinances or parts of ordinances that are inconsistent or in conflict with the provisions of this Ordinance are repealed.

SECTION 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City Code of Ordinances of the City of Coral Gables, Florida, which provisions may be renumbered or re-lettered and that the word ordinance be changed to “section,” “article,” or other appropriate word to accomplish such intention.

SECTION 6. The signature of the City Clerk on this ordinance is solely a ministerial act as required by Florida Statutes section 166.041(5) and not an action that can be considered “enacting or causing to be enforced” as used Florida Statutes section 790.33. Therefore, the provisions of Florida Statutes section 790.33 do not apply to the City Clerk.

SECTION 7. The City Commission finds that this Ordinance shall be effective upon the date of its adoption herein irrespective of whether the City Attorney signs for form and legal sufficiency.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2018.

APPROVED:

RAUL VALDES-FAULI
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

MIRIAM SOLER RAMOS
CITY ATTORNEY