

## **RESOLUTION NO. 15-18**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, CALLING ON THE STATE OF FLORIDA, GOVERNOR RICK SCOTT, PRESIDENT DONALD TRUMP, AND THE FEDERAL GOVERNMENT TO REDUCE GUN VIOLENCE IN AMERICA AND HELP PREVENT FUTURE SHOOTINGS BY BANNING MILITARY-STYLE WEAPONS AND HIGH CAPACITY MAGAZINES; REQUIRING A RIGOROUS BACKGROUND CHECK FOR EVERY FIREARM SALE; SUPPORTING RAISING THE AGE FOR LEGAL PURCHASE OF FIREARMS, MAGAZINES AND AMMUNITION TO 21; SUPPORTING THE PASSAGE OF COMPREHENSIVE LAWS TO ADDRESS THE GROWING CONCERNS ASSOCIATED WITH GUN VIOLENCE; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City proudly supports the constitutional rights of all Americans, including the Second Amendment. The unalienable rights bestowed by the U.S. Constitution, do not, however, give license to others to make fellow Americans less free and more fearful for their personal safety nor does the Constitution grant unfettered rights to Americans to bear arms against fellow Americans; and

**WHEREAS**, the City continues to support passage of resolutions urging State and Federal elected bodies to strengthen gun laws meant to protect our community; and

**WHEREAS**, the City urges national and state leaders to implement sensible gun law reforms that are supported by a majority of the nation; and

**WHEREAS**, an increase in the amount of hate groups, international and lone wolf domestic terrorism, underfunded community mental health programs, and easy access to military grade, high capacity magazine assault weapons have created circumstances which have led to an unprecedented number of mass shootings in American communities in recent years; and

**WHEREAS**, on February 14, 2018, a 19 year-old man using an AR-15 assault rifle tragically killed 17 students, teachers and coaches and wounded 14 others at Marjory Stoneman Douglas High School in Parkland, Florida; and

**WHEREAS**, on October 1, 2017, a man using semiautomatic rifles legally modified to shoot like automatic weapons fired into a crowd of concertgoers on the Las Vegas Strip and killed 58 people and wounded hundreds of others, making it the worst mass shooting in United States history; and

**WHEREAS**, on June 12, 2016, a man carrying an assault-style rifle and handgun killed 49 people and injured 53 others in a nightclub in Orlando, Florida; and

**WHEREAS**, on December 2, 2015, a husband and wife carrying assault rifles and handguns opened fire on a holiday banquet of government employees, killing 14 people and wounding more than 20 others in San Bernardino, California; and

**WHEREAS**, in July 2015, a gunman armed with a .40 caliber Hi-Point semi-automatic weapon opened fire in a movie theatre in Lafayette, Louisiana; and

**WHEREAS**, in December 2012, a 20 year-old man using an AR-15 assault rifle with a 30-round magazine opened fire in an elementary school in Newtown, Connecticut, killing 20 children and six staff members; and

**WHEREAS**, in July 2012, a gunman opened fire in a crowded movie theatre in Aurora, Colorado using an AR-15 assault rifle with a 100-round magazine, killing 12 people and injuring 59 others; and

**WHEREAS**, these incidents exemplify the dangers of assault weapons, such as UZIs, AK-47s and AR-15s; and

**WHEREAS**, such weapons are designed for military purposes and have no legitimate use for hunting, self-defense, or other civilian uses; and

**WHEREAS**, assault weapons are designed to enhance the capacity to rapidly shoot multiple targets, with a range of up to 100 yards and magazines that commonly enable the shooter to continuously fire dozens of rounds without reloading; and

**WHEREAS**, semi-automatic assault weapons were banned for a period of 10 years beginning in 1994 under the Federal Assault Weapons Act; and

**WHEREAS**, the federal ban restricted the sale, manufacture, transfer, and possession of semi-automatic assault weapons except for those already in lawful possession at the time of the law's enactment and those made for, transferred to, or owned by the federal, state or local government for purposes of law enforcement; and

**WHEREAS**, various studies indicate that the ban significantly reduced the use of assault weapons in crimes; and

**WHEREAS**, the ban expired in 2004 and has not been renewed; and

**WHEREAS**, although there is no federal law banning assault weapons, the District of Columbia, California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey and New York have all passed laws banning assault weapons; and

**WHEREAS**, on June 20, 2016, the United States Supreme Court declined to consider a challenge to the New York and Connecticut assault weapons bans, effectively upholding the state bans; and

**WHEREAS**, the City Commission finds it in the best interest of this community's safety to impose a ban on assault weapons, and

**WHEREAS**, according to Everytown For Gun Safety, which is an independent, non-partisan 501(c)(3) organization dedicated to understanding and reducing gun violence in America, background checks have blocked over 3 million gun sales to prohibited purchasers; and

**WHEREAS**, according to a study by the Department of Justice, between 1994 and 2014, federal, state, and local agencies conducted background checks on more than 180 million firearm applications and denied 2.82 million gun sales to prohibited purchasers; and

**WHEREAS**, despite this success, the system is undermined by legal loopholes and missing records that enable too many dangerous individuals to obtain weapons they later use in crimes; and

**WHEREAS**, it is estimated that state and federal agencies have failed to report more than one million records of persons with dangerous mental illness into the National Instant Criminal Background Check System (NICS) which initiates background checks into three databases: the National Crime Information Center (NCIC), the Interstate Identification Index, and the NICS Index; and

**WHEREAS**, on April 16, 2007, a man shot and killed 32 people at Virginia Tech with guns that were legally purchased because records of his mental health status were missing from the NICS; and

**WHEREAS**, on January 8, 2011, a man with a reported history of drug abuse and serious mental illness who should have been in the NICS database but was not, killed six people and injured 13 others, including U.S. Congresswoman Gabrielle Giffords; and

**WHEREAS**, on July 20, 2012, a man using a semi-automatic rifle and other guns allegedly shot and killed 12 people and injured at least 58 others in a movie theater in Aurora, Colorado, using some of the thousands of rounds of ammunition that the shooter had recently purchased online without any background check; and

**WHEREAS**, on October 21, 2012, a man using a semi-automatic handgun shot and killed his estranged wife and two others; and though a restraining order had been issued against the man – making him a prohibited person under federal law – he was able to avoid a background check by purchasing the gun from a private seller through armslist.com; and

**WHEREAS**, the shooter in the Sutherland Springs, Texas massacre should have been prevented from purchasing any firearm because of a domestic violence conviction and court-martial while in the United States Air Force. However, according to news reports, the Air Force did not provide the conviction to the FBI National Crime Information Center database; and

**WHEREAS**, these incidents exemplify the dangers of inadequate background checks prior to gun ownership and show the need for state and federal agencies to ensure that all records of serious mental illness and criminal history are reported in the NICS database; and

**WHEREAS**, in the wake of the Virginia Tech shootings, Virginia and other states have submitted hundreds of thousands of new mental health records into the NICS database, yet 19 states have each submitted fewer than 100 mental health records since that massacre; and

**WHEREAS**, under federal law, licensed gun dealers are mandated to conduct NICS checks before proceeding with a sale, but this requirement does not apply to so-called private or “unlicensed” sellers who are present in large numbers at gun shows and sell guns over the internet; and

**WHEREAS**, it is estimated that 6.6 million guns were sold privately in the U.S. between November 2011 and November 2012, and undercover investigations have shown that many private sellers at gun shows and online will proceed with sales even when they are made aware that prospective purchasers cannot pass a background check; and

**WHEREAS**, more than 12,000 Americans are murdered with guns every year, and too many of these crimes are committed by individuals who are barred from purchasing or possessing guns under federal law; and

**WHEREAS**, the Fix Gun Checks Act was introduced in the U.S. Congress, and this legislation would have addressed the two major flaws in the nation’s gun background check system by improving compliance with federal record reporting requirements, and by requiring background checks for all U.S. gun sales; however, it was read twice by the U.S. Senate and referred to the Committee on the Judiciary, where it stalled; and

**WHEREAS**, 90 percent of Americans and 90 percent of gun owners support fixing gaps in the gun background check database, and 86 percent of Americans, 82 percent of gun owners nationwide, and 74 percent of National Rifle Association (“NRA”) members support mandatory criminal background checks for all gun sales; and

**WHEREAS**, the City of Delray Beach strongly believes that Congress and state governments should take action to close deadly gaps in the NICS database; and

**WHEREAS**, results of a poll conducted in May 2012, published on the Giffords Law Center To Prevent Gun Violence’s website, show that 96% of respondents support a background check on anyone attempting to purchase a gun in order to determine whether the prospective buyer has been convicted of a felony, and 74% of National Rifle Association (“NRA”) members and 87% of non-NRA gun owners support requiring criminal background checks of anyone purchasing a gun; and

**WHEREAS**, more than 50 national organizations support closing gaps in the gun background check database and requiring a background check for all gun sales, including the U.S. Conference of Mayors, National Urban League, National Association for the Advancement of Colored People, and the National Coalition Against Domestic Violence, the International Association of Chiefs of Police, the Major Cities Chiefs Association and the Police Executive Research Forum; and

**WHEREAS**, like many mass shooters, the 19-year old suspected of shooting and killing at least 17 people and injuring 14 others at Marjory Stoneman Douglas high school in Parkland displayed warning signs prior to the shooting. He was expelled from school, and students and teachers reported that he displayed threatening behavior. His mother contacted law enforcement on multiple occasions regarding his behavior, and he was known to possess firearms.

**WHEREAS**, Florida does not have a law that empowers family members and law enforcement to seek a court order temporarily restricting a person's access to guns when they pose a danger to self or others; and,

**WHEREAS**, according to the Giffords Law Center on Gun Violence, 38 out of the 62 mass shooters in the last 20 years were reported as displaying signs of dangerous mental health problems prior to the killings. In many of these shootings, people who knew the shooter observed these signs, but federal and state laws provided no clear legal process to restrict his or her access to guns, even temporarily; and,

**WHEREAS**, presently, five states have enacted "Red Flag Laws", allowing law enforcement officers and family or household members to petition a court for an Extreme Risk Protection Order (also known as a Gun Violence Restraining Order) to keep guns away from a dangerous person in the throes of a crisis. Bills calling for Red Flag Laws are currently pending in 18 states, including Florida; and

**WHEREAS**, currently pending in the Florida Legislature is House Bill 231/Senate Bill 530 which would implement a Red Flag Law, and had these bills been passed and signed into law earlier, there is a high likelihood the Parkland massacre would have been averted and those loved ones saved; and

**WHEREAS**, laws imposing minimum age requirements for the possession and purchase of firearms are intended to decrease access to firearms by young people and, correspondingly, to decrease the number of suicides, homicides, and unintentional shootings among that population; and

**WHEREAS**, "firearm injuries are a leading cause of death among U.S. children aged one (1) to seventeen (17) years [old] and contribute substantially each year to premature death, illness and disability of children," said representative for the U.S. Centers for Disease Control and Prevention (CDC) in Atlanta, Katherine Fowler, who led a 13-year study on firearm injuries in children; and

**WHEREAS**, Dr. Eliot Nelson, author of an accompanying editorial and a researcher at the University of Vermont Children's Hospital in Burlington, Vermont, stated, "If kids didn't have guns, the impulse to kill themselves [or others] might pass before they acted on it. Too many people assume that if [youngsters] didn't have a gun they'd use something else, but the quick lethality of guns makes them especially dangerous for an impulsive teen whose moment of crisis might pass with a little time."; and

**WHEREAS**, according the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Federal Gun Control Act (GCA) permits shotguns and rifles, commonly referred to as long guns, and ammunition for shotguns or rifles to be sold to individuals 18 years of age or older, while all other firearms and ammunition may be sold to individuals 21 years of age or older; and

**WHEREAS**, under Florida law, the purchase of a long gun is allowed for a person under 21 years of age; and

**WHEREAS**, in order to restrict such purchase and/or possession of long guns, high-capacity magazines, and ammunition, the Florida legislature would need to amend Sections 790.17, 790.18, and 790.22, Fla. Stat.; and

**WHEREAS**, in 1987, the Florida Legislature passed Chapter 87-23, Laws of Florida, which created Florida Statutes section 790.33 and declared the preemption of the whole field of regulation of firearms and ammunition, reserving the exclusive right to regulate and/or enforce any laws involving firearms and ammunition to the Florida Legislature and the State of Florida; and

**WHEREAS**, in 2011, the Florida Legislature passed and Governor Scott signed Chapter 2011-109, Laws of Florida to allow the Governor to remove from office, without due process of law, any person acting in an official capacity for a local authority, including an elected official, who passes an ordinance or causes to be enforced a local ordinance, administrative rule or regulation impinging on the exclusive authority of Florida legislature to regulate firearms and ammunition in all respects; and

**WHEREAS**, the 2011 Amendment to Florida Statutes section 790.33 provides for personal liability of any person who enacts or causes to be enforced any local ordinance impinging upon the Legislature's occupation of the whole field of regulation of firearms and ammunition; and

**WHEREAS**, the 2011 Amendment to Florida Statutes section 790.33 also provides that if a Court finds a willful or knowing violation of the prohibition on the ability of local government to regulate or enforce firearms or ammunition in any regard, the Court may impose a personal fine of up to \$5,000 on the elected or appointed local government official(s) or administrative agency head and cause the county, agency, municipality, district or other entity to reimburse the legal cost of those who sue to overturn the ordinance, rule, regulation and/or enforcement effort and to pay their actual damages; and

**WHEREAS**, pursuant to Florida Statutes section 790.33, local communities appear powerless to enumerate elements of the standard of care which should be met to protect the community; and

**WHEREAS**, the City Commission of the City of Delray Beach urgently requests the Governor and Legislature of the State of Florida to address this deficit in law by enacting legislation that would allow municipalities the ability to address these public health, safety and welfare items by enacting local legislation without fear of removal from office, in accordance with the unique local characteristics of a community and with due respect to the risk to public; and

**WHEREAS**, the State should not infringe on local government's duty to protect its residents, visitors, tourists and businesses; and

**WHEREAS**, the mission of this Resolution is to encourage discussions that promote the passage of comprehensive laws, both state and federal, to address the growing concerns associated with gun violence in the United States, in the hope that the City of Delray Beach, as well as neighboring communities and communities across the nation, will become a safer place to live, work, and play.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:**

**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.** That the City Commission urges immediate passage of legislation that would outright ban assault weapons, including but not limited to semi-automatic rifles, semi-automatic shotguns, and semi-automatic pistols; automatic weapons; military-style weapons, and high-capacity magazines. Said legislation shall not limit the ban to certain model names or manufacturers, but must define prohibited weapons and devices based on the generic features that characterize such weapons. Any ban must also extend to parts that may be readily assembled into a prohibited weapon. Such legislation is necessary in order to keep those types of weapons away from our government/community centers, parks, and especially our schools.

**Section 3.** That the City Commission supports federal and state legislation that would require universal background checks for every firearm sale. The background check process must include an extensive search of all relevant mental health records and criminal history records, including juvenile and delinquency records, warrants and protective order information. Importantly, background checks of mental health records must be performed in conjunction with (and not independent of) checks of criminal history. In addition, the City Commission supports legislation that requires the applicant seeking to purchase a firearm to authorize disclosure of relevant mental health files, including files related to drug and alcohol abuse. Finally, the City Commission urges legislation that requires all mental health information and all criminal history records to be reported to federal and state databases.

**Section 4.** That the City Commission supports legislation similar to that adopted by California, Colorado, Delaware, Nevada, New York, Oregon, and Washington that requires all firearm transfers to be conducted by or processed through licensed dealers, who conduct background checks on prospective firearm purchasers or recipients, thus closing any loopholes that allow private unlicensed sellers to circumvent the background check requirements.

**Section 5.** That the City Commission urges the Florida legislature to immediately pass House Bill 231/ Senate Bill 530, popularly described as a “Red Flag Law,” to protect our community from those who are identifiable as a threat to safety and security.

**Section 6.** That the City Commission urges immediate amendment to Florida law and/or Federal law to make it unlawful for both licensed firearms dealers and private unlicensed sellers to sell, deliver, or otherwise transfer any gun, including but not limited to long guns (rifles and shotguns), pistols, ammunition, or high capacity magazines to persons under twenty-one (21) years of age.

**Section 7.** That the City Commission urges the Florida legislature to repeal the draconian punishments of elected officials set forth in Florida Statutes section 790.33.

**Section 8.** That the City Commission of the City of Delray Beach hereby directs the City Clerk to send a copy of this Resolution to Governor Rick Scott, Florida President of the Senate Joe Negron, Florida Speaker of the House Richard Corcoran, U.S. President Donald Trump; U.S. Senate President Paul Ryan, the Florida Delegation, U.S. Senator Bill Nelson; U.S. Senator Marco Rubio, and Congresswoman Lois Frankel

**Section 9.** If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

**Section 10.** This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED in regular session on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form and legal sufficiency:

\_\_\_\_\_  
R. Max Lohman, City Attorney