



Florida Carry

225 E. Church St. • Jacksonville, FL 32202

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Sent via email

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Written Notice of Preemption Violation and Offer of Settlement

Florida Carry has been made aware that the City of Okeechobee has adopted, and enforces, illegal Ordinance 1297 in direct violation of Florida Statutes and Article I, Section 8(a) of the Florida Constitution¹.

The legislature's primacy in [the regulation of arms] derives directly from the Florida Constitution. Article I, Section 8(a), of the Florida Constitution provides: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

The phrase "by law" indicates that the regulation of the state right to keep and bear arms is assigned to the legislature and must be enacted by statute.

Fla. Carry v. UNF, 133 So. 3d 966, 972 (Fla. 1st DCA 2013) (en banc)

Any local measure directed at the public regulating the possession or use of a defensive firearm, ammunition, or other classes of bearable arms, or sale of the same, is in violation of the constitutional preemption of the right to keep and bear arms. Additionally, such measures constitute a violation of the express field preemptions set forth in §790.06 and §790.33, Fla. Stat. These express preemptions of the field of weapons, firearms, and ammunition are longstanding and clearly established.

¹ A municipal ordinance regulating "the manner of bearing arms," of course, is not a "law" within the meaning of s. 8, Art. I, State Const. The Legislature in enacting Ch. 790, F.S., in the exercise of its police power has determined to regulate the carrying of concealed weapons and concealed firearms or "the manner of bearing arms." No duty or power in that regard has been duly delegated to municipalities.
Op. Att'y Gen. Fla. 84-39 (1984)

A local government cannot forbid what the Legislature has expressly licensed, authorized, or required, nor may it authorize what the Legislature has expressly forbidden. *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972). Express preemption, not surprisingly, occurs when "a statutory provision stating that a particular subject is preempted by state law or that local ordinances on a particular subject are precluded." *Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014). *Classy Cycles, Inc. v. Bay Cty.*, 201 So. 3d 779, 784 (Fla. 1st DCA 2016)

Chapter 166, Florida Statutes (1989), implements article VIII, section 2(b) by permitting municipalities to exercise any power for municipal purposes except when expressly prohibited by law. *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764, 766 (Fla. 1974). Section 166.021(3)(c) expressly excludes from municipalities' powers "any subject expressly preempted to state or county government by the constitution or by general law." *Thomas v. State*, 614 So. 2d 468, 472 (Fla. 1993)

[T]o engage in conduct that is prohibited by statute is not a discretionary function. As the First District concluded below, "[g]overnment function immunity does not shield entities that act contrary to or more restrictively than state law in the completely preempted field of firearm and ammunition regulation." *City of Weston*, 316 So. 3d at 404. *Fried v. State*, 355 So. 3d 899, 910 (Fla. 2023).

As a Florida registered non-profit membership organization representing the interests of defensive weapons and firearms owners who lawfully carry throughout the state, Florida Carry has the necessary standing to initiate legal action regarding this issue² to ensure compliance with state law and the cessation of these violations of fundamental civil rights. Millions of Floridians lawfully carry defensive firearms and weapons every day to protect themselves and their families. We will see to it that they do not face a patchwork of regulations which are impossible for them to keep up with as they traverse our great state.

The City of Okeechobee recently passed Ordinance 1297 on September 26, 2024. This ordinance was illegally passed without any legal basis. It was passed for the purpose of depriving Okeechobee citizens and neighbors of their constitutional right to purchase or possess firearms and ammunition, and violates Sec. 790.33, Fla. Stat. See, *Broward County v. Fla. Carry, Inc.*, 313 So. 3d 635 (Fla. 4th DCA 2021). Any individual who voted for this tyrannical law is potentially liable. *Id.* And *Fried v. State*, 355 So. 3d 899, 910 (Fla. 2023).

² *Broward Cty. v. Fla. Carry, Inc.*, 313 So. 3d 635, 642 (Fla. 4th DCA 2021)
Pretzer v. Swearingen, 49 Fla. L. Weekly D1541 (Fla. 1st DCA 2024) (en banc)

Pursuant to § 57.112, Fla. Stat., you are hereby notified that Ordinance 1297 is expressly preempted by § 790.33, § 790.06(15), Fla. Stat., and/or Art. 1 Sec. 8 Fla. Const. You have thirty (30) days from the date of this letter to repeal this ordinance. Compliance with this demand does not avoid your liability pursuant to Sec. 790.33, Fla. Stat.

The ordinance was allegedly passed pursuant to Secs. 870.042 and 870.043, Fla. Stat. Those statutes only apply to

that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof

Sec. 870.043, Fla. Stat.

To my knowledge there were no violent acts, defiance of lawful authority, or any other of these required elements prior to the declaration of emergency to justify its passage. The denial of a constitutional right cannot stand on conjecture. *R.C. v. FDACS.*, 323 So. 3d 275, 280 (Fla. 1st DCA 2021) (en banc).

The ordinance purports to rely on the State of Florida's Executive Order 24-208. That executive order is entirely based on Chapter 252, Fla. Stat., and does not mention or invoke the firearm provisions of Chapter 870, Fla. Stat., as the City's ordinance does, because the Chapter 870 elements do not exist.

It is clear from this ordinance that the sole purpose of invoking this section was to deny citizens the right to purchase and possess firearms and ammunition in direct contravention of state law and the constitutional rights of individuals wishing to purchase and possess firearms and ammunition for defense of themselves and the State.

The Governor's Chapter 252 declaration does not assert any acts of violence or resistance of lawful authority to have occurred nor did the State limit or restrict the ability to purchase firearms or ammunition in its Declaration. Chapter 252, which

governs emergency declarations related to natural disasters, limits to the Governor and the Division of Emergency Management the authority to suspend firearm sales. It does not authorize any declaration by local government except as specified by the Governor's order.

Chapter 870 your ordinance's basis only applies to riots and affrays, which has not occurred. Your city chose to use Chapter 870 because it did not possess the authority to act under Chapter 252.

Be aware that should litigation be necessary to resolve this matter, Sec. 790.33, includes individual liability, personally payable, by the elected or appointed agency heads under whose jurisdiction the knowing and willful violation of preemption occurred. In this case that would include Chief Hagan and each city council member who voted for this legislation.

Florida Carry, Inc., hereby demands payment of \$30,000 in damages and attorneys' fees to resolve this matter prior to initiation of litigation. The City must also commit in any release and settlement agreement, to not utilize Chapter 870 as a basis for an emergency declaration in response to future natural disasters, unless the elements of Sec. 870.043, are met and specifically factually asserted. The city must also agree to not terminate the right and ability of law-abiding citizens to purchase firearms and ammunition in the future under Chapter 870. See, *Bateman v. Perdue*, 881 F.Supp.2d 709 (E.D. N.C. 2012)

Please let me know within ten days if you would like to resolve this matter without the need for litigation.

Sincerely,

/s/ Eric J. Friday

Eric J. Friday | General Counsel

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**FLORIDA
CARRY**

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