

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

A. B., an individual and  
FLORIDA CARRY, INC.,  
a Florida non-profit corporation  
Plaintiff,

CASE NO: 2013-31317-CICI  
DIV:

v.

CITY OF DAYTONA BEACH, FLORIDA;  
DERRICK L. HENRY, an individual, and  
MICHAEL CHITWOOD, an individual,  
Defendants.

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**PLAINTIFFS' MOTION TO STRIKE AFFIRMATIVE DEFENSES**

COMES NOW, Plaintiffs A.B. and Florida Carry, Inc., by and through their undersigned counsel and file this PLAINTIFFS' MOTION TO STRIKE AFFIRMATIVE DEFENSES and as grounds therefore states:

1. Defendant City of Daytona Beach, Florida ("CITY") filed an Answer that included affirmative defenses.
2. Florida is a fact pleading state, and requires that ultimate facts in support of the legal theory be pled, in any pleading setting forth a claim for relief. *S. Fla. Coastal Elec., Inc. v. Treasures on the Bay II Condo Ass'n*, 89 So. 3d 264, 267 (Fla.3d DCA 2012).
3. Defendant CITY's Affirmative Defenses 1 through 5 fail to set forth any facts to show that CITY is entitled to rely on the affirmative defenses claimed, or has any factual basis for the listed affirmative defenses.
4. Paragraph 6 fails to state what actions CITY took that allegedly did not violate

Sec. 790.33, Fla.Stat., and is legally insufficient.

5. Defendant CITY claims in Paragraph 7 that its “ordinances, regulations, measures, directives, rules, enactments, orders, and policies are consistent with the requirements of Sec. 790.33, Fla. Stat.”, in effect admitting that it has such “ordinances, regulations, measures, directives, rules, enactments, orders, and policies.”

6. Because Sec. 790.33, Fla. Stat. prohibits CITY from “enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation” of the field of firearms, the only way for affirmative defense 7 to have any validity is if the CITY alleges that it has no “ordinances, regulations, measures, directives, rules, enactments, orders, and policies” concerning firearms, a claim the CITY has not made, and has in fact contradicted.

7. Any “local ordinance or administrative rule or regulation impinging upon such exclusive occupation” of the field of firearms is *per se*, a violation of the terms of Sec. 790.33, Fla. Stat., unless it relates to zoning of firearm businesses, use by police officers of issued firearms, or possession of firearms by employees of CITY while on duty, and is not a valid affirmative defense, as none of those exceptions are pled or applicable in this case.

WHEREFORE, Plaintiffs move that the Court strike CITY’s affirmative defenses.

