

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND  
FOR ALACHUA COUNTY, FLORIDA**

**CASE NO.:**

**DIVISION:**

**FLORIDA CARRY, INC.,  
a Florida Not-For-Profit  
Corporation**

Plaintiffs,

**vs.**

**CITY OF GAINESVILLE, FLORIDA,  
a Political Subdivision of the State of Florida; and  
ANTHONY LYONS, City Manager of the City of  
Gainesville,**

Defendants.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW, Florida Carry, Inc., Plaintiff herein, and sues the city of Gainesville, Florida and Anthony Lyons in his official capacity as city manager and states:

1. This is an action for declaratory and injunctive relief.

2. On October 16, 2017 at 4:00 pm the City of Gainesville issued an order prohibiting certain items in the City of Gainesville (Downtown Area)

3. The order prohibited weapons as defined by Section 790.001(13) Florida Statutes, as well as clubs within a designated area of downtown Gainesville.

4. The order was signed by Defendant Anthony Lyons in his official capacity as the City Manager of the City of Gainesville.

5. The order states specifically:

- a. "...in accordance with the emergency power vested in the City Manager pursuant to Executive Order No. 17-4, it is hereby ordered that, effective Wednesday, October 18, 2017, at 4:00 p.m. until Wednesday, October 18, 2017, at 11:30 p.m., the intentional possession outdoors in a public place of weapons (as defined by Section 790.001(13), Florida Statutes); shields, clubs, are prohibited in the Downtown area of the city...within the following boundary description:

North: NE 2<sup>nd</sup> Avenue  
East: NE 3<sup>rd</sup> Street  
South: SE 2<sup>nd</sup> Avenue  
West: Main Street"

- b. "Any person violating this Executive Order issued pursuant to the Declaration of Emergency, or any person who willfully fails or

refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the enforcement of such executive order shall, upon conviction therefore, be punished as provided by law. Violation of any “order or rule” imposed in an emergency situation is a second degree misdemeanor per Section 252.50 Florida Statutes.”

(Ex. A).

6. Defendants subsequently the order as follows:

- a. The effective dates of the order are Thursday, October 19, 2017 from 7:00 a.m. to Thursday, October 19, 2017, at 9:00 p.m.
- b. The prohibited items now include “tasers, knives, sharp objects, and sticks” and “mace” also known as a self-defense chemical spray.
- c. The designated area was amended to read:

North: Radio Road

East: The curb and/or sidewalk bordering the East side of SW 34<sup>th</sup> Street

South: SW 20<sup>th</sup> Avenue

West: An imaginary line beginning at the western boundary of the Campus USA Credit Union on SW 20<sup>th</sup> Avenue, going north to SW 35<sup>th</sup> Street and continuing up to a line extending west to Radio Road. The parking areas on the north and south sides of Hull Road between SW 34<sup>th</sup> Street and SW 37<sup>th</sup> Street are to be included in this boundary.

(Ex. B).

7. Defendants know, or should know, that they are without authority to regulate the bearing of arms, as only the Legislature may regulate the bearing of arms pursuant to Art. I, Sec. 8, Fla. Const. See, *Florida Carry, Inc. v. Univ. of N. Fla.*, 133 So. 3d 966, 972 (Fla. 1<sup>st</sup> DCA 2013).

8. Defendants know, or should know, that they are without authority to regulate possession of weapons by persons licensed under Section 790.06 Florida Statutes to carry concealed firearms or weapons, as the Legislature has chosen to preempt any regulation by local government regulating the bearing of arms by persons with a concealed carry license. Sec. 790.06(15).

9. Section 790.06 (15) Florida Statutes expressly preempts local governments from regulating both firearms and weapons defined by Section 790.001(13) possessed by licensees.

10. The declaration of a state of emergency by Governor Scott under Executive Order 17-264 states:

“In accordance with section 252.38, Florida Statutes, each political subdivision within the State of Florida may waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

- 1) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
- 2) Entering into contracts;
- 3) Incurring obligations;

- 4) Employment of permanent and temporary workers;
- 5) Utilization of volunteer workers;
- 6) Rental of equipment;
- 7) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and,
- 8) Appropriation and expenditure of public funds.”

11. Pursuant to Section 252.36(5)(h) Florida Statutes, only the Governor has the authority under this Chapter to “Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. However, nothing contained in ss. 252.31-252.90 shall be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act.” The Governor has not exercised this option.

12. Defendants have without authorization invoked Chapter 870 Florida Statutes in the order. Per Section 870.041 Florida Statutes - Preservation of the public peace by local authority:

“In the event of overt acts of violence, or the imminent threat of such violence, within a county or municipality and the Governor has not declared a state of emergency to exist, local officers shall be empowered to declare such a state of emergency exists in accordance with the provisions of ss. 870.041-870.048.”

As Governor Scott has in fact declared a state of emergency, Defendants are without authority to invoke any provision in Chapter 870 Florida Statutes, and are limited to those provisions authorized by Section 252.38 Florida Statutes.

13. Defendants have without authority prohibited lawful possession of knives and sticks (billies), self defense chemical spray (mace), purses and other bags where many CWFL licensees carry their lawfully concealed firearms and weapons,

14. No distinction is made in the executive order between the lawful open carry of certain defensive arms or the lawful concealing of such arms by holders of a Florida Concealed Weapons or Firearms License (CWFL), despite those items falling under the definition of “weapons” per Section 790.001(13).

15. Defendants have attempted to avoid the effect of Sec. 790.33 and its damages and attorney’s fees provisions, by not including firearms in their list of prohibitions, instead merely stating that weapons.

16. The initial executive order defined weapons as only those defined by Sec. 790.001(13). (Ex. A).

17. The subsequent executive order did not limit the definition to weapons as defined in Sec, 790.001(13), and included additional items. (Ex. B).

18. Defendants have without authority prohibited possession by any person of purely defensive weapons, i.e. tasers, in contradiction to the U.S.

Supreme Court's holding per curiam in *Caetano v. Massachusetts*, No. 14-10078 (2016).

19. Plaintiff has numerous members who live in, work in, travel through, or visit the City of Gainesville. The Order chills the members' ability to exercise their constitutional right under Art. I, Sec. 8 of the Florida Constitution and the Second Amendment to the Constitution of the United States of America by threatening criminal penalties.

20. The prohibited area includes a bank and ATM as well as a parking lot owned and operated by the Gainesville Regional Transit System, which is prohibited by law from prohibiting firearms on its premises. See, Sec. 790.33, Fla. Stat. and *Wis. Carry, Inc. v. City of Madison*, 2017 WI 19 (Wis. 2017)(noting that Wisconsin's preemption statute is similar to Florida's and prohibits cities and their created transit authorities from regulating firearms.

21. The prohibited area also includes public streets and sidewalks where citizens are allowed to travel and gather.

22. Unless the Defendants herein are enjoined by this Court, Plaintiffs will suffer immediate and irreparable injury, loss, and damage via the forfeiture of a constitutional right under threat of arrest.

23. Persons deterred from exercising their Second Amendment right to possess defensive weapons for protection suffer an irreparable harm that cannot be compensated by damages. *Ezell v. City of Chicago*, 651 F 3d. 684, 699.

24. Plaintiffs have no adequate remedy at law.

25. The harm, if any, that would result to Defendants if this injunction is granted would be relatively insignificant compared to the immediate and irreparable injury, loss, and damage that Plaintiff would suffer in the event that this injunction is not granted.

26. As the provisions of the Order are currently enforced, the Plaintiff will suffer immediate and irreparable injury, loss, or damage prior to the Defendants having an opportunity to be heard in this matter

27. Plaintiff requests that a temporary injunction be issued without notice to the Defendants.

28. The Defendants have attempted to evade review by the Court by initially issuing an order that for one day impaired the rights of Plaintiff's member by having the initial order run from October 8, 2017 at 4:00 pm until 11:30 p.m, so that by the time Plaintiff learned of the order it had expired.

29. Plaintiff is unaware when the order was amended but learned at 12:53 pm on October 19, 2017 that the order had been amended to include from 7:00 am until October 19, 2017 at 9:00 pm.



30. Plaintiffs are unaware whether the executive order might be further extended.

31. Upon information and belief, the Defendants are attempting to evade review by issuing limited time period orders so that any action filed will always evade review.

32. The events that prompted the executive order, a speech by an alt-right speaker, are likely to recur as the speaker has successfully challenged an attempt by the University of Florida to block his speech and is expected to continue to seek speaking locations, which will likely include other locations in Florida.

33. Defendants' ban on possession of defensive weapons in the designated area flies in the face of *Bateman v. Perdue*, 881 F. Supp. 2d 709 (E.D. N.C. 2012), in which the court held a similar North Carolina law banning possession of self-defense weapons during a state of emergency unconstitutional. ("...the statutes here excessively intrude upon plaintiffs' Second Amendment rights by effectively banning them (and the public at large) from engaging in conduct that is at the very core of the Second Amendment at a time when the need for self-defense may be at its very greatest. See *Heller*, 128 S.Ct. at 2799.")

34. Plaintiff began attempting to contact counsel for Defendants at approximately 8:05 am on October 19, 2017 in an effort to avoid the need for this injunction.

35. Plaintiff received a call to their counsel at 2:24 pm, on the 19th from Assistant City Attorney Daniel Lee, who was informed of the necessity of this motion should the city fail to rescind the emergency order immediately.

36. As of the filing of this motion, not notice has been provided to the undersigned that the city will rescind its executive order.

37. Citizens should not have their fundamental right to bear arms limited because they must transit the area affected by the Defendants' executive order.

38. Defendants are without statutory or other legal authority to regulate the bearing of arms by law abiding citizens.

WHEREFORE, Plaintiff respectfully requests that this Court permanently enjoin Defendants from attempting to regulate firearms in any manner through the use of city declarations, or other emergency powers and issue a declaratory judgment that Defendants' actions as described herein are in violation of Art. I, Sec. 8, Fla. Const. and Chapter 790, Fla. Stat. Plaintiff further requests an award of all attorneys fees and costs for bringing this action.

STATE OF FLORIDA  
COUNTY OF LEE

I, Richard A. Nascak do hereby swear or affirm that the foregoing facts are true and correct to the best of my knowledge, information and belief.

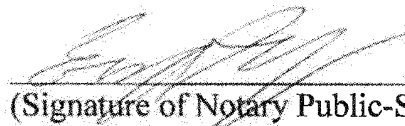


Richard A. Nascak

Sworn to (or affirmed) and subscribed before me this 19th day of Oct, 2017.



(NOTARY SEAL)



(Signature of Notary Public-State of Florida)

(Name of Notary Typed, Printed, or Stamped)

Personally Known x

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served to Defendants by eservice this 19<sup>th</sup> day of October, 2017 to:

Lee Libby, Esq.  
Assistant City Attorney, City of Gainesville  
libbylc@cityofgainesville

**KINGRY & FRIDAY**

/s/ Eric J. Friday  
Eric J. Friday, Esquire  
Florida Bar Number: 0797901  
118 W. Adams St., STE 320  
Jacksonville, Florida 32202  
Phone: (904) 722-3333  
Attorney for Plaintiffs  
Service@ericfriday.com  
efriday@ericfriday.com

# EXHIBIT A

**PROHIBITED ITEMS ORDER IN THE CITY OF GAINESVILLE  
(Downtown Area)**

WHEREAS, a declaration of local emergency was declared on the 16th day of October, 2017, pursuant to section 2.08, Charter Laws, City of Gainesville in Executive Order No. 17-4, due to the potential for civil unrest in response to the Richard Spencer event held at the University of Florida;

WHEREAS, Executive Order 17-4 authorized that the City Manager is designated and authorized to take any and all action under the current version of the City of Gainesville City Emergency Operations Plan or allowed pursuant to Chapters 252 and 870, Florida Statutes, necessary for the protection and preservation of the health, welfare and safety of the people and property (both public and private) within the City of Gainesville, Florida, including, the right to enter onto public and private property for such purposes; and

WHEREAS the City Manager, after discussions with the Chief of Police, Emergency Operations Commander, Chief of the Gainesville Fire Rescue and the City Attorney, finds that prohibiting the intentional possession outdoors in a public place of weapons (as defined by Section 790.001(13), Florida Statutes); shields; bats and clubs from the designated area is reasonably necessary to protect and preserve the health, safety and welfare of the persons and property within the City.

NOW, THEREFORE, in accordance with the emergency power vested in the City Manager pursuant to Executive Order No. 17-4, it is hereby ordered that, effective Wednesday, October 18, 2017 at 4:00 p.m. until Wednesday, October 18, 2017 at 11:30 p.m., the intentional possession outdoors in a public place of weapons (as defined by Section 790.001(13), Florida Statutes); shields; bats and clubs are prohibited in the Downtown area of the city shown on the attached map within the following boundary description:

**North:** NE 2<sup>nd</sup> Avenue  
**East:** NE 3<sup>rd</sup> Street  
**South:** SE 2<sup>nd</sup> Avenue  
**West:** Main Street

Any person violating this Executive Order issued pursuant to the Declaration of Emergency, or any person who willfully fails or refuses to comply with the order or orders of

any duly authorized law enforcement officer or personnel charged with the responsibility of the enforcement of such executive order shall, upon conviction therefore, be punished as provided by law. Violation of "any order or rule" imposed in an emergency situation is a second-degree misdemeanor per Section 252.50, Florida Statutes.

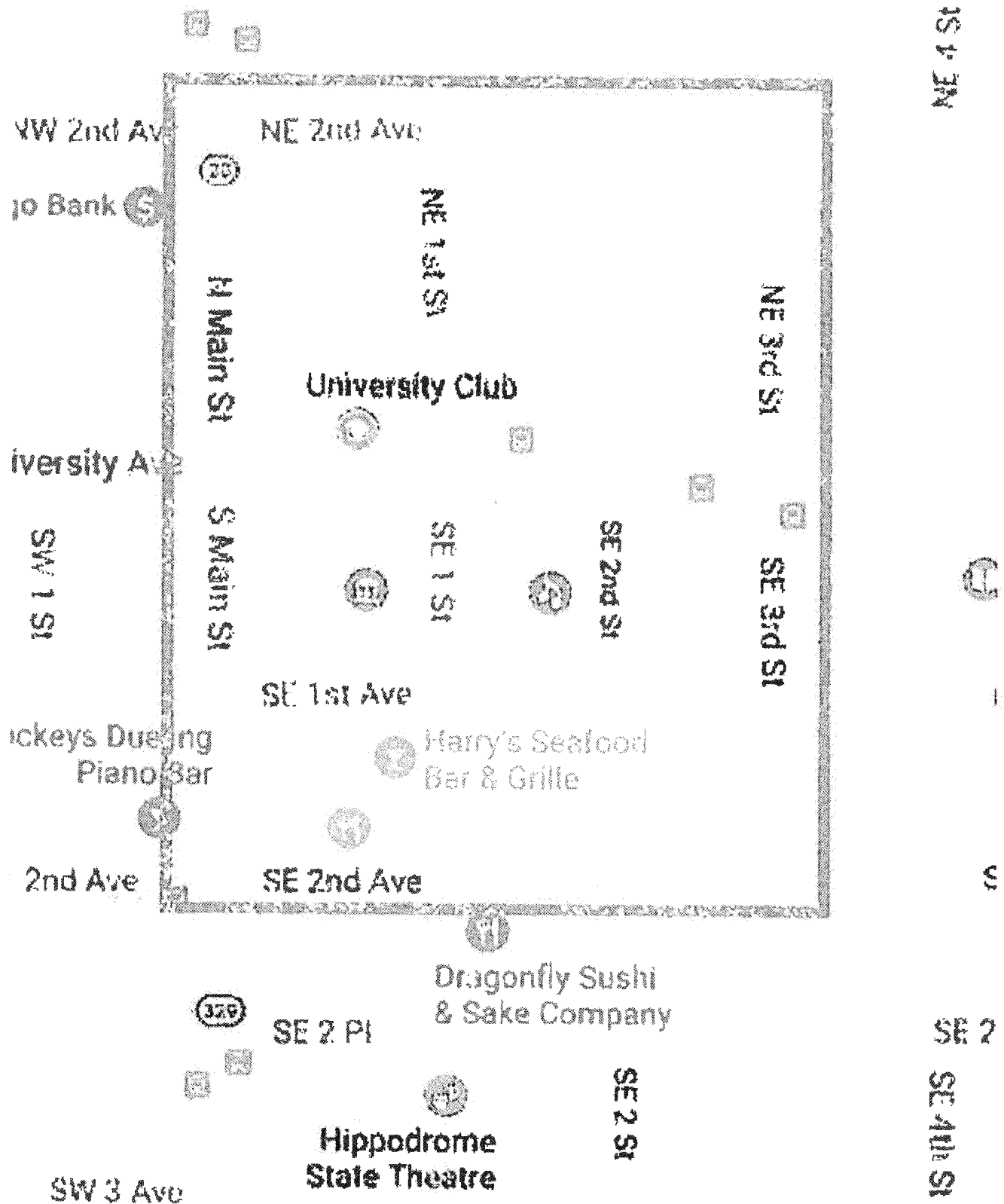
DONE and ORDERED this 16th day of October, 2017, at 4 p.m..

CITY OF GAINESVILLE, FLORIDA

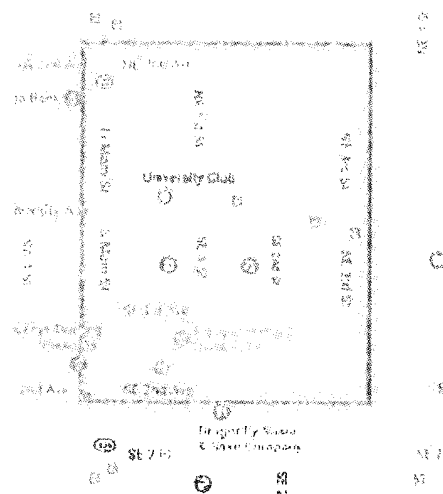
By: 

Anthony Lyons  
City Manager

# Downtown Gainesville







# EXHIBIT B

**PROHIBITED ITEMS ORDER IN THE CITY OF GAINESVILLE  
(UF Event Area)**

**WHEREAS**, a declaration of local emergency was declared on the 16th day of October, 2017, pursuant to section 2.08, Charter Laws, City of Gainesville in Executive Order No. 17- 4, due to the potential for civil unrest in response to the Richard Spencer event held at the University of Florida;

**WHEREAS**, Executive Order 17- 4 authorized that the City Manager is designated and authorized to take any and all action under the current version of the City of Gainesville City Emergency Operations Plan or allowed pursuant to Chapters 252 and 870, Florida Statutes, necessary for the protection and preservation of the health, welfare and safety of the people and property (both public and private) within the City of Gainesville, Florida, including, the right to enter onto public and private property for such purposes; and

**WHEREAS** the City Manager, after discussions with the Chief of Police, Emergency Operations Commander, Chief of the Gainesville Fire Rescue and the City Attorney, finds that prohibiting the below listed items from the designated area described below is reasonably necessary to protect and preserve the health, safety and welfare of the persons and property within the City.

**NOW, THEREFORE**, in accordance with the emergency power vested in the City Manager pursuant to Executive Order No. 17- 4, it is hereby ordered that, effective Thursday, October 19, 2017 at 7:00 a.m. until Thursday, October 19, 2017 at 9:00 p.m., the intentional possession outdoors in a public place of:

- Weapons, tasers, knives, sharp objects
- Lighters, matches, torches or open flame
- Any athletic equipment or other items which could be used as a weapon
- Masks of any kind, goggles, bandanas/scarfs, neck gaiters
- Flag Poles, bats, clubs, sticks (including sticks on signs)
- Aerosol/pressurized cans, mace
- Chains, padlocks, bicycle locks
- Shields
- Fireworks
- Backpacks, bags, purses, clutches
- Signs made of anything other than cloth, paper, foam core, cardboard
- Cans, metal or glass containers, premixed beverages or alcoholic beverages

- No water bottles of any kind
- Pop-up tents, canopies or hammocks
- Wagons or pull carts
- Coolers
- Pets (excluding ADA service animals)
- Grills, propane tanks
- Bicycles, scooters, skateboards
- Umbrellas
- Laser pointers
- Water balloons
- Megaphones or other amplified sound devices

are prohibited in the area of the city indicated on the attached map and within the following boundary description:

**North:** Radio Road;

**East:** The curb and/or sidewalk bordering the East side of SW 34<sup>th</sup> Street;

**South:** SW 20<sup>th</sup> Avenue

**West:** An imaginary line beginning at the western boundary of the Campus USA Credit Union on SW 20<sup>th</sup> Avenue, going North to SW 35<sup>th</sup> Street and continuing up to a line extending west from Radio Road. The parking areas on the north and south sides of Hull Road between SW 34<sup>th</sup> Street and SW 37<sup>th</sup> Street are to be included in this boundary.

Any person violating this Executive Order issued pursuant to the Declaration of Emergency, or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility of the enforcement of such executive order shall, upon conviction therefore, be punished as provided by law. Violation of "any order or rule" imposed in an emergency situation is a second-degree misdemeanor per Section 252.50, Florida Statutes.

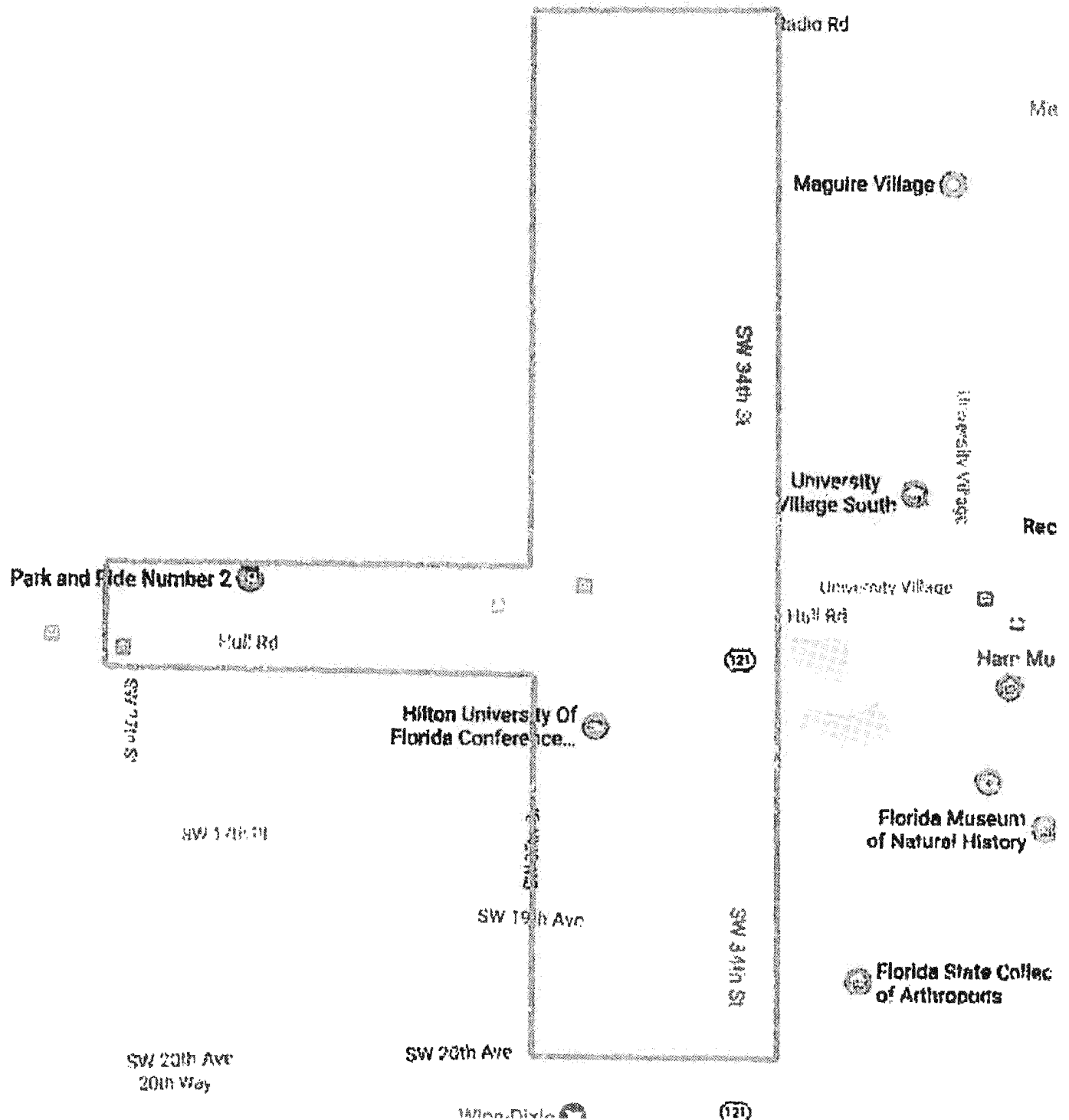
**DONE and ORDERED** this 18th day of October, 2017, at 09:00 <sup>AM</sup> ~~PM~~.

CITY OF GAINESVILLE, FLORIDA

By: 

Anthony Lyons  
City Manager

# University of Florida Event Area





## Gainesville Police Department

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Gainesville Police Department added 3 new photos.

2 hrs

### PROHIBITED ITEMS for UF Event Area:

Pursuant to local Emergency Declaration, the following items are hereby PROHIBITED until 9:00pm tonight in the area listed on the map:

Weapons, tasers, knives, sharp objects

Lighters, matches, torches or open flame

Any athletic equipment or items which could be used as a weapon

Masks of any kind, goggles, bandanas/scarfs, neck gaiters

Flag poles, bats, clubs, sticks (including sticks on signs)

Aerosol / pressurized cans, mace

Chains, padlocks, bicycle locks

Shields

Fireworks

Backpacks, bags, purses, clutches

Signs made of anything other than cloth, paper, foam core, cardboard

Cans, metal or glass containers, premixed beverages or alcoholic beverages

Water bottles of any kind

Pop-up tents, canopies or hammocks

Wagons or pull carts

Coolers

Pets (excluding ADA service animals)

Grills, propane tanks

Bicycles, scooters, skateboards

Umbrellas

Laser pointers

Water balloons

Megaphones or other amplified sound devices.

Violators will be subject to arrest.

### PROHIBITED ITEMS ORDER IN THE CITY OF GAINESVILLE (UF Event Area)

WHEREAS, a declaration of local emergency was declared on the 16th day of June, 2017, pursuant to section 2-06, Charter Laws, City of Gainesville in Executive Order 17-4, due to the potential for civil unrest in response to the Richard Spencer event in University of Florida.

WHEREAS, Executive Order 17-4 authorized that the City Manager is designated to take any and all action under the current version of the City of Gainesville Emergency Operations Plan or allowed pursuant to Chapters 252 and 270, Florida Statute for the protection and preservation of the health, welfare and safety of the people (both public and private) within the City of Gainesville, Florida, including, the removal of public and private property for such purposes; and

WHEREAS the City Manager, after discussions with the Chief of Police, Emergency Commanders, Chief of the Gainesville Fire Rescue and the City Attorney, find that the below listed items from the designated area described below is reasonably necessary to maintain and preserve the health, safety and welfare of the community and

The purpose of this order is to maintain the health, safety and welfare of the community and to prevent the use of force or violence in the City of Gainesville, Florida, during the event on June 17, 2017, at the University of Florida.

It is the order of the City Manager that the following items are prohibited in the designated area described below, from 6:00 PM to 9:00 PM, on June 17, 2017, at the University of Florida.

Any person violating this prohibition shall be subject to arrest by the Gainesville Police Department, or any other law enforcement agency, for violation of the ordinance. Any person violating this prohibition shall be subject to arrest by the Gainesville Police Department, or any other law enforcement agency, for violation of the ordinance.

CITY OF GAINESVILLE, FLORIDA

By: [Signature] City Manager