



City of North Miami Beach Interoffice Memorandum

CITY ATTORNEY'S OFFICE

Phone: (305) 948-2939

Fax: (305) 787-6004

TO: Charter Review Committee

FROM: Miriam Bensinger, Assistant City Attorney

DATE: June 26, 2008

RE: Request for List of Unnecessary and/or Revoked Provisions

Pursuant to the Charter Review Committee's request, I have reviewed the current Charter in light of Section 166.021(4) & (5), Florida Statutes, attached hereto for your reference.

The limitations on municipal powers that may be in a charter and remain unaffected by Section 166.02 are, basically, (1) creation of the municipality; (2) extra territorial powers (beyond municipality's jurisdictional limits); (3) terms of council and manner of their elections; (4) distribution of power among council members; (5) appointive boards; (6) change in form of government; (6) rights of municipal employees.

These are the issues that remain intact and in force unless they are revised at this time through the Charter Review process and subsequent referendum.

The provisions in the Charter that are covered by state (and/or County) law and are thus unnecessary include:

- (1) §§12-15 and §18 (Campaign Financing)
- (2) §21 (Municipal Powers)
- (3) §§49-51 (Authority and Method of Enacting Ordinances)
- (4) §30 Conflicts of Interest

The provisions in the Charter containing limitations on municipal powers that were effectively revoked by §166.021 include:

Memo to: Charter Review Committee
June 26, 2008
Page (2)

- (1) §62 - (Limitation on Number of Funds)
- (2) §62.1 - (Limitation on Maximum Unbudgeted Expenditure)
- (3) §64-67 - (Limitations on Bonding Authority)

The limitations are obsolete, in any case. The Committee does have the authority to recommend their re-enactment into the Charter in a more currently relevant and realistic form.

MB/mht

CHAPTER 166

MUNICIPALITIES

PART I GENERAL PROVISIONS (ss. 166.011-166.0497)

PART II MUNICIPAL BORROWING (ss. 166.101-166.141)

PART III MUNICIPAL FINANCE AND TAXATION (ss. 166.201-166.271)

PART IV EMINENT DOMAIN (ss. 166.401, 166.411)

PART I

GENERAL PROVISIONS

- 166.011 Short title.
 166.021 Powers.
 166.031 Charter amendments.
 166.032 Electors.
 166.033 Development permits.
 166.041 Procedures for adoption of ordinances and resolutions.
 166.0415 Enforcement by code inspectors; citations.
 166.04151 Affordable housing.
 166.042 Legislative intent.
 166.0425 Sign ordinances.
 166.043 Ordinances and rules imposing price controls; findings required; procedures.
 166.0435 Amateur radio antennas; construction in conformance with federal requirements.
 166.044 Ordinances relating to possession or sale of ammunition.
 166.0442 Criminal history record checks for certain municipal employees and appointees.
 166.0443 Certain local employment registration prohibited.
 166.0444 Employee assistance programs; public records exemption.
 166.0445 Family day care homes; local zoning regulation.
 166.045 Proposed purchase of real property by municipality; confidentiality of records; procedure.
 166.0451 Disposition of municipal property for affordable housing.
 166.047 Telecommunications services.
 166.048 Conservation of water; Xeriscape.
 166.0485 Establishment of neighborhood crime watch programs.
 166.049 Municipal law enforcement agencies; communications and assistance.
 166.0493 Powers, duties, and obligations of municipal law enforcement agencies.
 166.0495 Interlocal agreements to provide law enforcement services.
 166.0497 Alteration, amendment, or expansion of established downtown development district; procedures.

166.011 Short title.—This chapter shall be known and may be cited as the “Municipal Home Rule Powers Act.”

History.—s. 1, ch. 73-129.

166.021 Powers.—

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) “Municipal purpose” means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the constitution;

(c) Any subject expressly preempted to state or county government by the constitution or by general law; and

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or

existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances.

(6) The governing body of a municipality may require that any person within the municipality demonstrate the existence of some arrangement or contract by which such person will dispose of solid waste in a manner consistent with the ordinances of the county or municipality or state or federal law. For any person who will produce special wastes or biomedical waste, as the same may be defined by state or federal law or county or city ordinance, the municipality may require satisfactory proof of a contract or similar arrangement by which special or biomedical wastes will be collected by a qualified and duly licensed collector and disposed of in accordance with the laws of Florida or the Federal Government.

(7) Notwithstanding the prohibition against extra compensation set forth in s. 215.425, the governing body of a municipality may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.

(8) Entities that are funded wholly or in part by the municipality, at the discretion of the municipality, may be required by the municipality to conduct a performance audit paid for by the municipality. An entity shall not be considered as funded by the municipality by virtue of the fact that such entity utilizes the municipality to collect taxes, assessments, fees, or other revenue. If an independent special district receives municipal funds pursuant to a contract or interlocal agreement for the purposes of funding, in whole or in part, a discrete program of the district, only that program may be required by the municipality to undergo a performance audit.

(9)(a) The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other

activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

(d) Nothing contained in this subsection shall be construed as a limitation on the home rule powers granted by the State Constitution for municipalities.

(10)(a) As used in this subsection, the term:

1. "Authorized person" means a person:

a. Other than an officer or employee, as defined in this paragraph, whether elected or commissioned or not, who is authorized by a municipality or agency thereof to incur travel expenses in the performance of official duties;

b. Who is called upon by a municipality or agency thereof to contribute time and services as consultant or advisor; or

c. Who is a candidate for an executive or professional position with a municipality or agency thereof.

2. "Employee" means an individual, whether commissioned or not, other than an officer or authorized person as defined in this paragraph, who is filling a regular or full-time authorized position and is responsible to a municipality or agency thereof.

3. "Officer" means an individual who, in the performance of his or her official duties, is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and who has jurisdiction extending throughout the municipality, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

4. "Traveler" means an officer, employee, or authorized person, when performing travel authorized by a municipality or agency thereof.

(b) Notwithstanding s. 112.061, the governing body of a municipality or an agency thereof may provide for

be known
e Powers

tate Con-
nmental,
them to
municipal
and may
i, except

ctivity or
its politi-

ant to the
the State
municipality
any sub-
may act,

nd exer-
neral or
he State

e consti-

state or
general

uant to
ss. 1(g),

so con-
ad exer-
tution. It
tend to
pal gov-
ses not
or spe-
/ limita-
exercise
sly pro-
rstrued
municipal
al pow-
; within
special
tion or