

ORDINANCE NO. 2012-37

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 2002-30, WHICH ESTABLISHED THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY, ADMINISTERED BY THE FLORIDA LEAGUE OF CITIES; BY AMENDING SECTION 6 CONCERNING AMENDMENTS TO THE PLAN AND TRUST; PROVIDING FOR SEVERABILITY, PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THE ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of North Miami Beach has established and maintains a Retirement Plan and Trust for the General Management Employees of the City of North Miami Beach; and

WHEREAS, Section 6 of the Retirement Plan provides that the Plan may be amended by the City Council, subject to approval of 60 percent of the active participants of the Plan and the recommendation of the Plan Retirement Committee; and

WHEREAS, the City has received a legal opinion that the requirement that any amendment to the Retirement Plan be approved by 60 percent of the active participants of the Plan and the recommendation of the Plan Retirement Committee is an improper and unconstitutional delegation of the City Council's legislative authority; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the City and its citizens to eliminate the unconstitutional provision in the Retirement Plan.

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. Section 6, of Ordinance No. 2002-30 of the City of North Miami Beach,

Florida, Code of Ordinances is hereby amended as follows :

Section 6. The City Council of the City of North Miami Beach shall have the power to amend said Plan and Trust at such time or times as considered in the best interest of the Agency and its management employees, ~~upon approval of sixty percent (60%) of the active plan participants, and the recommendation of the~~ The Plan Retirement Committee which shall consist of the City Manager the Director of Finance and the City Attorney, or their designees, who shall all be plan participants, and two plan retirees chosen by the other three board members, may make recommendations to the City Council concerning any amendment or proposed amendment to the Plan.

SECTION 3. Should this ordinance or any part thereof be declared invalid by a Court of competent jurisdiction, the invalidity of any part of this ordinance shall not otherwise affect the validity of the remaining provisions of this ordinance, which shall be deemed to have been enacted without the invalid provision.

SECTION 4. It is the intention of the City Council of the City of North Miami Beach that the provisions of this ordinance shall become and be made a part of the Adoption Agreement, Administered by the Florida League of Cities and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. This ordinance shall take effect immediately upon its passage and adoption.

APPROVED BY TITLE ONLY on first reading this 18th day of December, 2012.

APPROVED AND ADOPTED on second reading this 2nd day of January, 2013.

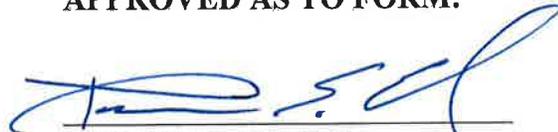
ATTEST:


PAMELA LATIMORE
CITY CLERK


GEORGE VALLEJO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM:


DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor & Council

Note: Proposed additions to existing City Code text are indicated by underline; proposed deletions from existing City Code text are indicated by ~~strikethrough~~.



REPLY TO: TALLAHASSEE

December 12, 2012

Ms. Darcee S. Siegel
City Attorney
City of North Miami Beach
City Hall, 4th floor
17011 N.E. 19 Avenue
North Miami Beach, FL 33162-3100

Re: Retirement Plan and Trust for the General Management Employees – Amendment Approval Process

Dear Ms. Siegel:

As requested, we have reviewed the process for approval of amendments contained in the City of North Miami Beach Retirement Plan for General Management Employees (“Management Plan”). The Management Plan is a defined benefit pension plan for general management employees of the City that was created by City ordinance in 2003. Section 6 of the Management Plan contains a procedure for amending the plan:

Section 6. The City Council of the City of North Miami Beach shall have the power to amend said Plan and Trust at such time or times as considered in the best interest of the Agency and its management employees, *upon approval of sixty percent (60%) of the active plan participants, and the recommendation of the Plan Retirement Committee* which shall consist of the City Manager, the Director of Finance and the City Attorney, or their designees, who shall all be plan participants, and two plan retirees chosen by the other three board members.

In our judgment, the requirement that any amendment to the Management Plan be approved by sixty percent of the active plan participants and be recommended by the plan retirement

See Things Differently

BRADENTON
101 Riverfront Boulevard
Suite 620
Bradenton, Florida 34205

p | 941-708-4040 • f | 941-708-4024

JACKSONVILLE
245 Riverside Avenue
Suite 150
Jacksonville, Florida 32202

p | 904-353-6410 • f | 904-353-7619

TALLAHASSEE
315 South Calhoun Street
Suite 830
Tallahassee, Florida 32301

p | 850-222-5702 • f | 850-224-9242

WEST PALM BEACH
515 North Flagler Drive
Suite 1500
West Palm Beach, Florida 33401

p | 561-640-0820 • f | 561-640-8202

committee is an improper and unconstitutional delegation of the City Council's legislative authority. In practical effect, the requirement that plan members and the retirement committee approve amendments to the plan gives the members and the board veto power over any changes to the plan. As more fully explained below, the power to amend the plan properly belongs to the City Council – the legislative body for the City of North Miami Beach – and any provision that limits or restricts the City Council's legislative power is unconstitutional, and should be removed. Simply put: the Management Retirement Plan was created by an ordinance adopted by the City Council, and may only be amended by an ordinance of the City Council.

A legislative body is not permitted to improperly delegate its authority to legislate to another governmental body or private person or entity. *Vodshalk v. City of Lincoln Park*, 95 So. 2d 9 (Fla. 1957); *Watson v. City of St. Petersburg*, 489 So. 2d 138 (Fla. 2d DCA 1986). Moreover, the Florida Constitution's separation of powers clause prohibits the unlawful delegation of constitutional powers. See Arts. II-III, Fla. Const. The legislature may not parcel out this constitutional duty. *Chiles v. Children A, B, C, D, E and F*, 589 So. 2d 260 (Fla. 1991). A city council is not permitted to delegate its legislative duties to another person. *County of Volusia v. City of Deltona*, 925 So. 2d 340 (Fla. 5th DCA 2006)(holding that the city was not permitted to delegate its legislative functions to a private property owner or administrative agency); See also *Amara v. Daytona Beach Shores*, 181 So. 2d 722 (Fla. 1st DCA 1966)(holding that an ordinance requiring permission from private property owners prior to the issuance of any license or permit was an unlawful delegation of legislative power). However, ordinances have been upheld when certain guidelines must be applied and there is no unbridled discretion. *St. Johns County v. Northeast Florida Builder's Association, Inc.*, 583 So. 2d 635 (Fla. 1991).

In our opinion Section 6 of the Management Plan is an unlawful delegation of the City's legislative power because it gives a group of non-elected City employees unbridled discretion to engage in legislative duties. In essence, 41% of the active participants of the Management Plan have effective veto power over any plan amendment adopted by the City Council, and the employees may exercise this veto power for any reason whatsoever. Likewise, the requirement that all plan amendments be recommended by the retirement committee – made up of three current and two retired plan members, grants veto authority over any amendment to the committee, with no guidelines or criteria for approval or disapproval of amendments. Employees who are active participants of the Management Plan, and the members of the retirement committee, have unbridled discretion on when, how and whether to amend the plan. As such, the amendment approval requirement in the Management Retirement Plan is distinguishable from cases such as *St. Johns County v. Northeast Florida Builder's Association, Inc.*, which have allowed limited delegation of legislative authority.

Based on the foregoing cases, the requirement in the Management Retirement Plan that plan amendments be approved by sixty percent of active plan participants and recommended by the retirement committee is an unconstitutional and improper delegation of the City Council's legislative powers. For this reason, we recommend that the amendment approval process in

Ms. Darcee S. Siegel
December 12, 2012
Page 3

Section 6 of the plan be amended to remove the plan participant and retirement committee approval provisions.

If you have questions concerning any of the matters discussed in this letter, please call.

Sincerely,



James W. Linn

JWL/es