



**municode**

***Roger D. Merriam***  
***Senior Code Attorney (Admitted to Practice in Florida)***  
***rdm@municode.com • 800-262-2633 ext. 1257 • www.municode.com***

May 5, 2016

**TO: MR. CRAIG E. LEEN**  
**CITY ATTORNEY**  
**CITY OF CORAL GABLES, FLORIDA**

**RE: CHARTER, RELATED LAWS AND CODE OF THE CITY OF CORAL GABLES, FLORIDA**  
**RECODIFICATION—LEGAL ANALYSIS**

MUNICIPAL CODE CORPORATION  
MAILING ADDRESS: P.O. Box 2235 Tallahassee, FL 32316  
PHYSICAL ADDRESS: 1700 Capital Circle, SW Tallahassee, FL 32310  
FAX: 850-575-8852  
LOCAL TELEPHONE NUMBER: 850-576-3171, ext. 1257

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## **PART I. INTRODUCTION**

Parts II and III of this memorandum are a legal analysis of the Charter, Related Laws and Code of the City of Coral Gables, Florida, as supplemented online through Ord. No. 2016-20 (“Code”), in which the Code has been researched for the following purposes:

1. Identification and elimination of conflicts, inconsistencies and obsolete provisions in connection with Florida Statutes, current with chapters from the 2016 2nd Regular Session of the 24th Legislature in effect through April 14, 2016.
2. Identification and elimination of obsolete or conflicting provisions.
3. Identification and elimination (or curing) of potentially unconstitutional provisions.
4. Elimination of conflicts with the City Charter.

The legal analysis is presented to the maximum extent possible as recommended changes.

Except for relocation of chapter 101, art. VI (*code enforcement*) to chapter 1, relocation of chapter 39 (*false claim*) to chapter 38 (*offenses and miscellaneous provisions*), and placement of chapter 46 (*solicitors, itinerant merchants and secondhand goods businesses*) in proper alphabetical order, it is not recommended that the Code be reorganized.

Except as stated in this memorandum, Municipal Code Corporation can implement the changes proposed herein in the final Code. The changes will be ordinance by adoption of the Code.

## **PART II. LEGAL ANALYSIS—COMMON ISSUES**

### **Subpart A. Department Titles**

Many different departments are referenced in the Code, some of which may not exist. The following is list of departments referenced in at least one section of the Code, together with a reference to one section referencing same. Please review and advise as to which department titles are correct and as to needed changes in incorrect department titles.

Finance department—§ 2-391

Building department—§ 2-1112

Building and zoning department—§ 10-32

Planning department—§ 2-1016

Development department—§ 62-262

Development services department—§ 105-28

Development services department, planning and zoning development division—  
App. A

Development services department, building division—App. A

Historic preservation department—§ 2-1016

Economic development department—§ 2-2016

Economic sustainability department—§ 2-2136

Employee relations department—§ 74-164 (also references insurance and safety  
division thereof)

Human resources—Risk management department—§ 105-28(2)

Health department<sup>1</sup>

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<sup>1</sup>It is believed that this is a reference to a county department.

Fire department—§ 10-26

Fire-rescue department—62-186

Police department—§ 14-32

Property appraiser department—§ 34-108

Parks and recreation department—§ 42-20

Community recreation department—App. B

Parking department—§ 2-1016

Public service department—§ 54-112

## **Subpart B. Director Titles**

Many different directors are referenced in the Code, some of which may not exist. In addition, some titles are inconsistent. The following is list of director titles referenced in at least one section of the Code, together with a reference to one section referencing same. Please review and advise as to which director titles are correct and as to needed changes in incorrect department titles.

Director of finance—§ 50-361

Finance department director—§ 26-64

Building director—§ 2-2109

Director of building and zoning—§ 101-60

Director of the building and zoning department—§ 101-61

Development services director—§ 101-90

Director of the department of development services—§ 101-85

Public works director—§ 2-195.4

Director of public works—§ 50-89(e)

Director of the public works department—§ 62-196

Human resources director—§58-83

Parking director—§ 62-155

Public service director—§ 50-153

Director of public services—§ 82-1

Director of the public service department—§ 54-115

## Subpart C. Ordinance Violation Penalties and Remedies

1. It is recommended that penalties for ordinance violations not be in appendix. The theory behind a fee schedule (such as Appendix A of the Code) is that fees, charges, and business taxes may be reviewed each year as a part of the budget process (as the city must have a balanced budget). By placement of the fees in one section or location in a Code, they are easier to locate and cost less to change in supplementation (because fewer Code pages would be changed). Fees (unlike penalties) must have a nexus to the services for which they are charged. The city may wish to include a penalty schedule in the Code.
2. State law provides for a variety of penalties and remedies for ordinance violations, as follows. It is clear that these are alternative remedies and in the case of proceedings under F.S. ch. 162, pt. I (F.S. § 162.01 et seq.), concurrent remedies. See *Goodman v. County Court in Broward County, Fla.*, App. 4 Dist., 711 So. 2d 587 (DCA 4, 1998), *reh. den.* 727 So. 2d 795.
  - a. F.S. § 62.22, provides (in part) as follows: “Unless otherwise specifically authorized and provided for by law, a person convicted of violating a municipal ordinance may be sentenced to pay a fine, not to exceed \$500, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, in a municipal detention facility or other facility as authorized by law.” It is clear that this is a limitation on judicial powers.
  - b. F.S. § 162.21 provides for ordinance violations citations to be punished as civil infractions, with a maximum fine of \$500.00 for violations that remain uncorrected after notice of up to 30 days, with certain exceptions to the prior notice requirement. F.S. § 162.21(8) provides that F.S. § 162.21 is an additional and supplemental method of enforcement.
  - c. F.S. ch. 162, pt. I (F.S. 162.01 et seq.) provides for enforcement via code enforcement boards and/or special magistrates. F.S. § 162.09 authorizes a fine to be imposed of no more than \$250.00 per day for a first violation, no more than \$500.00 per day for a repeat violation and further provides that if the violation is irreparable or irreversible in nature, the fine may no more than \$5,000.00. In addition, such statute provides that Coral Gables, based upon its population, may provide for fines of no more than \$1,000.00 per day per violation for a first violation, no more than \$5,000 per day per violation for a repeat violation, and no more than \$15,000 per violation if the violation is irreparable or irreversible. F.S. § 162.13 provides that F.S. ch. 162, pt. I is an additional and supplemental method of enforcement. See

Goodman v. County Court in Broward County, Fla., App. 4 Dist., 711 So.2d 587 (DCA 4, 1998), *reh. den.* 727 So. 2d 795.

- d. Pursuant to F.S. § 163.03(2), as interpreted by *Verdi v. Metropolitan Dade County*, 684 So. 2d 870 (3 DCA, 1996), the city has provided for an alternative code enforcement system. See Ord. No. 2016-11.

3. The following Code sections provide for penalties. Most do not specify how the fines stated therein are to be enforced. While it can be assumed the penalties providing for imprisonment are enacted pursuant to F.S. § 162.22, the status of the sections that provide only for a fine are unclear. Except as stated below, because Appendix A (generally) applies to civil fines, the city should take the position that the fines in the following Code sections (unless stated otherwise) are for enforcement in county court pursuant to F.S. § 162.22. (Appendix A has a catchall).

§ 1-7—\$500.00/60 days

§ 2-240(b)—\$500.00 fine

§ 10-24(f)—For the first violation, by a fine not to exceed \$150.00; for the second violation, by a fine not to exceed \$200.00; for the third violation, by a fine not to exceed \$250.00

§ 10-27(b)— For a first violation, by a fine of not less than \$50.00 and not to exceed \$200.00; for a second violation, by a fine of not less than \$100.00 and not to exceed \$250.00; for each subsequent violation, by a fine of not less than \$250.00 and not to exceed \$500.00

§ 15-148—Code enforcement ticket with following fines: (1) \$500.00 for the first offense. (2) \$1,000.00 for the second offense. (3) \$2,000.00 for the third offense. (4) \$3,000.00 for the fourth offense. (5) \$5,000.00 for the fifth offense. (6) \$5,000.00 for each subsequent offense after the fifth

§ 26-33(b)—“A charge of \$50.00”

§ 34-5—“May cited pursuant to chapter 101 of the City Code, and shall result in a fine of \$500.00 for each day the violation remains uncured”

§ 34-11—\$500.00/60 days. *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*



§ 34-109(b)—“\$250.00 for the first offense; \$500.00 for the second offense; and \$1,000.00 for each subsequent offense; or by imprisonment in accordance with the requirements of State Law”

§ 34-110—“\$250.00 for a first offense, and \$500.00 for a second offense, and \$1,000.00 for each subsequent offense”

§ 34-127(b)—“After a verbal warning, a fine of not less than \$150.00 and not more than \$500.00 per day until the person corrects the violation”. *It is unclear if a verbal warning would be sufficient to comply with F.S. § 162.21.*

§ 34-127(c)—“A fine of up to \$15,000 per violation may be imposed if the code enforcement board or a special magistrate finds the violation to be irreparable or irreversible in nature”

§ 34-169—Civil penalty of \$500.00

§ 34-174—\$500 and/or 60 days. *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*

§ 34-189—Civil fine: First violation within a 12-month period, \$50.00; second violation within a 12-month period, \$100.00, third violation within a 12-month period, \$500.00; any subsequent violation within a 12-month period, \$1,000.00

§ 38-8—30 days in jail or \$500 & stay away order, 60 days for violating stay away order

§ 38-10—\$500 and/or 60 days. *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*

§ 38-14—\$500 and/or 60 days, *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*

§ 38-81—Fine no greater than \$500.00, and/or other court action including criminal charges. *It is assumed that this is the civil fines*

§ 46-49—Fine of not less than \$150 per day and not more than \$500 per day

§ 54-112—\$500 and/or 60 days. *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*

§ 54-154—\$500 and/or 60 days. *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*

§ 62-67—Fine of \$25.00---\$500.00

§ 70-36(a)(1)b—“If the franchisee does not provide the HPP, the city may provide a notice of violation after which time the franchisee shall have 30 days to provide the HPP to the city, or shall be subject to a fine in the amount of \$500.00 per day for each day that the violation continues. Because of the serious consequences of not restoring service and complying with emergency orders of the city manager following a disaster as required herein, a franchisee that violates this provision shall be subject to a fine in an amount up to \$100.00 per affected subscriber. In determining whether to impose a fine and the amount of the fine, the city shall take into consideration the length of the service interruption and the numbers of affected subscribers, the nature and extent of the disaster, the efforts by franchisee to take appropriate steps to prevent major service interruptions in the event of a disaster, the franchisee's efforts to restore service as quickly as possible, and franchisee's efforts to comply with the city manager's emergency orders.” *It is assumed that this is not a fine in the legal sense, but rather contractual assessments, i.e., liquidated damages.*

§ 70-36(a)(20)b—“In assessing fines against a franchisee, the city manager shall be governed by the schedule set out below. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation.”

*Schedule of Fines*

Single violation of:	Maximum fines:
Subsection (1)	\$500.00
Subsection (2)	\$500.00
Subsection (3)	\$500.00
Subsection (4)	\$500.00
Subsections (5) and (6)	\$500.00
Subsections (7) and (8)	\$300.00
Subsection (9)	\$500.00
Subsection (10)	\$300.00
Subsection (11)	\$300.00
Subsection (12)	\$500.00
Subsection (13)	\$500.00
Subsections (14)a.1--a.9	\$300.00
Subsection (14)b	\$500.00
Subsections (14)c--f	\$300.00
Subsection (15)	\$300.00
Subsections (16) and (17)	\$300.00
Subsection (18)	\$500.00

§ 70-36(a)(20)g--- Any person who intentionally files a false complaint against a franchisee shall be subject to a fine in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation

§ 70-84(a)(1)—\$500.00 per day

§ 70-84(a)(2)—\$1,000.00 per day

§ 74-100(B)—Any person convicted of the violation of this section shall be fined not more than \$250.00, or sentenced to serve not less than one day, nor more than ten days, or by both such fine and imprisonment.

§ 74-196—All persons found in violation of this division shall be liable for a fine of \$23.00, and if paid after 30 days, a fine of \$42.00. This fine schedule is based on the County Code of Ordinance and is subject to future increase by County Code amendment.

§ 78-125(b)—Fine of not more than \$100.00 and costs of prosecution and in default of payment thereof, to imprisonment in the city jail for not more than 30 days.

§ 82-38—\$500 and/or 60 days. *This penalty could be deleted and language inserted tying the penalty to Code § 1-7, as it is duplicitous thereof.*

§ 83-39(2)—Civil penalty of not more than \$5,000.00

§101-168—Fine in the amount established by resolution or ordinance of the city commission. Unless otherwise provided, the initial fine may not exceed \$500.00 per violation and \$5000.00 for an irreversible or uncorrectable violation

§ 101-184—Fine in the amount established by resolution or ordinance of the city commission. Unless otherwise provided, the initial fine may not exceed \$500.00 per violation and \$5000.00 for an irreversible or uncorrectable violation (civil penalty). *It appears that the penalty cannot be fixed by resolution. In addition, app. A is an ordinance.*

§ 105-28(5)a—A citation for "failure to comply with construction staging ordinance and approved plans" for the amount of \$500.00 for each occurrence

§ 105-377(a) —For the first violation: \$250.00, For the second violation/repeat offender: \$500.00

4. The theory behind a fee schedule is that fees, charges and business taxes may be reviewed each year as a part of the budget process (as the city must have a balanced budget). Fees must have a nexus to the services for which they are charged. Therefore, penalties (other than late payments) should not be in a fee schedule. The following fees are in Code Appendix A. These fees, however, are not true fees as they are civil penalties (generally) for violation of the provision cited. Therefore, they should be reinserted in the Code provisions to which they are applicable or a schedule of penalties created in the Code.

§ 10-3

§ 10-26 (*the amounts are duplicated in Code § 10-26.*)

*Alarm fee schedule—Code § 26-31—26-46*

- a. *The entry for failure to correct violations is implementing Code § 26-38 which characterizes the fee as a “penalty or civil citation.” Please clarify.*
- b. *The entry for Response to alarm; failure to comply with affidavit process pertains to failure to comply with affidavit process. Nothing indicates a penalty.*
- c. *The language about the alarm user awareness class should not be in the fee schedule.*
- d. *The fee for automatic telephone dialing systems prohibited is implementing Code § 26-38, which characterizes the fee as a “penalty or civil citation.” Please clarify.*

§§ 26-32—26-39

§ 38-4

§ 38-5

§ 38-7 (*This includes provisions for imprisonment.*)

§§ 38-29—38-33 (*These sections have been repealed so that this entries will be deleted.*)

§ 54-21

§§ 54-117(dd)

§ 54-154 (*Code § 54-154 provides for a penalty of \$500/60 days*)

§ 62-27. *This entry in the fee schedule states “Unlawful placement of any sign designating street, avenue or other public place by a different name than by which it is generally and legally known.” This is not what § 62-27 prohibits as such section reads as follows: “It shall be unlawful for any person to use any number other than that designated or assigned by the building and zoning department.”*

§§ 62-58—66-99(e). *The penalties for these section conflict with Code § 62-67, which section provides for a penalty of not less than \$25.00 nor more than \$500.00 for violations.*

§ 62-131. *This is described in the fee schedule as “Allowing sidewalks to remain in a dangerous condition. This is not what is prohibited by Code § 62-131.*

§ 62-132. *This is described in the fee schedule as “Maintaining illegal, or improperly placed concrete buttons in swale area.” No such prohibition exists in the Code.*

§ 62-133 (first entry). *This is described in the fee schedule as “Maintaining a swale area that presents dangerous, hazardous, or unsanitary conditions.” This is not what is prohibited by Code § 62-133.*

§ 62-152. *This should reference § 62-154 and a certificate of compliance, not a permit. Code § 62-152 is a definitions section.*

§ 78-126. *This conflicts with Code § 78-125.*

§ 78-126(a). *This conflicts with Code § 78-125.*

§ 78-126(b). *This conflicts with Code § 78-125. Also this duplicates the prohibitions in Code § 78-126(b).*

§ 82-1

§ 82-4

§ 82-29. *This conflicts Code § 82-38.*

§ 82-32. *This conflicts with Code § 82-38.*

§ 86-1

§ 86-3

§ 86-59

§ 86-119

105. *This (Maintaining a dwelling which is unsafe, unsanitary, and/or in disrepair) apparently should be ch. 105, art. V. This penalty contradicts Code § 105-157.*

§ 105-2

§ 105-26

§ 105-27. *Contradicts penalty in Code § 105-27*

§ 105-377. *Contradicts penalty in Code § 105-377.*

§ 109-40

All other Code violations

*Miami Dade Code § 2-103.21, re: fire hydrants. Nothing in the Code adopts this section.*

5 Penalties are set by resolution in the following Code sections. As asterisk indicates that the fee is not found in Code Appendix A, which appendix now consists of a resolution. (Fixing penalties by resolution does not appear proper.)

§ 54-58 (civil fine)\*

§ 74-168 (civil fine)

§ 74-211 (civil fine)\*

§ 101-184 (Language also allows to be set by ordinance. A penalty is stated.)

6. Penalties are referenced as being established in the following Code sections:

§ 38-4

§ 38-5

§ 38-7

§ 74-168(2)

## Subpart D. Fees (Including Appendix A)

1. The theory behind a fee schedule is that fees, charges, and business taxes may be reviewed each year as a part of the budget process (as the city must have a balanced budget). By placement of the fees in one section or location in a Code, they are easier to locate and cost less to change in supplementation (because fewer Code pages would be changed). Fees (unlike penalties) must have a nexus to the services for which they are charged. Most municipalities adopt fees by resolution, as the enactment procedure is less cumbersome than the ordinance enactment procedure. See F.S. § 166.041. Code Appendix A (fees) contains an ordinance.

2. The following errors exist in Code Appendix A:

- a. The building permit fee schedule cites § 105-85; the correct cite is § 105-51.
- b. The electrical permit fee schedule cites § 105-86; the correct cite is § 105-52.
- c. The plumbing permit fee schedule cites § 105-87; the correct cite is § 105-53.
- d. The mechanical permit fee schedule cites § 105-88; the correct cite is § 105-54.
- e. The building division miscellaneous permit fee schedule cites § 105-89(a); the correct cite is § 105-55(a).

3. The following Code sections contain fees. Excluded from this list are civil penalties. An asterisk means that the fee is duplicated in Code Appendix A.

§ 2-243(b)

§ 2-2112(a)(1)\*

§ 2-1113(a)

§ 14-1

§ 14-32

§ 14-33



§ 14-146

§ 34-6

§ 34-165(d)

§ 34-171(d)

§ 46-42(9)

§ 46-44

§ 62-96(c)(2)

§ 62-96(e)

§ 62-154(g)

§ 66-42(2)

§ 66-42(4)

§ 70-27(f)

§ 70-75(b)

§ 74-305(a)(4)

§ 74-305(b)(3)

§ 74-359(c)

§ 78-106(106.2(1))\*

§ 78-107(107-2(11))

§ 78-138(a)(1)

§ 78-139(a)

§ 101-171

§ 101-189

§ 105-28(6)

4. Fees in the following Code sections are tied to resolution. An asterisk means that no fee is found for the section in Code Appendix A.

§ 38-79\*

§ 62-187(b)

§ 66-42(1)

§ 70-74(e)

§ 74-140(b)

§ 74-168(2)

§ 74-201(b)(2)\*

§ 74-201(d)

§ 74-202

§ 74-242(e)\*

§ 74-244 (f)\*---These are fees a wrecker charges for towing and storage.

§ 74-359(c)—Fee is established but can be changed by resolution.

§ 78-106(106.2(14))

§ 78-131 (definition of service charge)

§ 78-136

§ 78-157 (definition of ERU rate)

5. In the following Code sections, the language does not specify whether an ordinance or resolution establishes the fee. An asterisk indicates that no fee can be found in appendix A.

§ 2-389

§ 10-40

§ 14-64\*

§ 30-3

§ 30-4

§ 30-6

§ 42-34

§ 54-117(f)(4)

§ 54-187

§ 62-64

§ 62-157

§ 62-228

§ 62-261

§ 66-33

§ 66-34

§ 66-35

§ 66-43

§ 66-44

§ 66-45

§ 70-26(i)  
§ 70-74(e)  
§ 74-166(c)  
§ 74-195(f)  
§ 74-241(a)  
§ 74-244(t)\*  
§ 78-100  
§ 78-137  
§ 82-29  
§ 82-36  
§ 101-190(b)(2)  
§ 101-190(b)(4)  
§ 105-25  
§ 105-51  
§ 105-52  
§ 105-53  
§ 105-54  
§ 105-55  
§ 105-115  
§ 109-44

6. The following fees are listed in Code Appendix A but are not found in the Code:
  - a. “Economic and Cultural Development Department, When proposers are responding to a Request for Proposal for redevelopment of City-owned real estate, the cost is \$15,000 which is not reimbursable for the successful proposer but is reimbursable for the non-successful proposers.” While Code § 2-2011 et seq. deals with purchase, lease or sale of city property, there is no specific language that would require a fee such as stated. Insert language so requiring.
  - b. Public works department, right of way division. Contractor registration fee. Nothing in Code § 62-61 or elsewhere requires a registration fee. Alter Code § 62-61 accordingly.
  - c. The streetlight application request language. Even though it states no fee, the Code § 62-64(f) cited does not exist. Therefore, delete this language.
  - d. The provision for “commercial activities that obstruct or close a public right-of-way or impede traffic” cites Code § 62-18(c). As no such section exists, correct the citation to be to Code § 62-186 and alter such section to require a fee.
  - e. The wastewater fees for customer callout appear to have no ordinance requiring such fees be paid. Add language to Code chapter 78 so providing.
7. If fees are to be excluded from specific sections for the Code, it is recommended that the city not mention the word “ordinance” or “resolution.” In that manner either an ordinance or resolution can establish a fee. (Language could be added the Code so stating.)

## **PART III. LEGAL ANALYSIS—SPECIFIC PORTIONS OF CODE**

### **Part I. Charter and Related Laws**

#### **A. Charter**

Municipal recall is governed by F.S. § 100.361; while such statute is inapplicable to members of the governing body of the county, it does apply to municipalities. See *Abreau v. Cobb*, 670 So. 2d 1010 (DCA 3, 1996). The following provisions in the charter reference recall: §§ 1, 10(B)(vii)--10(B)(ix).

It would appear that the following charter provisions are adequately covered by the grant of powers in F.S. § 166.021 and could be repealed: §§ 9, 23, 24, 34a—34g.

Section 29 (“No municipal corporation shall be formed in the State of Florida using in any manner as part of its name the term ‘Coral Gables’.”), is an extremely interesting section that probably has no legal effect. Prior to the city revision, it read as follows: “No municipal corporation shall be formed in the State of Florida using in any manner as part of its name the words ‘Coral Gables’ or either of them.” The original provision was derived from a legislative act and had been ignored (*Witness Coral Springs, a Broward County municipality*). The city has no authority to prohibit another municipality from being called Coral Gables. (It is, of course, doubtful that two municipalities in Florida with the same name would be allowed to be created.)

#### **B. RELATED LAWS**

As the city does not issue alcoholic beverage licenses, delete § 20. (Sections 201—203 should be deleted with no editorial note as inclusion or exclusion does not effect the validity of an act.

## Part II. Code—Chapter 1—General Provisions

**Sec. 1-2. Definitions and rules of construction.** Add definitions of should and will.

**Sec. 1-7. General penalty; continuing violations.** Delete subsections (a) and (b) as covered by the remaining provisions. This appears to have been an error made in the 2006 Code, for which apologies are extended.

**Sec. 1-11. Certain ordinances not affected by Code.** Subsection (c) saves various provisions from repeal. They were saved from repeal during the preparation of the 2006 Code because it was anticipated that they would be addressed in the zoning code or a set of land development regulations. The provisions saved in subsection (c) appear in Attachment A to this memorandum (a separate file). (N.B., the provisions in Attachment A are taken from the 1991 Code as amended through July 19, 1991). Delete subsection (c) and:

1. Exclude from new Code the provisions of Code 1991, ch. 2, art. IV, div. 6 (*historic preservation department*), as such provisions are superseded by Zoning Ord. § 2-706.
2. Include in the Code the following provisions of Code 1991, ch. 2, art. VII (*planning*):
  - a. Code 1991, § 2-151(a), (b), (c)(2), (d) and (f). (Code §§ 2-151(c)(1) and (c)(3)(c)(4) and (e) are covered by F.S. § 163.3174.)
  - b. Code 1991, § 2-252(a).
    - i. Subsection (b) is not needed.
    - ii. Subsection (c) is covered by (and in conflict with) F.S. § 163.3191.
    - iii. Subsections (d) and (e) are covered by Zoning Ord. § 3-1501 et seq. and Code 2006, App. A.
    - iv. Subsection (f) is covered by Zoning Ord. § 3-210.
3. Exclude from the Code the provisions of Code 1991, ch. 7.5 (*concurrency management program*) as covered by Zoning Ord. § 3-1301 et seq.

4. Exclude from the Code the provisions of Code 1991, ch. 23 (*subdivisions*) as covered by zoning.



## Chapter 2. Administration

The following Code sections reference a parking advisory board. No such board is created in the Code. Please advise as to any desired changes: 2-2016, 74-165, 74-167, 74-168, 74-170, 74-171.

### Article I. In General

**Sec. 2-2. Travel expenses.** Delete the first sentence as not needed.

### Article II. City Commission

**Sec. 2-25. Compensation of mayor, commissioners; travel allowance; office expense.** Please review subsection (a). The first sentence sets compensation effective October 1, 2006. The second sentence provides for an increase in compensation based upon the CPI-W commencing October 1, 1986.

1. Delete the second sentence if it is no longer used.
2. If the CPI-W is still in effect, alter the second sentence to be effective on October 1, 2007, it being assumed no increase would be granted on the effective date of the salaries stated.

**Sec. 2-26. Regular meetings, special meetings.** Delete the last sentence (*public meeting requirement*) as covered by F.S. § 286.011.

### Article III. Boards, Commissions, Committees

#### Division 1. Generally

**Sec. 2-58. Application of article; definitions; standards for creation and review of boards generally.** Delete subsections (d) and (e) as covered by Charter § 26. If retained, correct charter reference to be to Charter § 26.

**Sec. 2-60. Terms of members.**

1. In subsection (b), if the last sentence is obsolete, delete it.
2. In subsection (d), change “appointing commissioner’s” to “nominating commissioner’s”. See subsection (a).

**Sec. 2-62. Chairperson; bylaws.**

1. In subsection (a), delete the reference to *Robert's Rules of Order, Newly Revised* as covered by Code § 2-67(1).
2. Delete subsection (d) (*open meetings*) as covered by Code § 2-67(2).
3. Delete subsection (e) (*voting requirements*) as covered by Code § 2-67(8).
4. Delete subsection (f) (*financial disclosure*) as not needed.

**Sec. 2-67. Rules of procedure.**

1. It is assumed that it is the intent that only this section applies to all boards and committees (as well as the city commission) and that Code §§ 2-68—2-75 apply only to the city commission. Please confirm that this assumption is not in error.

1. In subsection (a), so as to avoid adoption by reference problems (see *Blicht v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940)), please advise of the specific edition of *Robert's Rules of Order, Newly Revised* being used so that this subsection can be revised accordingly.

2. Delete subsections (2) and (3)(*open meetings*) as covered by F.S. § 286.011 and other statutes.

**Sec. 2-69. Order of business.** Alter subsection (e) so any person (as opposed to any citizen) may address the city commission. Legal resident aliens (and probably illegal aliens) have the right to address a legislative body. Alter Code § 2-73(a) in a similar matter.

**Sec. 2-72. Voting.** In subsection (f) (*voting conflict*), delete reference to F.S. § 286.011 as inapplicable.

## Division 2. Trial Board

**Sec. 2-118. Composition.** Delete as covered by (and not in conformity with), Charter § 13.

**Sec. 2-122. Failure of board to select members, county judge to select.** This section (which does reflect Charter § 13) references the county judge. There is not a single county judge for the county. Please advise as to the desired procedure to appoint the fifth member if the other four cannot agree.

## Division 4. Sustainability Advisory Board

**Sec. 2-184. Compensation.** Delete as covered by Charter § 27.

**Sec. 2-185. Public meetings.** Delete the open meeting requirement as covered by F.S. § 286.011.

**Sec. 2-187. Written reports.** Delete as covered by Code § 2-66.

## Division 5. Hopkins/Cooper Scholarship Committee

**Sec. 2-193. Grandfather clause.** Delete as obsolete. The final holdover terms will have been completed before the new Code is adopted.

**Sec. 2-194.5. Compensation.** Delete as covered by Charter § 27.

**Sec. 2-195.6. Written reports.** Delete as covered by Code § 2-66.

## Division 6. Waterway Advisory Board

**Sec. 2-195.15. Written reports.** Delete as covered by Code § 2-66.

## Article IV. Officers and Employees

**Sec. 2-199. City archives and records management program; duties of departments, the mayor and city commission offices.** Correct references to be to F.S. § 257.36 and F.A.C. ch. 1B-24.

## Article V. Conflict of Interest and Code of Ethics

**Sec. 2-225. Definitions.** Delete definitions of shall and will as covered by Code § 1-2, as revised.

### **Sec. 2-226. Gifts.**

1. In subsection (a) (*gift defined*), so as to be consistent with Miami-Dade Code § 2-11.1(e)(1) (see Miami-Dade County Code § 2-11.1(a)), add the following language: “Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.”

2. In subsection (b) (*exceptions*), while not required to do so (see Miami-Dade County Code § 2-11.1(a)), the city may wish to add the following exceptions found in Miami-Dade Code § 2-11.1(e)(2), which provisions will be altered to apply to the city:

- e. Gifts solicited by County employees or departmental personnel on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
- f. Gifts solicited by Commissioners on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
- g. Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner, nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a "nonprofit organization" shall mean any entity described in section 501(c)(3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. As used in this subsection, "compensation" means any money, gift, favor, political contribution, thing of value or other financial benefit.

**Sec. 3-233. Actions prohibited when financial interests involved.** Add language authorizing a waiver pursuant to Code § 2-1056. See Code §§ 2-1056, 2-1057.

**Sec. 2-236. Continuing application after city service.** Delete subsection (c) as obsolete.

**Sec. 2-243. Lobbying.** Delete definition of person as covered by Code § 1-2.

## Article VII. Finance

### Division 1. Generally

**Sec. 2-391. Division.** Delete as covered by Code § 2-629. See recommendation for same, *infra*.

### Division 2. Refunding Bonds and Additional Tax Levies

If these provisions (derived from a special act—Related Laws) are obsolete (see F.S. § 166.101 et seq.), delete. In any event:

1. In Code § 2-409, delete the last sentence (*no referendum required to levy tax to pay bonds*) as in conflict with Fla. Const. art. VII, § 12.
2. In Code § 2-435, delete the interest rate as repealed by F.S. §§ 215.84, 215.845.
3. In Code § 2-437, delete subsections (2) and (5), it being assumed that no referendum would be held as required by Fla. Const. art. VII, § 12.

### Division 3. Municipal Projects

As the provisions of Code § 2-467(1) (derived from a special act—Related Laws) provide that projects may be constructed outside the city, it appear that these provisions remain a special act insofar as they relate to the exercise of powers outside the city. See Fla. Const. art. VIII, § 2; F.S. § 166.021(3)(a); however this seems insignificant as it appears doubtful that the city would construct projects outside the city. It would appear that this division is not needed. See F.S. § 166.101 et seq. If retained as an ordinance (and the following constitute defects in these provisions as a special act):

1. In Code § 2-467, delete subsection (5), it being assumed that not referendum would be held as required by Fla. Const. art. VII, § 12.
2. In Code § 2-467(7), delete the references to eminent domain as covered by F.S. § 166.411 et seq.
3. In Code § 2-468, delete subsections (4)b. and (4)d., it being assumed that no referendum would be held as required by Fla. Const. art. VII, § 12.

4. Delete Code § 2-470, it being assumed that no referendum would be held as required by Fla. Const. art. VII, § 12.
5. In Code § 2-471, delete the interest rate as repealed by F.S. §§ 215.84, 215.845.

#### Division 4. Off-Street Parking Facilities

If these provisions (derived from a special act—Related Laws) are obsolete (see F.S. § 166.101 et seq.), delete. In any event in Code § 2-512, delete the references to eminent domain as covered by F.S. § 166.411 et seq.

#### Division 5. Sewer Financing

**Sec. 2-545. General grant of powers.** Delete subsection (5) (*eminent domain*) as covered by F.S. § 166.411 et seq.

### Article VIII. Procurement Code

#### Division 1. Generally

**Sec. 2-578. Definitions.** Delete the definitions of may, must, person, shall and should as covered by Code § 1-2, as revised.

#### Division 2. Procurement Organization

##### Subdivision I. In General

**Sec. 2-629. Creation of the procurement division.** If covered by the organizational chart in Code § 2-261, delete.

**Sec. 2-630. Centralization of procurement authority.** If covered by the organizational chart in Code § 2-261, delete.

**Sec. 2-766. Competitive sealed bidding (formal bids).** Ords No. 2016-14 amended the procurement code, but incorrectly designated the provisions amended. The ordinance has been treated as amending Code § 2-766(i).

## Division 12. Purchase, Sale or Lease of Public Property

**Sec. 2-2016. Analysis for the purchase, sale or lease of city property.** This section references a budget and audit advisory board, a property advisory board, and an economic development board. If any of these boards do not exist, please advise as to changes. (Such boards are not found in the Code, but could have been established by resolution.)

### Article IX. Impact Fees

**Sec. 2-2105. Definitions.** Delete the definition of city commission as covered by Code § 1-2, as revised.

**Sec. 2-2106. Applicability.** If subsection (d) is obsolete, delete it.

**Sec. 2-2114. Judicial review.** Delete as beyond the power of the city to provide, adding language to Code § 2-1113 that the decision of the city commission is final.

**Sec. 2-2118. Liberal construction.** Delete as covered by Code § 1-2, as revised.

**Sec. 2-2119. Severability.** Delete as covered by Code § 1-8.

## Chapter 6. Alcoholic Beverages

**Sec. 6-3. Retail beverage store and retail liquor store licenses issued to bona fide restaurants.** Delete. F.S. § 562.45(2)(c) prohibits ordinances that regulate or prohibit those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. This section also references nonexistent charter provisions. Fla. Const. art. VIII, § 5(a) provides (in part): “Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.”

**Sec. 6-4. Administrative review by city manager with approval by city commission for retail beverage and retail liquor store licenses issued to nonrestaurant facilities.** Delete. No authority for a local license exists. F.S. § 562.45(2)(c) prohibits ordinances that regulate or prohibit those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. This section also references nonexistent charter provisions. Fla. Const. art. VIII, § 5(a) provides (in part): “Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.”

**Sec. 6-5. Retail stores in hotels; exterior entrance and advertising prohibited.**

1. Delete the second sentence (“No signs advertising such retail beverage and/or retail liquor store, or the sale of alcoholic beverages or intoxicating liquors therein, shall be permitted upon the exterior, or to be visible from the exterior, of any such hotel.”). The issue of advertising is addressed in F.S. § 561.42. F.S. § 562.45(2)(c) prohibits ordinances that regulate or prohibit those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. Fla. Const. art. VIII, § 5(a) provides (in part): “Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.” In addition, because restrictions such as this are not provided for other businesses, the restriction is unconstitutional. See *Reed v. Town of Gilbert*, 135 S. Ct. 2217 (2015).

2. Delete the last sentence (“No such retail beverage and/or retail liquor store license shall ever be separable from the hotel license in conjunction with which it is issued.”) F.S. § 562.45(2)(c) prohibits ordinances that regulate or prohibit those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. Fla. Const. art. VIII, § 5(a) provides (in part): “Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.”

**Sec. 6-6. Retail stores in restaurants; exterior advertising prohibited.** Delete for the reasons stated for Code § 6-5.



**Sec. 6-7. Possession of untaxed beverages.** Delete as covered by F.S. § 562.01. As violations of such statute are a misdemeanor (see F.S. § 562.45), this section is covered by the adoption of misdemeanors in Code § 38-1.

**Sec. 6-8. Possession of beverages not permitted to be sold under license.** Delete as covered by F.S. § 562.02. As violations of such statute are a misdemeanor (see F.S. § 562.45), this section is covered by the adoption of misdemeanors in Code § 38-1.

**Sec. 6-9. Storage on licensed premises.** Delete as covered by F.S. § 562.03. As violations of such statute are a misdemeanor (see F.S. § 562.45), this section is covered by the adoption of misdemeanors in Code § 38-1.

**Sec. 6-10. Sale only on licensed premises.** Delete as covered by F.S. § 562.06. As violations of such statute are a misdemeanor (see F.S. § 562.45), this section is covered by the adoption of misdemeanors in Code § 38-1.

**Sec. 6-11. Compliance with state law.** Delete as not needed.

## Chapter 10. Animals

### Article II. Dogs

**Sec. 10-33. Keeping dogs commercially prohibited.** If covered by zoning, delete. To be completely covered by zoning, there must no pre-existing uses grandfathered by the zoning ordinance.

**Sec. 10-34. Removal of animal feces.** So as to modernize terminology, change “blind or handicapped persons” to “individuals with disabilities.” See F.S. § 413.08.

**Sec. 10-35. Keeping of domestic fowl prohibited.** If covered by zoning, delete. To be completely covered by zoning, there must no pre-existing uses grandfathered by the zoning ordinance.

## Chapter 14. Businesses

### Article I. In General

**Sec. 14-1. Distribution of advertising; license required.** Please review. It would appear that this is not the local business tax (even though the tax is due on October 1 of each year), as it seems likely that many advertising distributors would not be subject to the license tax, because F.S. § 205.042 authorized the levy of the tax on:

- (1) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any business within its jurisdiction.
- (2) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
- (3) Any person who does not qualify under subsection (1) or subsection (2) and who transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by s. 8, Art. I of the United States Constitution.

If this section is obsolete, delete it. N.B. the fee stated in this section is \$25.00.

### Article II. Secondhand Goods Dealers

Delete as covered by F.S. § 538.01 et seq. While F.S. § 538.16 does allow more restrictive ordinances, the holding period in Code § 14-35 is less stringent than the holding period found in F.S. § 538.06, as amended Laws of Fla. ch. 2016-59. The records keeping requirements are also at variance with F.S. § 538.04, as amended Laws of Fla. ch. 2016-59.

### Article III. Going-Out-Of-Business, Fire Sales and Similar Sales

**Sec. 14-68. Regulation and supervision.** This section provides for enforcement by the “chief collector or his delegated agent.” Please advise as to the current title.

**Sec. 14-70. Advertising sign requirements.** Delete as unconstitutional. Because these sign restrictions are not applicable to other businesses, they are content based and invalid. See *Reed v. Town of Gilbert*, 135 S. Ct. 2217 (2015).

## Article IV. Closing Sales

### Division 3. Permanent Closing Sales

Delete as covered by Code ch. 14, art. III.

## Chapter 22. Elections

**Sec. 22-1. State law and Charter to govern elections.** Delete subsection (a) as covered by F.S. § 100.3605.

**Sec. 22-7. Early voting.** Delete. F.S. § 101.657 no longer has opt out provisions; a city must affirmatively provide that there is early voting in municipal elections that are not held in conjunction with county or state elections.

**Sec. 22-8. Referendum/elections.** Delete as covered by F.S. § 101.6102.

## **Chapter 30. Fire Prevention and Protection**

**Sec. 30-2. Rights retained in city.** Delete as not needed.

**Sec. 30-5. Negotiated fees.** If approval of the city commission would be required for the negotiated amount, revise accordingly.

## Chapter 34. Nuisances

### Article I. In General

**Sec. 34-11. Mosquitos.** Delete subsections (2) and (3) as covered by Code § 1-7; subsection (3) is incorrect in that injunctive relief is available even if the defendant is imprisoned. Injunctive relief is also an alternative remedy.

### Article II. Weeds, Wild Growth, Rubbish, Debris

**Sec. 34-22. Failure to comply; form of notice to property owner.** In subsection (b), ungarble the first sentence by rewording it as follows:

Such notice shall be given by registered or certified mail and or posting, addressed to the owner of the property described, to the ~~home record~~ owner's address, as recorded in the current county tax rolls, and shall be deemed complete and sufficient notice when so addressed and deposited in the United States mail with proper postage prepaid.

### Article III. Lost, Stolen, Junked, Abandoned Property

#### Division 2. Vehicles

**Sec. 34-80. Procedure for removal and destruction.**

1. Delete subsection (1) as covered by and in conflict with F.S. § 705.103.
2. Delete subsection (2) as covered by F.S. § 715.07.

**Sec. 34-81. Obstructing enforcement prohibition.** Delete as covered by F.S. § 705.103(5), adopted by reference in Code § 38-1.

**Sec. 34-82. Granting immunity from prosecution to enforcement officers.** Delete as covered by F.S. § 705.103(6).

## **Article IV. Graffiti; Graffiti Removal**

**Sec. 34-109. Prohibitions.** While F.S. § 806.13(9) provides that F.S. § 806.13 does not preempt municipal graffiti ordinances, such subsection limits the penalties to those found in F.S. § 162.21 (\$500.00—See F.S. § 162.21(5)(b)). As this Code section provides for greater penalties than those found in F.S. § 162.21, delete this section as covered by F.S. § 806.13.

## **Article VI. Abandoned Real Property**

**Sec. 34-172. Opposing, obstructing enforcement officer; penalty.** While opposing or obstructing a police officer is punishable under F.S. ch. 843, there is no statute pertaining to city employees generally; therefore revise to tie this section to Code § 1-7. The existing language is vague.

**Sec. 34-173. Immunity of enforcement officer and other persons authorized to enforce article.** Delete as beyond the power of a municipality to provide.

## **Article VII. Forfeiture of Abandoned Real Property**

**Sec. 34-183. Forfeiture proceedings.** Delete as beyond the power of the city to provide. This section deals with court jurisdiction and procedure, all of which is preempted to statute and court rules. In addition, this section references nonexistent F.S. § 165.031 (probably should be to F.S. § 50.011).



## Chapter 38. Offenses and Miscellaneous Provisions

### Article I. In General

**Secs. 38-2 & 38-3. Aircraft--Minimum altitude & stunt flying.** Please review. As worded this section prohibit the use of ‘toy’ model (gas engine) planes (RC and wire controlled) as well as drones. In any event, add an exemption for emergency situations.

**Sec. 38-4. Discharge of paintball gun, marker, BB gun, or air-operated or gas-operated gun.** Subsection (b) will be ungarbled by revising as indicated below:

Any law enforcement officer is authorized to seize from any person under the age of 18 years any paintball gun, marker, BB gun, or air-operated or gas-operated gun that the officer has reasonable grounds to believe has been, is being or will be used in violation of subsection (a) of this section. The city shall retain the gun until it is claimed by a parent or guardian of the owner of the gun. If the gun remains unclaimed for a period of 14 days, it may be considered abandoned property and disposed of accordingly. Any violation of this section shall be subject to a fine as established by the city commission.

**Sec. 38-5. Use of laser pointers.** Delete definition of person as covered by Code § 1-2.

**Sec. 38-13. Immunity.** Delete as beyond the power of the city to provide.

### Article IV. Automated External Defibrillators

**Sec. 38-80. Applicability.** Delete the first sentence as obsolete.

## **Chapter 39. False Claims and Presentations Ordinance**

**Sec. 39-10. Immunity.** Delete as beyond the power of the city to provide.

## Chapter 42. Parks and Recreation

### Article II. Public Conduct in Parks

**Sec. 42-19. Purpose.** Make the text a sentence by inserting at the beginning “The purposes of this article are”.

**Sec. 42-28. Decency.** In subsection (e), change “improper place” to “unauthorized place.”

**Sec. 42-29. Disorderly conduct.**

1. In subsections (a)—(d), avoid constitutional problems by inserting a reasonable person standard.

2. In subsection (h), delete the prohibition of consumption (or drinking) of alcohol as covered by Code § 6-15.

**Sec. 42-31. Compliance with the rules and regulations of the city parks and recreation department.** Delete subsection (c) as covered by F.S. ch. 837, adopted by reference in Code § 34-1.

**Sec. 42-35. Dogs, cats, and other animals.** In subsection (a), delete references to birds as covered by Code § 10-2.

## **Chapter 46. Solicitors, Itinerant Merchants and Secondhand Goods Businesses**

### Article I. In General

**Sec. 46-1. Ordinances saved from repeal.** Delete as obsolete. This section saves Code 1991, ch. 18 from repeal. Such chapter appears in Attachment A (a separate file) and is not needed because:

1. Ch. 18, art. II (§§ 18-41—18-65), Peddlers, Solicitors and Itinerant Vendors, is superseded by Code 2005, ch. 46, art. II, div. 2 (§ 46-41 et seq.).
2. Ch. 18, art. III (§§ 18-81—18-127, Charitable Solicitations, was codified as Code 2006, ch. 46, art. III, which ordinance was repealed by Ord. No. 2006-08.
3. Ch. 18, art. IV. (§§ 18-146—18-154), Secondhand Dealers is codified in Code 2006, ch. 14, art. II.

Article II. Permit For Sale of Merchandise, Wares and Goods

Division 2. Permit For Sale of Merchandise, Wares and Goods

**Sec. 46-49. Penalties.** Deleted subsection (c) as covered by Code § 1-7.

## Chapter 50. Pensions

### Article II. Retirement System for City Employees

#### Division 2. Administration

#### Subdivision II. Retirement Board

**Sec. 50-88. Officers and employees.** In subsections (a) and (b), so as to avoid adoption by reference problems (see *Blich v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940)), please advise of the specific edition of *Robert's Rules of Order, Newly Revised* being used so that this subsection can be revised accordingly.

### Article III. Retirement System for Police Officers

**Sec. 50-276. Definitions.** In the definition of police officer, correct the state law reference to be to F.S. § 185.02(16).

### Article IV. Firefighters' Pension Trust Fund

**Sec. 50-314. Definitions.** In the definition of firefighter, correct the state law reference to be to F.S. § 175.032(11)(a).

**Sec. 50-320. Same--Power and authority.** Delete subsections (7), (8) and (10) as they reference state imposed duties upon state departments, the titles of which are in error.

## **Chapter 54. Solid Waste**

### **Article II. Litter**

**Sec. 54-25. Litter in parks.** Delete as covered by Code § 42-25.

**Sec. 54-117. Roll-off waste contractors franchise agreements.** Delete subsection (q) (county franchisees as of Sept. 23, 1998) as obsolete.

**Sec. 54-192. Collection of fees.** Delete these provisions (derived from a special act—Related Laws) as not needed. See Code § 54-191.

## **Chapter 58. Special Assessments**

### Article II. Capital Project and Related Services Assessment Ordinance

#### Division 1. Introduction

##### **Sec. 58-121. Definitions.**

1. Delete definitions of city, commission and county as covered by Code § 1-2.
2. Delete the definition of ordinance. Throughout this article, the terms “ordinance and “this ordinance” will be changed to “this article.”

**Sec. 58-122. Interpretation; title and citation.** Delete the last sentence of subsection (a) and all of subsection (b) as covered by Code § 1-2.

## **Chapter 62. Streets, Sidewalks and Other Public Places**

### Article III. Excavations

#### Division 1. Generally

**Sec. 62-68. Violations.** Delete as covered by Code § 1-7.

#### Division 2. Protection of Underground Utilities

**Sec. 62-95. Definitions.**

1. In the definition of “as-builts,” correct reference to be to F.A.C. 5J-17.050.
2. In the definition of excavation, correct statutory reference to be to 373.019(22).

**Sec. 62-135. Private right of action.** Delete as beyond the power of the city to provide.

### Article VII. Special Events

Except for Code § 62-230, delete as superseded by article VI.



## Chapter 66. Taxation

### Article II. Local Business Tax Act

**Sec. 66-22. Application.** Delete the requirement that a social security number be given. Section 7 of Pub. L. 93-579 provides that:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number. (2) the (The) provisions of paragraph (1) of this subsection shall not apply with respect to - (A) any disclosure which is required by Federal statute, or (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual. (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

**Sec. 66-36. Revocation for violation of ordinances.** Delete.

1. F.S. § 205.022(1) provides as follows:

“Local business tax” means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of this chapter.

The above-quoted definition clearly provides that business license tax is not a regulatory measure; rather, it is a revenue measure. See Op. Atty. Gen. 073-339, Oct. 25, 1973; Op. Atty. Gen. 074-21, Jan. 17, 1974; Op. Atty. Gen. 076-30, Jan. 30, 1976.

2. As the local business tax is not regulatory and the receipt is evidence that the tax has been paid, it follows that the receipt cannot be revoked or denied. It is evidence that the tax has been paid; once paid, it cannot be declared unpaid (unless the wrong tax has been paid). The legislature has, however, imposed certain prerequisites. See, e.g., F.S. § 205.194, 205.196. While technically improper, the city in Code § 66-37 requires that a business tax receipt not be issued for locations where the proposed business would not be proper under zoning and other ordinances. Most municipalities so provide. This is sound policy. A person would be (understandably) upset were he to pay a business tax and then learn he could not engage in business at the chosen location.
3. A municipality cannot transform a business license receipt into a regulatory vehicle. As certain intrastate businesses are exempt from the business tax (see Code § 66-21 and F.S. § 205.042), a classic case of discriminatory regulation would be presented (interstate commerce being subject to the tax while intrastate commerce is not). See Op. Atty. Gen. 073-399, Oct. 25, 1973.

### Article III. Insurance Premium Taxes

**Sec. 66-75. Insurance premiums; excise imposed--Casualty.** Change state insurance commissioner to office of insurance regulation of the financial services commission. See F.S. § 185.08.

**Sec. 66-76. Same--Property.** So as to track F.S. § 175.101, revise to read as follows:

(a) There is hereby assessed and imposed on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the office of insurance regulation of the state financial services commission, an excise tax in addition to any lawful license or excise tax amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of the city.

(b) In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, 70 percent of such premium shall be used as the basis for the 1.85-percent tax.

(c) The tax shall be payable annually on March 1 of each year. Installments of taxes shall be paid according to the provision of F.S. §

624.5092(2)(a), (b), and (c).

#### Article IV. Public Service Tax

**Sec. 66-97. Tax levied; schedule.** The city may wish to add the following language, implementing the mandatory provisions of F.S. § 166.231(1)(b) to this section:

The tax imposed by this section shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term “fuel adjustment charge” means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

#### Article V. Telecommunication Service Tax

**Sec. 66-131. Rate and amount of tax on purchase of telecommunication service.** So as to be consistent with F.S. § 202.19, change the seven percent rate to 5.1 percent and alter to label the tax a communications services tax. In addition, as the city apparently requires a permit fee (See. F.S. § 337.401(3)(c)1.a and Code § 70-78), alter the conversion rate to be 3.98 percent and add language stating that if the city does not require a permit pursuant to F.S. § 337.401, the conversion rate is 4.1 percent.

#### Article VI. Ad Valorem Taxation

##### Division 2. Homestead Exemption for Low-Income Elderly Persons

**Sec. 66-193. Commencement of additional exemption.** Delete as obsolete.

**Sec. 66-195. Notification to property appraiser.** Delete as obsolete.

## Chapter 70. Telecommunications

### Article II. Cable Television Systems

The provisions of F.S. § 610.102 et seq. provide for issuance of cable television franchises by the state. Municipalities are prohibited from granting new franchises. See F.S. § 610.102. (The author does not interpret this prohibition as prohibiting renewal of an existing franchise.) If there is no longer a city franchisee, delete this article. If, however, (as seemly likely) a franchise is currently in effect, delete the following provisions, which provisions relate to granting of franchises:

70-26(a)(1), (d), (e)

70-27

70-46(b) (“grant franchises”)

**Sec. 70-38. Discrimination prohibited.** In subsections (a) and (c), add sexual orientation as a prohibited ground for discrimination.

### Article III. Right-Of-Way Use

**Sec. 70-73. Definitions.** Delete the second and third sentences as covered by Code § 1-2, as revised.

**Sec. 70-75. Compensation.** In subsection (b), correct the state law reference to be to F.S. § 202.11(1).

**Sec. 70-77. Underground installation; relocation.** In subsection (e), change F.S. § 337.403(1)(a)—(c) to F.S. § 337.403(1).

## Chapter 74. Traffic and Vehicles

### Article I. In General

#### **Sec. 74-1. Driving vehicles on parkways, golf course, etc., prohibited; exceptions.**

Add an exemption for driving golf carts on golf courses.

### Article III. Stopping, Standing and Parking

#### Division 3. Valet Parking

**Sec. 74-165. Application and review procedures for permit.** In subsection (b), change occupational license to business tax receipt. See F.S. ch. 205.

### Article V. Wrecker Service

**Sec. 74-237. Definitions.** In the definition of license, change occupational license to business tax receipt. See F.S. ch. 205.

**Sec. 74-240. License required for city-initiated towing services; prohibition.** Change occupational license to business tax receipt. See F.S. ch. 205.

**Sec. 74-241. Selection and application for towing license for city-initiated towing services; fees.**

1. In subsection (b)(3) change occupational licenses to business tax receipts. See F.S. ch. 205.
2. In subsection (b)(8), delete the reference to social security number. Section 7 of Pub. L. 93-579 provides that:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number. (2) the (The) provisions of paragraph (1) of this subsection shall not apply with respect to - (A) any disclosure which is required by Federal statute, or (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual. (b) Any Federal, State, or local government agency which

requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

#### Article VII. Impound Vehicles

**Sec. 74-306. Appeals.** Delete as beyond the power of the city to provide.

#### Article VIII. Dangerous Intersection Safety

**Sec. 74-354. Adherence to red light traffic control signals.** Delete as covered by F.S. § 316.075 and therefore preempted. See F.S. § 316.007.

## Chapter 78. Utilities

Code §§ 78-49, 78-51, 78-102 and 78-105 reference the General Waterworks Corporation. (Code §§ 78-102 and 78-105 are missing the term “Corporation.”) Code § 78-98 (*sewer connection requirement definitions*) defines the terms owner, tenant, occupant and user with language indicating that water is furnished by the Miami-Dade Water and Sewer Department. Other sections reference water service by the Miami-Dade Water and Sewer Authority. See, e.g., Code § 78-100. Please advise of any necessary reconciliation.

### Article III. Sanitary Sewer System

#### Division 3. Sewer Use Regulations

**Sec. 78-124. Definitions.** In the definition of sanitary sewer, change the reference to the now nonexistent state sanitary code to reference “state rules.”

**Sec. 78-140. General provisions.**

1. Delete subsection (a) (*judicial review*) as beyond the power of the city to provide.
2. Delete subsection (f) (*severability*) as covered by Code § 1-8.

### Article IV. Stormwater Management Utility

**Sec. 78-157. Definitions.** Revise the introductory language to read as shown below. This will delete language covered by Code § 1-2, as revised, and will also delete the reference to Webster’s Dictionary. Many different companies publish dictionaries bearing the name Webster.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

## **Chapter 82. Vegetation**

### Article I. In General

**Sec. 82-1. Defacement of trees, shrubs, vines, etc., in public places prohibited without permit.** Delete reference to park as covered by Code § 42-23.

### Article II. Standards for Removal and Relocation of Trees

**Sec. 82-37. Grandfather provision.** Delete as obsolete.



## **Chapter 86. Waterways**

### Article II. Vessels and Water Safety

#### Division 1. Generally

**Sec. 86-25. Endangering life or property with watercraft.** Delete as covered by F.S. § 327.33, adopted by reference in Code § 38-1.

## **Subpart B--Land Devel. Regs—Ch. 101. Admn & Enforcement**

### Article II. Development Review Committee

**Sec. 101-19. Development review committee.** Delete as not needed.

### Article IV. Special Master Dispute Resolution

This article is at substantial variance with F.S. § 70.51. Delete all provisions except the following, which should be modified to reference a special magistrate (rather than a special master) and insert language stating that the city is implementing F.S. § 70.51:

§§ 101-90—101-92

§ 101-94

§ 101-95(2), (6)—(16)

§ 101-99

### Article VI. Code Enforcement

#### Division 2. Code Enforcement Board

**Sec. 101-161. Creation; membership; statutes to govern board.**

Subsection (a) provides that the code enforcement board has jurisdiction over “the technical codes in force in the city, including, but not limited to, occupational licenses, fire, building, zoning and sign codes and ordinances.” This statement is contradictory, as the business tax is not a technical code. Under F.S. § 162.02, the board can be used to enforce any ordinance, where a pending or repeated violation continues to exist. Please advise as to jurisdiction. If the board has jurisdiction over provisions not found in subpart B, then the board should be relocated to subpart A.

#### Division 3. Supplemental Code Enforcement Procedures

Per F.S. § 162.03, change “hearing officer/special master” to “special magistrate.”

## **Chapter 105. Buildings and Building Regulations**

### Article II. Building Standards

#### Division 1. Generally

**Sec. 105-27. Condition of commercial property.** In subsection (b), delete the last sentence as covered by Code § 1-7.

### Article V. Minimum Housing Code

#### Division 1. Generally

**Sec. 105-157. Penalty for violation of chapter provisions; person defined.** Delete subsection (c) as covered by Code § 1-7.

## **Chapter 117. Subdivisions**

This chapter is derived from a special act (Related Laws). If adequately covered by the zoning ordinance and county standards, delete.