



Office of the Town Attorney

Mitchell A. Bierman
Member
Weiss Serota Helfman Cole & Bierman

MEMORANDUM

To: Honorable Mayor and Town Council
From: Mitchell A. Bierman, Member
Date: October 19, 2016
Re: Adoption of Town Code of Ordinances
2nd Reading (Additions to existing code text are shown by underline)

REQUEST

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING AND ENACTING A NEW CODE OF ORDINANCES FOR THE TOWN OF CUTLER BAY, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Town has adopted numerous ordinances since its incorporation including a comprehensive set of Land Development Regulations. To this point, those ordinances have survived and been implemented as individual ordinances without a cohesive structure. Over the past two years the Town Attorneys, Municode Attorneys and editors and Town staff have worked to format, edit, organize and codify the Town’s adopted Ordinances into a single Town Code document. Chapter 1 of the Code provides general provisions which are standard with the adoption of a comprehensive code. The remainder of the Code consists of the consolidated ordinances previously adopted by the Town. Upon adoption, this Code will be available online on Municode.com, with full search, copy, and print functions. Through the process several key changes occurred focused around resolving conflicts, duplication, streamlining and eliminating conflicts with State law created when the State legislature adopted new legislation impacting ordinances the Town already had adopted.

Several notable changes have occurred which have been outlined below.

- Changes were made to address State preemptions.





- First, references to firearm regulations have been removed from the Park rules. State legislation preempts all firearm regulation to the State. More significantly, in 2011, the State legislature imposed major penalties¹ not just on enforcing municipalities, but also on the individual elected or appointed officials and staff *adopting or enforcing* such regulations.
- Second, Ordinance 09-03 requiring security camera installation was not codified as it has been preempted by state law.
- The Town Council agenda format and Council procedures (section 2-129 in Code) was originally adopted in Ordinance 06-12. Ordinance 07-12 amended Ordinance 06-12 to have the agenda format adopted by resolution. That provision has been amended in this draft code to allow the entire agenda format and Council procedures to be adopted by resolution. A resolution adopting your current procedures and agenda format will be presented with 2nd reading of this Code adoption ordinance.
- Finally, the Code Enforcement schedule of fines was updated to reflect the Town's violations (as opposed to the entire Miami-Dade County Code) and to revise the fines consistent with the Town's fining authority which, based on its size, is limited to \$250 per violation per day, up to \$500 per violation per day for repeat violations². Violations of an irreparable nature may be assessed fines up to \$5,000 per day.

Attached is a spreadsheet outlining all the Town Ordinances adopted to date and their location in the new draft Code (Attachment "A"). Where an original ordinance was amended, the succeeding ordinances are noted with the final chapter location provided in parenthesis. The ordinance progression was not provided for Chapter 3 provisions as those provisions often overlap or were amended in multiple non-linear ordinance progressions.

RECOMMENDATION

It is recommended that the Town Council adopt the attached Ordinance.

¹ Penalties include: court injunction; up to a \$5,000 fine for elected/appointed government official or staff under whose jurisdiction the violation occurred (knowing/willful); No reimbursement for defense of a person who willfully/knowingly violated statute; cause for termination or removal by Governor; prevailing plaintiff's attorney's fees, *including* contingency fee multiplier; and actual damages up to \$100,000.

² Miami-Dade County, based on its size, is permitted to fine up to \$500/1000 per violation per day, which was reflected in the Code from the Town's original incorporation.





ATTACHMENTS

- Attachment “A” – Ordinance Disposition
- Attachment “B” – Advertisement (Miami Herald Local – Sept. 8, 2016)
- Attachment “C” – Advertisement (Miami Herald Local – Oct. 6, 2016)

