



MEMORANDUM

Agenda Item No. 5(A)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE:

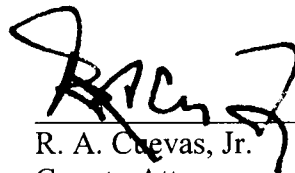
(Second Reading 10-18-11)
September 1, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT:

Ordinance amending Section 1-4.1 of the Code relating to administrative amendments to the Code; authorizing the County Attorney to update the Code and County rules and regulations to delete any provisions which, as a matter of law, have been preempted and declared null and void by Section 790.33, Florida Statutes

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Joe A. Martinez.



R. A. Cuevas, Jr.
County Attorney

RAC/up



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 18, 2011

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 5(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 5(A)
10-18-11

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 1-4.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATING TO ADMINISTRATIVE AMENDMENTS TO THE CODE; AUTHORIZING THE COUNTY ATTORNEY TO UPDATE THE CODE AND COUNTY RULES AND REGULATIONS TO DELETE ANY PROVISIONS WHICH, AS A MATTER OF LAW, HAVE BEEN PREEMPTED AND DECLARED NULL AND VOID BY SECTION 790.33, FLORIDA STATUTES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Florida Statutes Section 790.33 entitled “Field of Regulation of Firearms and Ammunition Preempted” occupies the entire field of regulation of firearms and ammunition and has, with limited exception, declared all local ordinances, administrative regulations and rules related to this field null and void; and

WHEREAS, a recent amendment to Section 790.33, Fla. Stats. which becomes effective October 1, 2011, provides that: (1) any County official or employee who willfully and knowingly takes enforcement action related to preempted ordinances regulating firearms and ammunition is subject to personal liability for fines up to \$5,000 and possible removal from office by the Governor or termination of employment or contract; (2) the County itself could be liable for damages of up to \$100,000 and attorney’s fees; and (3) the County is prohibited from using public funds to defend or reimburse the defense of any person found to have knowingly and willfully violated the preemption by enforcing ordinances regulating firearms and ammunition; and

WHEREAS, the Code needs to be updated to delete any provisions of the Code or ordinances or County rules or regulations regulating firearms and ammunitions, which, as a matter of law, have been preempted and nullified by Section 790.33, Fla. Stats., so that affected County officials and employees will know to limit their enforcement efforts to laws and regulations which are prescribed and set forth in or allowable by state law; and

WHEREAS, the best interests of the County would be served, if the necessary updating of the Code is carried out as expeditiously as possible, given the fines and penalties which may accrue from the enforcement of County ordinances, rules and regulations which have been preempted and nullified as a matter of law by Section 790.33, Fla. Stats, as amended,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 1-4.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 1-4.1. Administrative amendments to Code; power of the County Attorney.

The Board of County Commissioners hereby authorizes the County Attorney to administratively amend, from time to time, the Code of >>Miami<< [[Metropolitan]] Dade County solely for the purpose of conforming said ordinances to any changes in numbering references to the State Constitution, State statutes, State rules and regulations and to the >>Miami-<<Dade County Code.

>>Additionally, the Board of County Commissioners hereby authorizes the County Attorney to update the Code and County administrative regulations or rules to delete any provisions which, as a matter of law, have been preempted, and declared null and void by Sec. 790.33, Fla. Stats., as amended, entitled "Field of

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Regulation of Firearms and Ammunition Preempted.” The County Attorney also is authorized to direct the codifier of the Code to notate any provision that, as a matter of law, has been preempted and declared null and void by Sec. 790.33 Fla. Stats., as amended.<<

>>Except as provided in this section<< the County Attorney shall have no authority to administratively conform the Code wherein said amendments to the State Constitution, State statutes, State rules and regulations, and the >>Miami<< Dade County Code substantively alter the provisions of the said Constitution, statutes, rules or regulations and/or >>Miami<< Dade County Code provisions.

Notwithstanding the foregoing, where conflicts in language by error or omission are found between provisions of the Code as originally enacted and as recodified, the original Code provisions shall govern and the county attorney is authorized to administratively amend such conflicts, omissions or errors to conform the new recodified Code with the original Code.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Cynthia Johnson-Stacks
Jess McCarty

Handwritten signatures of the County Attorney and the preparers. The top signature is in black ink and appears to be 'JAC'. Below it is a signature in blue ink that appears to be 'CJS'. At the bottom is a signature in black ink that appears to be 'JMM'.

Prime Sponsor: Chairman Joe A. Martinez