




## Council Report

To: The Honorable Mayor and City Council

From: Jeff P. H. Cazeau, City Attorney 

Date: November 7<sup>th</sup>, 2022

RE: **AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING SECTIONS 10, 36 AND 58 OF THE CITY CHARTER, TO CHANGE THE DATE OF THE GENERAL ELECTION FROM MAY 9, 2023 TO NOVEMBER 5, 2024 AND TO CHANGE THE DATE OF ALL SUBSEQUENT ELECTIONS; PROVIDING FOR THE EXTENSION OF EXISTING TERMS OF OFFICE; ADOPTING SUCH CHARTER AMENDMENTS PURSUANT TO SECTIONS 100.3605(2) AND 166.021(4), FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER/CONFORMITY OF AMENDMENTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

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The accompanying Ordinance was prepared and placed on the agenda at the request of Mayor Philippe Bien-Aime.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING SECTIONS 10, 36 AND 58 OF THE CITY CHARTER, TO CHANGE THE DATE OF THE GENERAL ELECTION FROM MAY 9, 2023 TO NOVEMBER 5, 2024 AND TO CHANGE THE DATE OF ALL SUBSEQUENT ELECTIONS; PROVIDING FOR THE EXTENSION OF EXISTING TERMS OF OFFICE; ADOPTING SUCH CHARTER AMENDMENTS PURSUANT TO SECTIONS 100.3605(2) AND 166.021(4), FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER/CONFORMITY OF AMENDMENTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with Sections 36 of the City Charter, regular elections shall be held in odd-numbered years, on the second Tuesday in May; and

**WHEREAS**, Section 6-76, of the City Code provides for the date of regular elections to be held in odd-numbered years, on the second Tuesday in May; and

**WHEREAS**, Section 100.3605(2), Florida Statutes, authorizes the City Council to change the dates of its election and to extend the terms of office of sitting Councilmembers necessitated by any such changes to the election date; and

**WHEREAS**, the City Council has determined that the City's current General Election held in May is funded entirely by the residents of the City and it would be in the public interest to move the City's General Election from May in odd-numbered years to the first Tuesday in November following the first Monday in November in each even-numbered year so that the City General Election would coincide with the national and gubernatorial election and the cost of the election would be reduced by such a change;

**WHEREAS**, starting with the 2023 City General Election currently scheduled for May 9, 2023, the City Council desires to change the date of the City's General Election to November 5, 2024, and to extend the corresponding terms of office of sitting Councilmembers to coincide with the election date change; and

**WHEREAS**, all subsequent elections will occur on the first Tuesday following the first Monday in November in each even-numbered year and the date of runoff elections shall occur on the first Tuesday after the first Monday in December following the City General Election; and

**WHEREAS**, the City Council desires to change the City's regular election dates accordingly.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:**

**Section 1.**     **Recitals.** The above recitals are true and correct and incorporated herein by this reference.

**Section 2.**     **Charter Amendment.** Pursuant to Sections 100.3605(2) and 166.021(4), Florida Statutes, Sections 10, 36 and 58 of the City Charter are amended to read as follows:

**PART I. CHARTER OF THE CITY OF NORTH MIAMI**

\* \* \* \* \*

**ARTICLE III. THE COUNCIL**

\* \* \* \* \*

**Sec. 10. - Number; selection; term.**

(3) On the ~~second~~ first Tuesday after the first Monday in ~~May~~ November of each ~~odd~~ even-numbered year, two (2) councilmembers shall be elected for a four-year term. No councilmember including the mayor shall serve more than two (2) consecutive terms beginning with the election in 2013. The mayor shall be elected for a two year term. Service will be deemed consecutive unless there is a two-year period during which the individual does not serve as councilmember or mayor ("Break in Service"). Any person serving the maximum amount of years as mayor must have a two-year Break in Service before serving as councilmember. Any person serving the maximum amount of years as councilmember is not mandated to have a two-year Break in Service before serving as mayor. A councilmember candidate must continuously reside and submit a Florida government issued identification (ID) plus one type of residency showing that the candidate has continuously resided in the district for which the candidate is seeking election, for a period of one (1) year prior to the time of qualification and thereafter. A councilmember who changes residence to a location outside of the district shall immediately vacate such office, and such vacancy shall be filled pursuant to this charter. The mayor shall not serve as mayor for more than two (2) consecutive terms and must be a continuous resident of the city for one year prior to the time of qualification and thereafter. Councilmembers serving an unexpired term who desire to run for the office of mayor or in another district shall resign as required by state law. Whenever the term council or councilmembers is used in this charter, it shall be deemed to mean and include the mayor unless otherwise specifically provided.

\* \* \* \* \*

## ARTICLE VII. ELECTIONS

\* \* \* \* \*

### Sec. 36. – Municipal elections.

The regular election for councilmembers, mayor and city clerk when applicable shall be held on the ~~second~~ first Tuesday after the first Monday in May November in ~~odd~~even-numbered years.

Should the council determine that by reason of the happening of a disaster or of an impending disaster, such election should not be held, it may by resolution authorize the mayor by proclamation to postpone the holding of the election for a period not to exceed fourteen (14) days. Such proclamation shall be posted in the city hall not less than ten (10) hours prior to the opening of the polling place or places for such elections and shall specify the time to which the election is to be postponed. The term "qualified elector" as used in this charter shall mean a citizen having the qualifications required by law to vote in the city who is at the time registered to vote, or, if no later complete registration is in effect at the time, was registered to vote in the city at the last preceding general election. Any special election of the council shall be held as nearly as practicable according to provisions for a regular election.

\* \* \* \* \*

## ARTICLE VIII. CITY CLERK

\* \* \* \* \*

### Sec. 58. - City clerk; election.

- (a) On the ~~second~~ first Tuesday after the first Monday in May November of an ~~odd~~even-numbered year, the city clerk shall be elected to hold office for a term of four (4) years and until his or her successor is elected and qualified but beginning in 2013 shall be limited to serving no more than two consecutive terms. In the event that no candidate receives a majority of the votes cast, then a runoff election shall be held between the two (2) candidates receiving the highest number of votes at the time and in the manner set forth in [section] 61. In the event a vacancy occurs in the office of city clerk, the deputy city clerk shall assume the duties of the city clerk. Such vacancy shall be filled for a full four-year term in the next regular election being held for the City of North Miami.

**Section 3. Extension of Existing Terms of Office.** Notwithstanding the provisions of Section 10(2) of the City Charter, for the 2023 General Election only, the term of the office for any Councilmember or City Clerk whose term would ordinarily expire in May of 2023 shall be extended up to the date that the newly elected or re-elected Councilmember or City Clerk would take office pursuant to Section 37 of the City Charter.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Charter/Conformity of Amendments.** Following adoption of the Charter Amendments, the City Clerk shall have the Charter Amendments incorporated into the City Charter and shall file the revised Charter with the Department of State. The City Clerk is authorized to revise the Charter to the extent necessary to ensure that the adopted Charter Amendments conform to one another.

**Section 6. Repeal of Conflicting Provisions.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

**Section 7. Effective Date.** This Ordinance shall be effective upon adoption on second reading.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
PHILIPPE BIEN-AIME  
MAYOR

ATTEST:

\_\_\_\_\_  
VANESSA JOSEPH, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY

SPONSORED BY: MAYOR PHILIPPE BIEN-AIME

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Philippe Bien-Aime \_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Vice Mayor Alix Desulme, Ed.D. \_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilman Scott Galvin \_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilwoman Kassandra Timothe, MPA \_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilwoman Mary Estimé-Irvin \_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.



# MEMORANDUM

To: Honorable Mayor and City Council

From: Jeff P. H. Cazeau, City Attorney *JPC*

Date: November 1, 2022

**Re: Memo regarding effect of election date change**

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Dear Mayor and Council,

At the November 7, 2022, City Council Meeting you will be asked to consider two ordinances pursuant to Florida Statute Section 100.3605(2), which will change the date of the City of North Miami election from May 9, 2023 to November 5, 2024. The purpose of this memo is to explain the ramifications of these ordinances, should they pass.

As a preliminary matter, it must be noted that pursuant to the Florida Resign to Run Law, Fla. Stat. 99.012 on May 19, 2022, Mayor Philippe Bien-Aime tendered his resignation as Mayor of the City of North Miami. Mayor Bien-Aime submitted his resignation from the office of North Miami Mayor in order to seek election to another office, Miami-Dade County Commissioner, District 2. Pursuant to the Resign to Run Law the effective date for the resignation is the earlier of two dates:

- 1) The date that he would take office as Miami-Dade County Commissioner; or
- 2) The date the Mayor's successor is required to take office.

Since the City of North Miami Charter and Code of Ordinances is silent on the specific date a successor must fill a vacancy, Section 3.01 of Miami-Dade County's Home Rule Charter applies. That section provides that the terms of office of the Mayor and County Commissioners shall commence on the second Tuesday next succeeding the date of the general election in November. In this instance, the general election is scheduled for November 8, 2022, with the successful candidate taking office on November 22, 2022. Therefore, Mayor Bien-Aime's resignation would be November 22, 2022.

## DISCUSSION

***What effect will the Mayor's resignation have on the current City Council and how will position of Mayor get filled following the vacancy.***

Who stands in for the Mayor during his absence and/or vacancy is governed by two different sections of the North Miami City Charter.

Article III, Section 13 establishes the position of vice-mayor and states that the vice-mayor will “act as mayor during the absence or disability of the mayor”. That section states the following:

**Sec. 13. - Presiding officer; mayor.**

**The mayor shall preside at the meetings of the council and shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law, and shall have a voice and vote in the proceedings of the council, but shall have no regular administrative duties. The council shall elect a vice-mayor who shall act as mayor during the absence or disability of the mayor. The vice-mayor shall be elected from among the councilmembers.**

We know that Sec. 13 only speaks to the “absence or disability of the mayor” because Section 15 of the Charter discusses “Vacancies on the council”. That section states as follows:

**Sec. 15. - Vacancies on the council.**

**Vacancies on the council shall be filled for the remainder of the unexpired term of the councilmember whose seat becomes vacant in the following manner:**

- (1) If the vacancy occurs because of resignation by a councilmember who is seeking other elective office, the election for which office includes the electors of the City of North Miami, such councilmember must file a written resignation with the city clerk at least ten (10) days prior to the earliest qualifying date for such other elective office (the resignation to become effective upon a successor's being sworn into office) and a successor shall be elected in the same election with qualifying concurrent with the qualifying dates of the office sought by the resigning councilmember.
- (2) **If the office of a councilmember becomes vacant on or before the councilmember has served one half of his or her term plus one day, a regular or special election shall be held within sixty (60) days to fill the vacancy for the balance of the term. If the office of a councilmember becomes vacant more than one half of his or her term plus one day after the councilmember takes office, then the remaining members of the council shall choose a successor and such appointee shall fill the vacancy for the balance of the term.**
- (3) In accordance with subsection (1) or (2), if a vacancy is to be filled at other than a regular city election, and the city clerk certifies that the city candidates cannot be included on the ballot, then the vacancy shall be

filled as provided in subsection (2) as though there were no other election being held.

- (4) Nominations and the conduct of the election shall be as otherwise provided in this charter and by law, and notice of election shall be posted in the city hall and published in a newspaper of general circulation in the City of North Miami once a week for four (4) consecutive weeks preceding the holding of the election.

By the effective date of his resignation, November 22, 2022, Mayor Bien-Aime will have served one half of his term plus one day. Based on the above, if there is no change to the City of North Miami election date, sometime after November 22, 2022 (when the vacancy is created) the remaining members of the City Council would vote to appoint someone to fill the vacancy created by the Mayor's absence.

However, should the City Council pass the ordinances amending the City Charter to allow a change of election dates from May 9, 2023 to November 5, 2024, as will be explained below, there would be no appointment of the Mayor's successor. Instead, the City would have to hold a special election.

In changing the City of North Miami election date to coincide with state, federal, and county elections, the terms of office for the sitting council member's will be extended. Specifically, the Mayor's extended term of office will now be from May 11, 2021 to November 5, 2024 as opposed to May 11, 2021 to May 9, 2023. This will trigger a special election because on November 22, 2022, the Mayor will not yet have served more than half of the term, plus one day. Based on a term commencing on May 11, 2021 and ending November 5, 2024, "one half term plus a day" would be February 8, 2023.

See Florida Attorney General Opinion 2000-61:

*"I am of the opinion that pursuant to section 100.3605, Florida Statutes, the City of Mulberry may by ordinance amend its city charter to move the dates of city elections from April to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November.*

See also Florida Attorney General Opinion 2003-52:

*Accordingly, I am of the opinion that the City of Lauderdale Lakes, pursuant to sections 166.021(4) and 100.3605, Florida Statutes, may amend its city charter by ordinance to move the dates of city elections from March to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November, when the existing charter was last amended in January 1998.*



# MEMORANDUM

## CONCLUSION

As such, if the ordinances changing the date of the City of North Miami election from May 2023 to November 2024 is passed, the terms of office of the Mayor and City Council will all be extended. This means, the Mayor will not have served half a term plus one day by the effective date of his resignation on November 22, 2023. Accordingly, pursuant to the City of North Miami Charter a special election to fill the vacancy for the balance of the Mayor's term must take place within sixty (60) days of the effective day of his resignation.

If for some reason the ordinances changing the City of North Miami Election from May 2023 to November 2024, is not passed then sometime after November 22, 2022, the remaining city council members must vote to appoint someone to complete the balance of the Mayor's term which would end in May 2023.


Attachment(s)

**PHILIPPE BIEN-AIME, MAYOR**  
70 NE 134 Street  
North Miami, FL 33161  
PhilippeBienAime447@Gmail.com  
May 17, 2022

Vanessa Joseph, Esq., Clerk  
City of North Miami  
776 NE 125 Street  
North Miami, FL 33161  
vajoseph@northmiamifl.gov  
cityclerk@northmiamifl.gov

**RECEIVED**

MAY 19 2022

**NORTH MIAMI**  
Office of the City Clerk  
by Guerty Genosier  
Deputy City Clerk  
@ 3:45 P.M.  


Re: Mayor Philippe Bien-Aime  
**Irrevocable Letter of Resignation**

Dear Clerk Joseph:

In accordance with the requirements of §99.012, Florida Statutes (2018), I tender my irrevocable resignation as North Miami Mayor in view of my candidacy for Miami Dade County Commission, District 2 on the August 23, 2022 election ballot. This resignation, submitted at least ten (10) days prior to the first day of qualifying for the office of Miami-Dade County Commissioner, District 2 (May 31, 2022), is effective no later than the earlier of the following dates: (1) the date I would take office of Miami-Dade Commissioner, District 2 if elected, or (2) the date my successor is required to take office.

Please let me know immediately if this resignation is insufficient to comply with the requirements of the Resign-to-Run Law.

Respectfully,

  
Philippe Bien-Aime

Copy: Gov. Ron DeSantis, GovernorRon.Desantis@eog.myflorida.com  
Ryan Newman, General Counsel, ryan.newman@eog.myflorida.com  
Florida Department of State, SecretaryofState@DOS.MyFlorida.com,  
DOS.GeneralCounsel@DOS.MyFlorida.com

## ARTICLE 3. - ELECTIONS

### SECTION 3.01. - ELECTION AND COMMENCEMENT OF TERMS OF COUNTY COMMISSIONERS.

- A. The election of the Commissioners from even-numbered districts shall be held in 1994 and every four years thereafter and the election of Commissioners from odd-numbered districts shall be held in 1996 and every four years thereafter at the time of the state primary elections.
- B. A candidate for County Commission or Mayor must receive a majority of the votes cast to be elected. Effective with the election for County Commission in 2004, if no candidate receives a majority of the votes cast there will be a runoff election at the time of the general election following the state primary election between the two candidates receiving the highest number of votes. Should a tie result, the outcome shall be determined by lot. No votes cast in favor of any candidate who withdraws, becomes disqualified, or becomes deceased prior to any election shall be counted. The names of unopposed candidates for Mayor and County Commissioners shall not appear on an election ballot and such election shall not take place. Each unopposed candidate shall be deemed to have voted for himself or herself. In the event that no candidate has qualified for Mayor or County Commissioner, a vacancy shall be deemed to have occurred, and shall be filled as provided by this Charter for the filling of a vacancy.
- C. Except as otherwise provided in this Charter, beginning with the elections in 2004, the terms of office of the Mayor and County Commissioners shall commence on the second Tuesday next succeeding the date of the general election in November.
- D. Notwithstanding any other provision of this Charter, effective with the term of Mayor scheduled to commence in October, 1996, no person shall be elected as Mayor for more than two consecutive four-year terms. Neither service as Mayor or County Commissioner prior to the terms scheduled to commence in October, 1996, nor service of a partial term subsequent to October, 1996, shall be considered in applying the term limitation provisions of this section.
- E. Notwithstanding any other provision of this Charter, effective with the term of Commissioners scheduled to commence in 2012, no person shall be elected as Commissioner for more than two consecutive four-year terms. No term of service as a Commissioner commencing prior to 2012 shall be considered a part of or counted toward the two term limit.

Select Year: 2022 

## The 2022 Florida Statutes

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[Title IX](#)  
ELECTORS AND  
ELECTIONS

[Chapter 100](#)  
GENERAL, PRIMARY, SPECIAL, BOND, AND REFERENDUM  
ELECTIONS

[View Entire  
Chapter](#)

### 100.3605 Conduct of municipal elections.—

(1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

(2) The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes.

History.—s. 2, ch. 95-178.

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Select Year: 2022 

## The 2022 Florida Statutes

[Title XII](#)  
MUNICIPALITIES

[Chapter 166](#)  
MUNICIPALITIES

[View Entire Chapter](#)

### 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) 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.

(8)(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) A contract between the governing body of a municipality or other entity engaged in economic development activities on behalf of the municipality and an economic development agency must require the agency or entity receiving municipal funds to submit a report to the governing body of the municipality detailing how the municipal funds are spent and detailing the results of the economic development agency's or entity's efforts on behalf of the municipality. By January 15, 2011, and annually thereafter, the municipality shall file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the municipality's website.

(e)1. By January 15, 2011, and annually thereafter, each municipality having annual revenues or expenditures greater than \$250,000 shall report to the Office of Economic and Demographic Research the economic development incentives in excess of \$25,000 given to any business during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. Economic development incentives include:

a. Direct financial incentives of monetary assistance provided to a business from the municipality or through an organization authorized by the municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.

b. Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.

c. Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions.

d. Below-market rate leases or deeds for real property.

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities.

(f) This subsection does not limit the home rule powers granted by the State Constitution to municipalities.

(9)(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 a per diem and travel expense policy for its travelers which varies from the provisions of s. [112.061](#). Any such policy provided by a municipality or an agency thereof on January 1, 2003, shall be valid and in effect for that municipality or agency thereof until otherwise amended. A municipality or agency thereof that provides any per diem and travel expense policy pursuant to this subsection shall be deemed to be exempt from all provisions of s. [112.061](#). A municipality or agency thereof that does not provide a per diem and travel expense policy pursuant to this subsection remains subject to all provisions of s. [112.061](#).

(c) Travel claims submitted by a traveler in a municipality or agency thereof which is exempted from the provisions of s. [112.061](#), pursuant to paragraph (b), shall not be required to be sworn to before a notary public or other officer authorized to administer oaths, but any claim authorized or required to be made under any per diem and travel expense policy of a municipality or agency thereof must contain a statement that the expenses were actually incurred by the traveler as necessary travel expenses in the performance of official duties and shall be verified by a written declaration that it is true and correct as to every material matter; and any person who willfully makes and subscribes any such claim that he or she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation of such a claim that is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, commits a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Whoever receives an allowance or reimbursement by means of a false claim is civilly liable in the amount of the overpayment for the reimbursement of the public fund from which the claim was paid.

**History.**—s. 1, ch. 73-129; s. 1, ch. 77-174; s. 2, ch. 90-332; s. 2, ch. 92-90; s. 2, ch. 93-207; s. 2, ch. 94-332; s. 1, ch. 95-178; s. 1, ch. 98-37; s. 1, ch. 2003-125; s. 2, ch. 2010-147; s. 22, ch. 2011-34; s. 60, ch. 2011-142; s. 3, ch. 2011-143.

**Advisory Legal Opinion - AGO 2000-61**[Print Icon Print Version](#)

Number: AGO 2000-61

Date: October 6, 2000

Subject: Change in date of municipal elections, referendum

Mr. Frank Comparetto, Jr.  
Mulberry City Attorney  
Citrus & Chemical Bank Building  
114 North Tennessee Avenue, Suite 204  
Lakeland, Florida 33801-4659

RE: MUNICIPALITIES--CHARTERS--REFERENDUM--change in date of election of municipal elections and resulting change in terms of sitting officers may be accomplished by ordinance without a referendum. ss. 100.3605 and 166.021, Fla. Stat.

Dear Mr. Comparetto:

You ask substantially the following question:

May the City of Mulberry, pursuant to section 100.3605, Florida Statutes, amend its city charter by ordinance to move the dates of city elections from April to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November?

In sum:

Pursuant to section 100.3605, Florida Statutes, the City of Mulberry may by ordinance amend its city charter to move the dates of city elections from April to November to coincide with federal, state, and county elections and to extend the terms of the sitting commissioners to November.

In Attorney General Opinion 94-31, this office stated that under the then existing statutes, the city commission of the City of Tallahassee could not amend its charter by ordinance to provide for a change in the date on which municipal elections will occur and extend the terms of the sitting officers affected by the change. This conclusion was based

on the language of section 166.021 Florida Statutes (1993). Subsections (4) and (5) of the statute sought to implement the broad grant of home rule powers by repealing or converting into ordinances limitations on municipal powers contained in a municipal charter or special act adopted prior to July 1, 1973. Subsection (4) of section 166.021, however, provided that nothing in Chapter 166, Florida Statutes, the Municipal Home Rule Powers Act, was to be construed as permitting any changes in a special law or municipal charter that affect certain subject matters set forth therein, including "the terms of elected officers," without referendum approval as provided in section 166.031, Florida Statutes.

During the 1995 legislative session, legislation was introduced to amend section 166.021, Florida Statutes. Section 1 of Chapter 95-178, Laws of Florida, amended section 166.021(4) to read in pertinent part:

"However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect . . . 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*, . . . without approval by referendum of the electors as provided in s. 166.031. . . ." (e.s.)

Section 2 of Chapter 95-178, *supra*, created section 100.3605, Florida Statutes, relating to the conduct of municipal elections.[1] Subsection (2) of section 100.3605 provides:

"(2) The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes."

An examination of the legislative history of the 1995 legislation indicates an intent that municipalities would be authorized to amend their charters to change the election dates and qualifying periods for candidates, including any changes in terms of office necessitated by such amendment, without a referendum.[2] Moreover, the title for Chapter 95-178, Laws of Florida, states in pertinent part:

"An act relating to municipal elections; amending s. 166.021, F.S.; authorizing amendment of a special law or municipal charter for the purpose of changing election dates and qualifying periods for candidates, including any changes in terms of office necessitated thereby, without referendum; creating s. 100.3605, F.S.; . . . providing for change of qualifying periods and election dates by ordinance and for the orderly transition of office; providing an effective date."

While the title to a statute cannot enlarge the operation or effect of an enactment, it may be used as an aid in the statute's interpretation.

[3] The title reflects an intent of the Legislature to permit municipalities to amend their charter to change the election dates and qualifying periods for candidates, including any changes in terms of office necessitated thereby, without referendum.

Accordingly, I am of the opinion that pursuant to section 100.3605, Florida Statutes, the City of Mulberry may by ordinance amend its city charter to move the dates of city elections from April to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/tjw

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[1] Chapter 95-178, Laws of Florida, became effective January 1, 1996. See s. 3, Ch. 95-178, *supra*.

[2] See House of Representatives Committee on Ethics and Elections Final Bill Analysis & Economic Impact Statement on HB 2209 (passed by the Legislature as Ch. 95-178, Laws of Florida), dated May 10, 1995, stating:

"HB 2209 authorizes amendment of a municipal charter or special act without referendum for the purpose of changing municipal election dates and qualifying period for candidates and for the adjustment of terms of office necessitated by such date changes. . . ."

[3] See, e.g., *Parker v. State*, 406 So. 2d 1089 (Fla. 1981) (one indicator of legislature's intent is the title of the law enacting the statute); *Carlile v. Game and Fresh Water Commission*, 354 So. 2d 362, 365 (Fla. 1977) (reference to the title of a legislative act is appropriate in determining legislative intent); *Long v. State*, 622 So. 2d 536 (Fla. 1st DCA 1993); *State, Department of Environmental Regulation v. SCM Glidco Organics Corporation*, 606 So. 2d 722 (Fla. 1st DCA 1992) (to determine legislative intent, court must consider act as whole, i.e., evil to be corrected, language of act, including its title, history of its enactment, and state of law already in existence).

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**Advisory Legal Opinion - AGO 2003-52**[Print Icon Print Version](#)

Number: AGO 2003-52

Date: November 3, 2003

Subject: Municipal charter, change in election date

Mr. James C. Brady  
501 Northeast 8th Street  
Fort Lauderdale, Florida 33304

RE: MUNICIPALITIES-CHARTERS-ELECTIONS-PUBLIC OFFICERS-change in election date for city officials set forth in charter. ss. 100.3065, 166.021 and 166.031, Fla. Stat.

Dear Mr. Brady:

On behalf of the Mayor and City Commission of the City of Lauderdale Lakes, you ask substantially the following question:

May the City of Lauderdale Lakes, pursuant to sections 166.021(4) and 100.3605, Florida Statutes, amend its city charter by ordinance to move the dates of city elections from March to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November, when the existing charter was last amended in January 1998?

You refer to Attorney General Opinion 00-61, in which this office concluded that a city could amend its charter by ordinance to move the dates of city elections from April to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November. You state, however, that you are not sure whether the charter under consideration was adopted before or after the effective date of the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes.

Section 166.031, Florida Statutes, sets forth the procedures to be observed in amending municipal charters, including a requirement that a proposed amendment shall be subject to approval by referendum of the voters. For charters adopted prior to July 1, 1973, and not subsequently readopted, section 166.021, Florida Statutes, repealed or

changed into ordinances many of the limitations contained in such charters. Subsection (4) of the statute, however, provided that nothing in Chapter 166, Florida Statutes, the Municipal Home Rule Powers Act, was to be construed as permitting any changes in a special law or municipal charter that affect certain subject matters set forth therein, including "the terms of elected officers," without referendum approval as provided in section 166.031, Florida Statutes.

Thus, for charters adopted after July 1, 1973, and for charter provisions relating to the terms of elected officers adopted prior to that date and not subsequently readopted, any amendment of those provisions would be subject to the procedures in section 166.031, Florida Statutes. Accordingly, this office concluded in Attorney General Opinion 94-31 that the city commission of the City of Tallahassee could not amend its charter by ordinance to provide for a change in the date on which municipal elections will occur and extend the terms of the sitting officers affected by the change.

During the 1995 legislative session, however, legislation was introduced to amend section 166.021, Florida Statutes. Section 1 of Chapter 95-178, Laws of Florida, amended section 166.021(4) to read in pertinent part:

"However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect . . . 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*, . . . without approval by referendum of the electors as provided in s. 166.031. . . ." (e.s.)

In addition, Chapter 95-178, *supra*, created section 100.3605, Florida Statutes, relating to the conduct of municipal elections.[1] Subsection (2) of section 100.3605 provides:

"The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes." [2]

Accordingly, this office in Attorney General Opinion 00-61 concluded that a city may amend its city charter by ordinance to move the dates of city elections from April to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November.[3]

Thus, as noted above, prior to the 1995 amendment to section 166.021(4), Florida Statutes, and the creation of section 100.3065, Florida Statutes, a change in the charter prescribing the qualifying and election dates for municipal officers, and the resulting change in the term of office for sitting officers, required amendment according

to the provisions of section 166.031, Florida Statutes, regardless of when such provisions were adopted. The legislative history of the 1995 legislation amending section 166.021(4) and creating section 100.3065, however, indicates an intent that municipalities are authorized to amend their charters, whether those charters were adopted before or after July 1, 1973, to change the election dates and qualifying periods for candidates, including any changes in terms of office necessitated by such amendment, without a referendum.

Accordingly, I am of the opinion that the City of Lauderdale Lakes, pursuant to sections 166.021(4) and 100.3605, Florida Statutes, may amend its city charter by ordinance to move the dates of city elections from March to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to November, when the existing charter was last amended in January 1998.

Sincerely,

Charlie Crist  
Attorney General

CC/tjw

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[1] Section 2, Ch. 95-178, Laws of Florida.

[2] See House of Representatives Committee on Ethics and Elections Final Bill Analysis & Economic Impact Statement on HB 2209 (passed by the Legislature as Ch. 95-178, Laws of Florida), dated May 10, 1995, stating:

"HB 2209 authorizes amendment of a municipal charter or special act without referendum for the purpose of changing municipal election dates and qualifying periods for candidates and for the adjustment of terms of office necessitated by such date changes. . . ."

And see the title for Ch. 95-178, Laws of Florida, stating in pertinent part:

"An act relating to municipal elections; amending s. 166.021, F.S.; authorizing amendment of a special law or municipal charter for the purpose of changing election dates and qualifying periods for candidates, including any changes in terms of office necessitated thereby, without referendum; creating s. 100.3605, F.S.; . . . providing for change of qualifying periods and election dates by ordinance and for the orderly transition of office; providing an effective date."

[3] Compare Op. Att'y Gen. Fla. 01-81 (2001), in which this office was asked whether the exception afforded by ss. 166.021(4) and 100.3065,

Fla. Stat., applied to a change in the dates of the qualifying period as well as the terms of office for council members from two years to three years. This office noted that in Op. Att'y Gen. Fla. 00-61 (2000), only the sitting officers' terms were extended due to the change in the date of the election; the term of office of future officers, however, remained the same; however, in Op. Att'y Gen. Fla. 01-81 (2001), the city was interested in changing the term of office for future council members. This office concluded that the change in term of city council members from two years to three years did not fall within the exception recognized in ss. 166.021(4) and 100.3605; thus, such a change would have to be submitted to the voters for approval.

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