

Repeal of municipal ordinances

Number: INFORMAL

Date: November 03, 1999

The Honorable Heather Fiorentino
Representative, District 46
6231 Grand Boulevard
New Port Richey, Florida 34652

RE: MUNICIPALITIES--ORDINANCES--procedure for repealing ordinances.

Dear Representative Fiorentino:

Thank you for contacting this office regarding the procedure for repealing a municipal ordinance. Several constituents that live in the City of New Port Richey have contacted you for assistance in this matter.

After reviewing the information you have forwarded, it does not appear that this is a matter upon which this office may formally comment. The Attorney General is statutorily limited to rendering legal opinions on questions of state law.[1] Questions requiring the interpretation or construction of local legislation should be referred to the attorneys for local governments who have expertise in resolving these local issues. However, while this office does not generally interpret local legislation, I offer the following informal comments in an effort to be of assistance to you.

Generally, the right to pass an ordinance includes the power to repeal or modify it, provided no right secured by the Florida Constitution is violated.[2] It is the general rule that a local ordinance cannot be amended or repealed by a mere resolution. To accomplish that result, a new ordinance must be passed.

The New Port Richey City Code appears to recognize the general rule. Section 2.12 of the code describes those actions which require passage of an ordinance:

"In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which:

* * *

(12) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article VIII with respect to repeal of ordinances reconsidered under referendum power.

Acts other than those referred to in this section may be done either by ordinance, resolution or majority vote of the city council."

Thus, the city code recognizes that generally, ordinances must be amended or repealed by adoption of a subsequent ordinance.

However, section 2.12(12), recognizes an exception for the repeal of ordinances reconsidered under referendum power as provided in Article VIII of the code. Pursuant to section 8.05, New Port Richey City Code:

"When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

* * *

(3) The city council repeals the ordinance[.]"

Section 8.06(a) of the code authorizes the city council to reconsider a proposed initiative ordinance by voting for its repeal. The ordinance about which you have required, an alcoholic beverage ordinance, apparently falls within the scope of this provision.

From the minutes of the regular city council meeting of August 3, 1999, which you have forwarded to this office, it appears that the city council proceeded as required by the city code. I would note that the City Attorney for the City of New Port Richey has prepared a memorandum of law, dated August 25, 1999, which also comes to this conclusion.[3]

I trust that these informal comments will be of some assistance to you in advising your constituents.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See Department of Legal Affairs Statement Concerning Attorney General Opinions (copy enclosed).

[2] See 12 Fla. Jur. 2d *Counties and Municipal Corporations* s. 167.

[3] See Memorandum of Law, "Repeal of Alcoholic Beverage Ordinance" from Tom Morrison, City Attorney, to Gerald Seeber, City Manager, dated August 25, 1999.