

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Alan, Director, Human Resources Management/954-797-1169

PREPARED BY: El pagnier K. Hudson, Assistant Director, Human Resources Management

SUBJECT: Ordinance 1st Reading/Approval of revision to Town Administrator's Contract to require an affirmative vote of four members of Town Council in the event of dismissal without cause

AFFECTED DISTRICT: Townwide

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE REVISION TO TOWN ADMINISTRATOR'S CONTRACT IN COMPLIANCE WITH FS 166.041(6) TO REQUIRE AN AFFIRMATIVE VOTE OF FOUR MEMBERS OF TOWN COUNCIL IN THE EVENT OF DISMISSAL WITHOUT CAUSE; AMENDING THE EXISTING CONTRACT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Report in Brief: Upon request of Town Council, the inquiry was made regarding the validity of a proposed resolution amending the Town Administrator's contract terms to require an affirmative vote of four members of Town Council in the event of termination without cause. Per the opinion of Town Attorney, Monroe Kiar, an ordinance is required to effect this change in the Town Administrator's contract.

PREVIOUS ACTIONS: None

FISCAL IMPACT: None

RECOMMENDATIONS: Human Resources Management recommends that the ordinance be submitted to Town Council for favorable consideration.

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE REVISION TO TOWN ADMINISTRATOR’S CONTRACT IN COMPLIANCE WITH FS 166.041(6) TO REQUIRE AN AFFIRMATIVE VOTE OF FOUR MEMBERS OF TOWN COUNCIL IN THE EVENT OF DISMISSAL WITHOUT CAUSE; AMENDING THE EXISTING CONTRACT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie desires to bring more stability to the favorable operations of the Town; and

WHEREAS, the Town Attorney conducted extensive research on the impact of altering the Town Adminrator’s contract by resolution and found that FSS166.041 makes clear, a municipality may adopt additional, more stringent requirements to this section by ordinance or charter amendment; and

WHEREAS, the Town wishes to retain Thomas J. Willi as Town Administrator with a revision in the contract to require an affirmative vote of four members of Town Council in the event of dismissal without cause:

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA

Section 1. That the Town Administrator’s Contract be revised to require an affirmative vote of four members of Town Council in the event of dismissal without cause.

Section 2. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2003.

PASSED ON SECOND READING THIS _____ DAY OF _____, 2003.

ATTEST:

MAYOR/COUNCIL MEMBER

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

MEMORANDUM

DATE: February 11, 2003
TO: Mayor and Councilmembers
FROM: Monroe D. Kiar 
RE: Proposed amendment to Town Administrator's contract

You asked this office to provide a legal determination regarding the validity of a proposed resolution which would amend the Town Administrator's contract to require an affirmative vote of four members of the Town Council in order to terminate the Town Administrator without cause as described within the provisions of the contract.

STATEMENT OF FACT

An evaluation of the Town Administrator's performance was set forth for the Council's review on the February 5, 2003 Town Council Agenda under Item 8.1. Within the provisions of that item, it was proposed that by resolution, the Town Council was vested with the authority to amend the Town Administrator's contract to establish that the Town Administrator could not be terminated without cause unless by an affirmative vote of four councilmembers.

The Town Council reviewed the item and entered into substantial debate regarding the matter. During this debate, the Town Attorney was asked to present his legal opinion as to whether the proposed resolution was valid. The Town Attorney indicated that the current charter of the Town of Davie did not address the question of whether a supermajority can be required in order to dismiss the Town Administrator. The Town Attorney also stated that it was his belief, without the benefit of thorough research, that due to a provision of the charter that allows the Council to forgo Robert's Rules of Order in certain situations, the resolution may be permissible.

It was the decision of the Town Council, however, to table this matter to the February 19, 2003 Town Council Meeting. The Town Council additionally requested the Town Attorney's office to conduct extensive legal research regarding the validity of the proposed resolution and to prepare an opinion concerning the present matter.

DISCUSSION

The current Town of Davie Charter is silent with respect to the manner in which the Town Administrator may be hired or dismissed. Section 6 of the Town Charter establishes that a Town Administrator shall be the Town's "administrative head" and shall conduct the administrative duties of the Town. This section further enumerates the powers and duties granted to the Town Administrator. However, the provisions of the current Town Charter do not explicitly or implicitly indicate the manner in which the Town Administrator may be dismissed.

Although the Charter does not prescribe a method by which the Town Council may dismiss the Town Administrator, prior Town Administrators have been dismissed by affirmative votes of three Councilmembers through resolutions. Because the proposed resolution would amend the Town Administrator's contract to expressly require that (4) Councilmembers affirmatively vote to dismiss the Administrator, in order to terminate the Administrator's contract, the proposed resolution would in this circumstance heighten the standards established within the Charter for the enactment of a resolution.

A review of the Charter indicates that the manner in which resolutions are enacted is addressed in Section 7(J)(9). That section of the Charter expressly states that "Resolutions may be introduced and passed by three (3) affirmative votes at any regular or special meeting of the Town Council". As this office has previously indicated, in the event that the Council wishes to dismiss a Town Administrator, the provisions of the proposed resolution would undoubtedly heighten the standard for enacting a resolution established by the Charter.

Pursuant to the Home Rule Act, passed by the Legislature in 1973, the Town of Davie possesses broad home rule powers and may exercise any power for municipal purposes except when expressly prohibited by law. In accordance with the Home Rule Act, the Town may, by charter, exercise its powers to enter into any contract with the Town Administrator that is not inconsistent with established law. Sect. 166.021(1) Fla. Statutes. Conversely, the Town is prohibited by law from entering into contracts which will abridge applicable provisions of the Florida Statutes.

The Florida Statutes expressly established in Section 166.041 (4), the standard by which a municipality "may" enact ordinances and resolutions. The statute indicates that an affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution. It is established law that a municipality may not enact an ordinance or resolution with less exacting standards than the standard established by the Legislature. However, it has also been firmly established that a municipality may require additional, more stringent requirements than those established by Section 166.041. This principle was expounded upon by the Attorney General in an opinion of the Attorney General, AGO 74-371.

In AGO 74-371, the Attorney General opined that the City of Miramar was authorized to adopt by "ordinance or charter amendment" additional, more stringent requirements than those established by Section 166.041. The Attorney General's Office further reiterated their opinion in AGO 74-371 that a municipality may adopt additional requirements to Section 166.041 by "ordinance or charter amendment" in three subsequent opinions, AGO 76-197, AGO 84-63, and AGO 86-15.

It is the clear opinion of the Attorney General that the only manner in which a municipality may enact additional and more stringent requirements than that of Section 166.041 is by ordinance or through a charter amendment.

As such, it is the opinion of this office that the proposed resolution which would amend the Town Administrator's contract to require an affirmative vote of four members of the Town Council in order to terminate the Town Administrator is invalid. While the Town Council may vote to require a supermajority to dismiss the Town Administrator through an ordinance or amend the Town charter, it may not do so through a mere resolution.

Addendum to employment agreement between Administrator and Town of Davie

Section 3 Termination and Severance Pay

(3) Termination of the Administrator without cause shall require a super-majority vote of the Town Council.

Approved

By _____
Harry Venis, Mayor

Thomas J. Willi

Attest _____
Russell Muniz
Town Clerk