

Multifamily dwellings, resident property manager

Number: INFORMAL

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Mr. John C. Dellagloria
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RE: MUNICIPALITIES--ORDINANCES--MULTIFAMILY DWELLINGS--authority of municipality to adopt ordinance requiring on-site or resident property manager for multifamily residential properties.

Dear Mr. Dellagloria:

You have requested this office's assistance in determining whether the City of North Miami is authorized to adopt an ordinance requiring multifamily dwellings to maintain an on-site or resident property manager as a prerequisite to the issuance of a certificate of occupancy or certificate of reoccupancy. The city's proposed ordinance would also require certain security precautions to be taken.

By way of illustration, you have attached a copy of an ordinance enacted by the City of Homestead requiring that each multifamily complex consisting of more than 19 units is required to designate and maintain a resident manager upon application for a business license and or certificate of occupancy or reoccupancy. This ordinance requires a monthly meeting of all resident managers and provides that if, after a two month review, the complex generates a number of police calls equal to or greater than twenty-five percent of the total number of living units, then the city manager, if deemed necessary, shall require that the resident manager fence the entire perimeter of the complex and hire a licensed security guard or off-duty police officer to secure the complex from 6:00 p.m. to 6:00 a.m. If, after two month, the fence and night security do not ameliorate the police calls, then the city manager has the discretion to require that the resident manager install a guard gate at all primary entrances to the complex within no less than four months.

According to your letter, the City of Homestead adopted this ordinance as a result of continuous police calls generated by area multifamily complexes. The city relied on its charter and police powers to enact the ordinance in question. The City of North Miami is requesting this office's assistance in determining the advisability of adopting a similar ordinance.

While this office does not comment on ordinances which have been validly adopted,[1] the following discussion is offered in an effort to assist you in advising the City Council of the City of North Miami.

Under Article VIII, section 2, Florida Constitution, as implemented by Chapter 166, Florida Statutes, (the Municipal Home Rule Powers Act), municipalities have broad home rule powers.

Further, it is the general rule that municipalities may, under their police powers, regulate, restrain, and abate activities or conditions which are dangerous to the public health, safety, or welfare.[2]

However, in order to be valid, the regulations adopted must be reasonable and nondiscriminatory and they must tend to promote the public health, safety, morals, or general welfare.[3] As the Florida Supreme Court noted in *Griffin v. Sharpe*,[4] an ordinance enacted under a theory of general police powers must not infringe on constitutional guarantees by invading personal or property rights unnecessarily or unreasonably, denying due process of law or equal protection of laws, or impairing obligations of contract. In addition, such an ordinance must not be inconsistent with the general laws of the state, must not discriminate unreasonably, arbitrarily or oppressively, and must not constitute a delegation of legislative or executive or administrative power.[5]

Thus, assuming that a regulation is necessary for the welfare of the public, and is not physically invasive or confiscatory of some existing property right, it is probably within the government's police power to enact it.[6] For example, the First District Court of Appeal determined that a section of the Jacksonville housing code requiring screen doors was constitutionally valid insofar as it protected the health of the citizens of the city but that by exempting dwelling buildings containing central heating furnaces and air conditioning, the ordinance was blatantly discriminatory and was being unconstitutionally applied.[7]

In order to avoid the infirmities described in the *Stallings* case, it may be advisable to clearly provide for the applicability of the ordinance proposed by the City of North Miami to both owner-occupied and non-owner occupied multifamily residential properties. In addition, when considering the adoption of an ordinance such as the one you have suggested for the City of North Miami, care must be taken that unbridled discretion is not delegated to an administrative official. Sufficient guidelines and standards for carrying out this delegation of authority by the city commission must be provided for the official carrying out the mandates of the ordinance.[8]

I trust that these informal comments will assist you in advising the City of North Miami.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosure

[1] See Department of Legal Affairs Policy Regarding Opinions, copy enclosed.

[2] See *City of Jacksonville v. Sohn*, 616 So. 2d 1173 (Fla. 1st DCA 1993); *Carter v. Town of Palm Beach*, 237 So. 2d 130 (Fla. 1970); and Op. Att'y Gen. Fla. 79-71 (1979).

[3] 62 C.J.S. *Municipal Corporations* ss. 128, 132-135 (1949).

[4] 65 So. 2d 751 (1953).

[5] *And see Miami Shores Village v. William N. Brockway Post No. 124 of American Legion*, 24 So. 2d 33 (Fla. 1945); *Wallace v. Town of Palm Beach*, 624 F.Supp. 864 (S.D. Fla. 1985).

[6] *See Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996 (Fla. 2d DCA 1993).

[7] *See Stallings v. City of Jacksonville*, 333 So. 2d 70 (Fla. 1st DCA 1976). *And see Lester v. City of St. Petersburg*, 183 So. 2d 589 (Fla. 2d DCA 1966).

[8] *See Flesch v. Metropolitan Dade County*, 240 So. 2d 504 (Fla. 3d DCA 1970), *cert. den'd*, 244 So. 2d 432 (Fla. 1971). *And see* Ops. Att'y Gen. Fla. 91-24 (1991) (county commission may delegate powers to enforce zoning laws to zoning appeals boards if instrument conveying such authority provides meaningful standards and guidelines for boards to follow in exercising such powers) and 71-382 (1971).