



CITY OF NEWBERRY

ORDINANCE NO. 2023-31

AN ORDINANCE OF THE CITY OF NEWBERRY, FLORIDA; IMPLEMENTING THE STATE'S STATUTORY MANDATE TO PREPARE BUSINESS IMPACT ESTIMATES PRIOR TO THE ADOPTION OF PROPOSED ORDINANCES PURSUANT TO SECTION 166.041(4), FLORIDA STATUTES; PROVIDING FINDINGS; ADOPTING BUSINESS IMPACT ESTIMATE PROCEDURES, REQUIREMENTS, & EXEMPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF NEWBERRY, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS. In adopting this Ordinance, the City Commission of the City of Newberry, Florida (the "City") hereby makes and expresses the following findings, purposes, and intent:

(1) The City has been conferred broad legislative powers to enact ordinances to perform governmental functions and exercise power to promote the health, welfare, safety, and quality of life of a local government's residents by both the Florida Constitution and the Florida Legislature.

(2) The procedures for adopting municipal ordinances are set forth in Section 166.041, Florida Statutes.

(3) The Florida Constitution grants cities broad authority to take actions furthering citizens' health, welfare, safety, and quality of life called "home rule," and this authority includes legislative powers to enact local laws.

(4) Florida cities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.

(5) These home rule powers have been liberally construed when reviewed by courts.

(6) This broad home rule authority is limited by two guideposts: preemption, where a higher level of government such as the State has already legislated on a topic, and standards of reasonableness.

(7) A municipal ordinance can be declared invalid on the grounds that it is inconsistent with the Florida Constitution or Florida Statutes, and inconsistency may be found where a city ordinance is either preempted by or in conflict with the Florida Constitution or Florida Statutes.

(8) A municipal ordinance can also be declared invalid on the grounds that it is arbitrary or unreasonable, meaning that it has no legitimate governmental interest, and city ordinances are presumed valid by courts reviewing them, and the burden falls on the challenger to establish the ordinance's arbitrary or unreasonable nature.

(9) Beginning October 1, 2023, municipal ordinances adopted in Florida may be subject to local challenge based upon failure to produce a “business impact estimate.”

(10) If a court invalidates an ordinance, this ruling may result in imposition of attorneys’ fees against a city if an ordinance is later determined to be arbitrary or unreasonable.

(11) The Florida Legislature also adopted a statutory mandate that cities produce a “business impact estimate” prior to passing an ordinance, subject to certain exemptions and exceptions.

(12) The statute (Chapter 2023-309, Laws of Florida, codified as Section 166.041(4), Florida Statutes) mandates that the estimate must be published on the city’s website and include certain information, such as the proposed ordinance’s purpose, estimated economic impact on businesses, and compliance costs.

(13) This unfunded state mandate also imposes certain conditions on lawsuits brought by any party to challenge the legal validity of local ordinances as preempted by state law, arbitrary, or unreasonable.

(14) The state has created a number of exemptions for certain specified ordinances, including

- Ordinances required to comply with federal or state laws or regulations
- Ordinances relating to the issuance or refinancing of debt
- Ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget
- Ordinances required to implement a contract or agreement, including grants or financial assistance
- Emergency ordinances
- Ordinances relating to procurement
- Ordinances enacted to Implement: Part II, Ch. 163, including land development regulations, zoning, development orders, development agreements, and development permits; Sections 190.005 and 190.046 (CDDs); the Florida Building Code; the Florida Fire Prevention Code.

(15) The City Commission has provided all necessary public notice and held the requisite public hearings and accepted testimony and other competent, substantial evidence from the public for purposes of making these findings and determining to adopt this ordinance.

SECTION 2. CREATION OF SECTION 2-3 CODE OF ORDINANCES; IMPLEMENTATION OF STATUTORY MANDATE TO PERFORM BUSINESS IMPACT ESTIMATES. Section 2-3 of the Code of Ordinances of the City of Newberry, Florida (hereafter “the Code”) is hereby created to read as follows:

“Sec. 2-1. Implementation of Statutory Mandate to Perform Business Impact Estimates. The City Commission hereby adopts an ordinance to implement the Florida statutory mandate contained in § 166.041(4), Florida Statutes, to perform business impact estimates prior to the adoption of certain ordinances as specified in the statute. The City Commission shall perform a business impact statement in accordance with the requirements of the statute for all ordinances

not exempted by §§ 166.041(4)(c) or 166.0411, Florida Statutes, and may in its sole discretion determine to perform a business impact statement for any ordinance that is exempt under the statute. Nothing contained herein is intended to create additional mandates for performing the business impact estimates of exempt ordinances or to waive any exemption. The City hereby authorizes and adopts a pass through charge applicable to any person, firm, entity, or business which requests or sponsors the adoption of an ordinance solely to assess, cover, and collect the fees, deposits, costs, and expenses relating to pertaining to the preparation of the business impact estimate. The City may in its sole discretion waive this pass through charge.”

SECTION 3. SEVERABILITY. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full effect.

SECTION 4. CONFLICTS. Should any provision contained in this Ordinance conflict with any prior provision of the Code or any City ordinance, then the provisions of this ordinance shall control.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect upon passage and adoption at second reading.

PASSED upon first reading this 9th day of October, 2023.

NOTICE PUBLISHED on the _____ day of _____, 2023.

PASSED AND ADOPTED on the ____ day of _____, 2023.

**BY THE MAYOR OF THE
CITY OF NEWBERRY,
FLORIDA**

Honorable Jordan Marlowe, Mayor

ATTEST, BY THE CLERK OF THE
CITY COMMISSION OF THE CITY OF
NEWBERRY, FLORIDA:

Judy S. Rice, City Clerk

APPROVED AS TO FORM AND
LEGALITY:

City Attorney's Office