



AGENDA
FERNANDINA BEACH CITY COMMISSION
WORKSHOP
JANUARY 2, 2018
5:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PRESENTATION**
 - 4.1 REVIEW CITY COMMISSION RULES OF PROCEDURE AND GOVERNING DOCUMENTS OF THE CITY** - *City Attorney Bach will present an overview of City Commission Rules of Procedure and the City's governing documents.*
- 5. DISCUSSION**
- 6. ADJOURNMENT**

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSES, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

Persons with disabilities requiring accommodations in order to participate should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired).

CITY COMMISSION AGENDA ITEM
City of Fernandina Beach



SUBJECT: Presentation
Review City Commission Rules of Procedure and Governing Documents of the City

ITEM TYPE: Presentation

REQUESTED ACTION:

SYNOPSIS: At the request of Vice Mayor Kreger, the Legal Department has compiled a presentation of the City's governing documents and how they interact. The documents include the City Charter, the City Commission Rules of Procedure, the Comprehensive Plan, the Code of Ordinances, and the Land Development Code. City Attorney Bach will also discuss the Florida Sunshine Law and Rules of Ethics.

FISCAL IMPACT: None

CITY ATTORNEY COMMENTS: N/A

CITY MANAGER RECOMMENDATION(S): N/A

Tammi E. Bach, City Attorney 12/22/2017

Dale Martin, City Manager 12/27/2017

Date: December 14, 2017

Submitted By: Katie Newton, Legal Assistant

COMMISSION ACTION:

Florida Land Development Regulations

For writers, administrators, users, and challengers of Florida land development regulations.

TAG ARCHIVES: CONSISTENT WITH COMPREHENSIVE PLAN

Role of LDRs in Determining Consistency of Development Orders With the Comprehensive Plan

Posted on [April 11, 2011](#) | [2 comments](#)

UPDATED TO REFLECT 2011 LEGISLATIVE AMENDMENTS.

An applicant for a rezoning, special exception, or any other type of development order just wants to get their request approved. They are directed to look at the local LDRs and told “meet these requirements and you will be approved.” Okay, it usually isn’t that clear-cut, but that should be the heart of it—the LDR requirements state what must be done to get the approval and the application can only be approved if the LDR requirements are met. But then someone raises questions about whether the application is consistent with some provision of the local comprehensive plan.

Isn’t it enough to meet the requirements of the LDRs? Don’t the LDRs implement the comprehensive plan and wouldn’t that take the comprehensive plan out of the picture? The short answer is no; sections 163.3161 and 163.3194, F.S., say the development order must also be consistent with the comprehensive plan.^[1]

So, does the requirement of consistency with the comprehensive plan mean a local jurisdiction’s comprehensive plan and LDRs are two separate regulations, which a request for development is required to meet separately? Or does the LDRs’ status as the implementor of, at least part of, the comprehensive plan create some presumption that compliance with the LDRs also constitutes compliance with the comprehensive plan?

These questions go beyond confused applicants not knowing what they have to do to get through a zoning process. These questions go to the heart of every development order review – to the roles of the comprehensive plan and the LDRs in the entire development order review and decision process.^[2]

Role of Comprehensive Plan

The planning process, represented by the comprehensive plan, has been found to be a different sovereign power than the zoning process, represented by the LDRs.^[3] The purpose of a comprehensive plan is to set the principles, guidelines, standards, and strategies for future development.^[4] It is a “statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.”^[5] By the language of the statutes, the comprehensive plan is adopted “to guide”^[6] through “principles, guidelines, standards and strategies ... the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.”^[7] The comprehensive plan has been “likened to a constitution for all future development within the governmental boundary.”^[8] If the comprehensive plan is like a constitution, paraphrasing a description of the function of the U.S. Constitution, comprehensive planning “require[s] a fundamental written document that

establishes the frame of [the regulation of development and growth], states first principles and core values, and embodies the original consent of the governed; these are the functions of the [adopted comprehensive plan].”^[9] Stated another way, a constitution, and, by analogy, the comprehensive plan, is “the system of fundamental principles according to which a nation, state, corporation, or the like, is governed.”^[10]

Also, like the Florida or U.S. constitutions, the comprehensive plan is “hard law”^[11] because it is legally binding and not a political statement. It controls the local decisions, and even the courts, in decisions on development.^[12] The comprehensive plan is also “supreme law”^[13] in that it controls over the LDRs or other local laws on development.^[14]

But can this statement of fundamental principles also function as a regulation? The constitution has been found to not be “designed to provide detailed instructions for the method of its implementation.”^[15] Similarly, the new statute amendments state “[i]t is not the intent [of the statutes] to require the inclusion of implementing regulations in the comprehensive plan”^[16] Comprehensive plans do provide detailed provisions as well as more general guidelines. But is that enough for the comprehensive plan to stand alone? Or should the comprehensive plan provisions be viewed as instructions for the next step of detail, the LDRs? This is the position of the new statutory provisions, which say, after the above quoted language, that it is the intent that the comprehensive plan identify the strategy mechanisms (including land development regulations) for implementing the comprehensive plan, lay out principles describing how the strategies will be carried out, and establish meaningful and predictable standards and guidelines for implementing the more detailed LDRs.^[17]

Role of the Land Development Regulations

If the comprehensive plan is the constitution, the LDRs would be the statutes. The evaluation of the consistency of the LDRs with the comprehensive plan would be analogous to evaluating whether a statute is constitutional. The LDRs (at least the zoning regulations part) have been described as “the means by which the comprehensive plan is implemented, and involves the exercise of discretionary powers within limits imposed by the plan”^[18] and that LDRs are “enacted to provide specific legislative standards that must be applied to the general provisions of the Plan and enforced to regulate the various land use categories in the Plan.”^[19]

There is little question that the Florida Statutes expect and require that the LDRs be an integral part of implementing the comprehensive plan.

- Section 163.3201, F.S., says it two ways – the comprehensive plan shall be implemented, in part, by the adoption and enforcement of local development regulations and the adoption and enforcement of local development regulations shall be based on, be related to, and be a means of implementation of the comprehensive plan.
- Section 163.3167(1)(c), F.S., says local governments have the power and the responsibility to implement the comprehensive plan by the adoption of appropriate LDRs.
- Sections 163.3202(1) and (2), F.S., say that, not only must LDRs that are consistent with and implement the comprehensive plan be adopted within one year of the amendment of the comprehensive plan provisions, the provisions of the LDRs must be specific and detailed as are “necessary or desirable” to implement the comprehensive plan.
- Section 163.3164, F.S., defines a “land development regulation commission” as the locally designated group to develop LDRs “which implement the adopted comprehensive plan.”
- Section 163.3177(1), F.S. (2011), says the comprehensive plan shall contain programs, activities and land development regulations to ensure the comprehensive plan is implemented.

At least one provision of the statutes, §380.502, F.S., recognizes, however, that many of the goals and objectives of the comprehensive plan will not be met through regulations and other actions may be necessary, indicating a view that the LDRs are not expected to fully implement the comprehensive plan. Similarly, the statutes at §163.3177, F.S. (2011) provide that the comprehensive plan will include “programs and activities,” in addition to the land development regulations, to implement the comprehensive plan, indicating not all of the comprehensive plan provisions may require implementing regulations.^[20]

Do the LDRs replace the comprehensive plan provisions in a consistency evaluation?

So, a major role, if not the major role, for LDRs is to implement the comprehensive plan. But is implementing the same thing as consistency? Do the implementing LDRs have a controlling role in an evaluation of the consistency of an application? At least one court case found that the provisions of the comprehensive plan, itself, not the provisions of ordinances “purportedly adopted to implement the plan,” control in a §163.3215 consistency challenge.^[21] This view may change, however, under the new comprehensive plan statutes, where the land development regulations are specifically expected to have a significant role in implementing the comprehensive plan.^[22]

If the LDRs’ implementation of the comprehensive plan does not also mean consistency with the comprehensive plan provisions, what is the point of the LDRs? Why not, from a consistency standpoint, just require development to meet the comprehensive plan?^[23] But the statutes do require LDRs, do state that their purpose is to implement the comprehensive plan, and do require that they be consistent with the comprehensive plan. This strongly suggests that LDRs have a meaningful role to play in the consistency review of development applications.

When there are provisions of the comprehensive plan that address a topic (especially if they state the LDRs are to be written to implement the topic provisions), if there are LDR provisions that also address that same topic, that implement those comprehensive plan provisions, and that are “consistent” with those comprehensive plan provisions, how can there not be at least a presumption that those LDR provisions stand in the place of the comprehensive plan provisions? To say that, during the review of an application for a development order, the LDR provisions can be given no consistency weight and the comprehensive plan provisions must be reanalysed and re-applied on a case-by-case ad hoc basis^[24] is to say that the LDRs cannot implement the comprehensive plan to the point of consistency, which clearly defeats the intent and the requirements of the statutes.

Accordingly, at least in a perfect, clear scenario of LDR provisions fully implementing and being precisely consistent with the comprehensive plan, it would be reasonable to say that consistency with those LDR provisions is the same as consistency with the comprehensive plan provisions. And that those LDR provisions stand in place of the corresponding comprehensive plan provisions, eliminating the need to review those comprehensive plan provisions separately.

Consistency in the real world

It is recognized, however, that things are seldom that precise. There can be, and are, situations where the LDRs cannot stand in place of the comprehensive plan provisions and a consistency analysis must still consider the comprehensive plan separately. Setting aside from consideration the parts of the comprehensive plan that are not related to development orders or would not be appropriately implemented by the LDRs (such as capital improvement budgeting provisions), there would seem to be two scenarios (one with subsets) where a development application that is consistent with the LDR provisions would not also automatically be “consistent” with the comprehensive plan. Those are: 1) when the LDRs aren’t consistent with the relevant provisions of the comprehensive plan; or 2) when the LDRs, as written, are consistent, but don’t fully implement the relevant provisions of the comprehensive plan (with subset scenarios).

Scenario One – The LDRs are not consistent with the Comprehensive Plan

The first scenario would violate section 163.3194(1)(b), F.S.^[25] That certainly doesn't mean it doesn't happen, however. In the real world, LDRs and comprehensive plan provisions get amended, take different paths, follow the direction of different political administrations, etc., and become inconsistent. The appropriate thing to do is to regularly audit the provisions and make changes to keep them consistent. But, for various reasons, it doesn't always happen. There may not be significant immediate penalties to the jurisdiction for these inconsistencies, but there can be significant impacts on those trying to get through the application review process.

LDRs that are not consistent with the relevant portion of the comprehensive plan puts applicants for development approvals in a very difficult position.^[26] Short of putting the application on hold and attempting to convince the local governing body to amend the LDRs or comprehensive plan or filing a legal action to have the jurisdiction ordered to change one or the other, the only option would be to try to meet both the comprehensive plan and the LDR provisions. Sometimes that is just not possible. It may be possible that the LDRs and the comprehensive plan provisions intersect in some way, like a Venn diagram, allowing the proposed use in some type of configuration. But if the provisions are completely inconsistent, relative to the subject application, the options for the applicant would seem to be limited to pushing for an amendment or moving forward with the application and hope no one challenges it (the "file and pray" option).

For the local government, the options under scenario one are also limited. The cleanest would be to amend either the comprehensive plan or the LDRs to resolve the inconsistency. But what happens to pending applications? Should there be a moratorium on that problem situation (which creates its own problems)? Once the inconsistency is known, the file and pray option becomes less available to the local government, which can lead to the "wink and nod" option (I won't tell anyone there is a problem if you don't). Obviously, both the file and pray option and the wink and nod option are inconsistent with the law and are fraught with significant risks.

If the inconsistency of scenario one is to be challenged, a question is raised about which process to use. The statutes provide for a specific process for challenges of the consistency of the LDRs with the comprehensive plan, §163.3213, F.S., but the timeframe is limited to within 12 months after the adoption of the disputed regulation and appears to be for facial challenges of the LDR consistency, rather than as applied to a specific application. This would mean that outside of the limited timeframe or when the challenge is to the application of the LDR to a specific application, the applicable process would be under §163.3215, F.S. But this process, as viewed by the courts, has tended to ignore the LDRs and look only at the consistency of the specific application with the comprehensive plan.^[27] So, even attempting to resolve the LDR/comprehensive plan consistency through legal action is fraught with problems.

Scenario Two – The LDRs are consistent, but don't fully implement the comprehensive plan

The second scenario—the LDRs don't fully implement all the relevant provisions of the comprehensive plan—is probably the most likely to occur. This scenario can be divided into three subsets: a) the specifics of the subject situation are outside expectations or the scope of the regulation so that, although the LDRs are technically met, the situation is not consistent with the comprehensive plan provisions; b) the application or review of the application triggers a "fundamental" right or principle in the comprehensive plan that makes the application or decision on the application, even though technically consistent with the LDRs and comprehensive plan, in violation of the fundamental principle; or c) the LDRs leave whole provisions of the comprehensive plan unimplemented or addressed through vague requirements, such as the application "must be consistent with the comprehensive plan."

The first subset—the specifics of the subject situation are outside expectations or the scope of the regulation, creating technical compliance but not actual compliance—is likely to happen where the implementing LDRs are

written to address the normal or typical situation. A fairly common and straight forward example would be a situation where the minimum lot size requirement is not an exact fraction of the required density, such as lot sizes of 7,000 square feet in an area where the density requirement is a maximum of six units per acre. In most situations, a development of lots would require roads, open space, drainage areas, etc. that would take up enough land that 7,000 square foot lots would not exceed six units per acre. But in a situation of land that has sufficient frontage on a public road, that doesn't trigger requirements for separate drainage or open space areas, and does not otherwise require any part of the land to be used for anything other than the lots, the maximum density can be exceeded. If the LDRs have a provision that provides for this situation (in other words, implements the comprehensive plan density requirement fully), there is no issue. But if not, the separate comprehensive plan provisions, and the requirement for consistency with them, would control to prevent the density from being exceeded.^[28]

The second subset—the application triggers the application of a separate “fundamental” right or principle in the comprehensive plan—is likely to be somewhat rare. Using the constitution analogy, one aspect of this can be thought of as a constitutionality issue (and may actually trigger constitutional issues). One example of this would be when the comprehensive plan echoes the requirements of sections 163.3194(4)(a),^[29] and 163.3161(10), F.S.(2011)^[30] that local government regulations shall not create a taking of property without compensation. The application may meet the LDR provisions and the LDR provisions may fully implement the comprehensive plan provisions they purport to implement, yet the action on the application may work so as to create a taking of the property. If the LDRS do not address this potential, fully, the comprehensive plan provisions become the focus. This situation goes beyond just a question of consistency, but is an example of how the LDRs may not stand fully in the place of the comprehensive plan.

A somewhat more likely, and more difficult, issue in this subset is when the LDRs implement the specific policies and more general objectives of the comprehensive plan, but may not address every possible aspect of the stated goals. This goes to the question of what is the comprehensive plan the consistency must be measured against—is the goal narrowed by the objectives and policies such that no other aspect of the goal is relevant? This is touched on in the article [Consistency with the comprehensive plan](#) and will be explored in greater detail in a future article.

The third subset—when the LDRs leave whole provisions of the comprehensive plan unimplemented or addressed through vague requirements—is, unfortunately, the most likely to occur. When this happens, the default response would seem to be to just let the comprehensive plan control and have an ad hoc review of the comprehensive plan for each application.

The difficulty of this approach is that it does require an ad hoc, case-by-case determination of the comprehensive plan provisions' intent and what is required to advance the provision. These issues of unclear intent and uncertainty about what the comprehensive plan requires create the same potential problems as the application of vague LDR provisions—arbitrary and capricious decisions, unlawful delegation of legislative powers, and the invalidity of the provision due to its vagueness.

When the decision-makers on an application have to make a case-by-case determination of whether the application is consistent with the provisions of the comprehensive plan, it is very difficult to prevent inconsistent treatment of similar situations. This inconsistent treatment can easily present constitutional problems of violations of equal protection and due process rights. Beyond the legal problems, however, it also means that the comprehensive plan is not being implemented consistently^[31] and decisions are being made based on which way the political winds are blowing. Certainly there are those that don't object to decisions being controlled by political winds (or whims), but that is not how decisions are supposed to be made in the quasi-judicial arena.

And the quasi-judicial arena is the reason for the second problem with ad hoc decisions. The making of new regulations is only within the power of the local government's governing body – it is a “legislative” process.^[32] When regulations are so general or vague they cannot be objectively applied, requiring a subjective determination of what is required, when, or by whom, such a determination is essentially making new regulations. Doing so on a case-by-case basis in a review of a specific application, is, therefore, making new regulations on a case-by-case basis. Since the decisions made on development applications are administrative^[33] or quasi-judicial decisions, the makers of those decisions have no power to make new regulations (they are not acting as the legislative body in those decisions, even if they are also the governing body). Therefore, if the legislative body did not make the determination of what the comprehensive plan provision means in the adopted regulations, there is no one at the local level that can make that decision; meaning there is no way to make development order consistency decisions.

The third problem is somewhat similar to the first two. The Florida courts have long held that regulation requirements must be specific^[34] and clear enough to be consistently applied.^[35] When the regulations are not sufficiently clear, they can be considered void.^[36] This would mean that a general comprehensive plan provision, when applied as a separate regulation to a specific development application, could potentially be considered void, and, therefore, not applicable to the decision.

So can a general provision of the comprehensive plan—a collection of “fundamental principles,” as described above—meet the requirements of a regulation; are all comprehensive plan provisions specific and clear enough to be applied consistently, without being considered void, or their application being a legislative action? Perhaps some can, but how do we tell which they are?

When LDRs fail to fully implement the comprehensive plan provisions, especially when they include little more than a general statement that the comprehensive plan must be met, the political winds are allowed to blow freely, but the risks of challenges also significantly rise. And, perhaps most importantly, the planning and guidance of growth and development (hopefully the reason that there are comprehensive plans and land development regulations in the first place) suffers.

So What

This is a long answer to the original question of the role of the LDRs in a development order consistency review. It can be summarized by saying that, although a jurisdiction's LDRs and comprehensive plan are two separate regulations, both of which must be met, it is possible and desirable to have LDRs that are consistent with the comprehensive plan and implement the comprehensive plan fully enough as to stand in the place of the comprehensive plan in a vast majority of development order application reviews. Accordingly, LDRs can have a very important role to play in development order consistency reviews. But if the LDRs are not sufficiently complete, those comprehensive plan provisions not fully implemented by the LDRs must be separately applied. When that happens, significant constitutional and authority problems can occur.

Bottom line, to keep consistency decisions out of the control of administrative law judges and the courts, local governments must adopt and consistently apply LDRs that are consistent with and fully implement the comprehensive plan provisions that come into play.

Endnotes

1. §163.3161(6), F.S. (2011) (“It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity

with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.”) and 163.3194(1)(a), F.S. (“After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.”)

2. And certainly is very relevant in a §163.3215, F.S., challenge of the consistency of a development order with a comprehensive plan.
3. Lee County v. Sunbelt Equities, II, Ltd. P’ship, 619 So. 2d 996, 1004 (Fla. 2d DCA 1993) and Machado v. Musgrove, 519 So. 2d 629, 631 (Fla. 3d DCA 1987).
4. §163.3177(1), F.S. (2011); Sunbelt Equities, 619 So. 2d at 1004; §163.3194(4)(b), F.S.
5. Machado, 519 So. 2d at 631-32 (citing § 163.3167(1), F.S. and Southwest Ranches Homeowners Ass’n v. Broward County, 502 So. 2d 931 (Fla. 4th DCA 1987)).
6. § 163.3167(1)(b), F.S.
7. § 163.3177(1), F.S. (2011)
8. Machado, 519 So. 2d at 632, Citrus County v. Halls River Dev., Inc., 8 So. 3d 413, 420-21 (Fla. 5th DCA 2009), Nassau County v. Willis, 41 So. 3d 270, 284 (Fla. 1st DCA 2010).
9. William A. Kaplin, *American Constitutional Law: An Overview, Analysis, and Integration*, p. 9, Carolina Academic Press 2004.
10. <http://dictionary.reference.com/browse/constitution>
11. Kaplin, p.31.
12. See endnote 1.
13. Kaplin p. 31
14. §163.3194(1)(b), F.S
15. Johns v. May, 402 So. 2d 1166, 1169 (Fla. 1981).
16. §163.3177(1), F.S. (2011).
17. Id.
18. Machado, 519 So. 2d at 632.
19. Keene v. Zoning Bd. of Adjustment, 22 So. 3d 665, 668-69 (Fla. 5th DCA 2009), reh’g denied (Dec. 7, 2009) (also stating that “In order to resolve [the consistency] issue, we must apply the provisions of the [Comprehensive] Plan and the ... Development Code ... which implements the Plan.
20. §163.3177(1), F.S. (2011).
21. Buck Lake Alliance, Inc. v. Bd. of County Com’rs of Leon County, 765 So. 2d 124, 127 (Fla. 1st DCA 2000).
22. §163.3177(1), F.S. (2011).
23. There are jurisdictions that essentially do that, by including a general statement or “criteria” that all applications “must meet the comprehensive plan.”
24. See the discussion *supra* about the problems with ad hoc application of the comprehensive plan.
25. Which requires that “[a]ll land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof”
26. As discussed in *Consistency with the comprehensive plan*, all development orders must be consistent with—compatible with and further the relevant provisions of—the comprehensive plan. They must also meet the applicable requirements of the LDRs. If the application does not meet the applicable requirements, it must be denied. Except for rezonings, if the application does meet the standards, it must be approved. For non-rezoning applications, the applicable regulations are the only issues that are to be considered in the review; everything else is irrelevant.
27. See *Consistency with the Comprehensive Plan* and Buck Lake Alliance, Inc. v. Bd. of County Com’rs of Leon County, 765 So. 2d 124, 127 (Fla. 1st DCA 2000).
28. This can easily create significant authority problems, as discussed in endnote 29, below.
29. “[P]rivate property shall not be taken without due process of law and the payment of just compensation.”

30. “Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law.”
31. Which is an issue under §163.3177(1), F.S. (2011), which says the comprehensive plan is to “guide future decisions in a consistent manner.”
32. *Askew v. Cross Key Waterways*, 372 So. 2d 913, 918–19 (Fla. 1978). (stating “When [a regulation] is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the [regulation] in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.”) and *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209, 211 (Fla. 1968) (stating “When the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say What the law shall be.”)
33. The task of a case-by-case determination of whether an application meets all of the applicable requirements of the comprehensive plan in an administrative decision situation, such as the LDR review of a permitted use permit request, is all but impossible. An administrative or ministerial official has no authority to make a subjective determination. Thus, any subjective decisions necessary must have already been made, and the official is just applying them. If the LDR provisions the official must apply do not fully implement the comprehensive plan, the official has no authority to go outside of the LDRs to look for what else must be applied or authority to make a determination on how outside provisions, such as the comprehensive plan, would apply to the application.
34. *N. Bay Village v. Blackwell*, 88 So. 2d 524, 526 (Fla. 1956); *Drexel v. City of Miami Beach*, 64 So. 2d 317, 319 (Fla. 1953); and *Phillips Petroleum Co. v. Anderson*, 74 So. 2d 544, 547 (Fla. 1954).
35. *Drexel*, 64 So. 2d at 319; *Phillips Petroleum*, 74 So.2d at 547.
36. See, for example, *Hartnett v. Austin*, 93 So. 2d 86, 88 (Fla. 1956) (stating “An ordinance which is so vague that its precise meaning cannot be ascertained is invalid, even though it may otherwise be constitutional. The reason for the rule is the necessity for notice to those affected by the operation and effect of the ordinance”).

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Consistency with the Comprehensive Plan

Posted on [February 27, 2011](#) | [5 comments](#)

UPDATED TO REFLECT 2011 LEGISLATIVE AMENDMENTS.

Consistency is required.

Once a jurisdiction's comprehensive plan has been properly adopted, all "development" (see [What is the development LDRs can regulate](#)), both public and private, must be consistent with the comprehensive plan. §§[163.3161\(5\)](#) and [163.3194\(1\)\(a\)](#), F.S. Similarly, all the jurisdiction's land development regulations must also be consistent with the plan. §[163.3194\(1\)\(b\)](#), F.S.

"The statute is framed as a rule, a command to cities and counties that they must comply with their own Comprehensive Plans The statute does not say that local governments shall have some discretion as to whether a proposed development should be consistent with the Comprehensive Plan. Consistency with a Comprehensive Plan is therefore not a discretionary matter." [Pinecrest Lakes, Inc. v. Shidel, 795 So.2d 191, 198 \(Fla. 4th DCA 2001\)](#).

Definition of Consistency

The Florida Statutes provide a definition of what is meant by consistent. Section [163.3194\(3\)\(a\)](#), F.S., says:

A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Breaking the definition down, first, it is the aspects of development that are at issue. Land uses, densities and intensities are specifically called out and, therefore, probably are the aspects of greatest issue, but the catch-all "other aspects" brings in all aspects of development. All aspects of development would mean not only the negative aspects, but also the positive ones. Second, the aspects of concern are only those permitted by the development order (abbreviated as "D.O." for the rest of this article) or land development regulation ("LDR"). If the D.O. or LDR does not allow a development aspect, that aspect is not part of the review.

For the next part of the definition, "are compatible with" and "furthers," the plan, §[163.3177](#), F.S. formerly provided a definition of what was meant by these phrases in the context of consistency of local plans to state and regional plans, where "compatible with" meant not in conflict with and "furthers" meant to take action in the direction of the goals." But those provisions were deleted by the 2011 changes. It is probably reasonable to assume the deletions had more to do with the decreased focus on comparing local comprehensive plans against state requirements than it being a statement that the definitions were no longer correct. Regardless, the recent amendments to the growth management statutes do now provides a definition of "compatibility" ("a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition") in the statutes, in §[163.3164\(9\)](#), F.S., which may help in analyzing what consistency means.

Using that definition of compatibility this would mean that the D.O. or LDR is “compatible with” (has achieved compatibility with) the comprehensive plan if it “can coexist” in “a stable fashion” without “unduly negatively impacting” the plan. This is essentially the same as the previous statute definition, of being not in conflict with.

But the definition of consistency also requires that the D.O or LDR must “further” the goals or policies of the comprehensive plan. There is no clear definition of “furthers” in the current growth management statutes, but it is not unreasonable, given its usage, to use the ordinary meaning – furthers means to advance or assist in moving forward. This would mean that the D.O. or LDR must not only not conflict with, but must also help advance, the provisions of the comprehensive plan. This requires an affirmative action – an implementing of the comprehensive plan provisions.

The last part (“and if it meets all other criteria enumerated by the local government”) seems a bit vague, especially in reference to an LDR. The “it” referenced appears to be the D.O. or LDR and, as the sentence is in the conjunctive, the “other criteria enumerated” appear to potentially be criteria separate from the comprehensive plan (reading that part of the sentence as “A [D.O. or LDR] shall be consistent with the comprehensive plan ... if it meets all other criteria enumerated by the local government”). It isn’t clear if these would be procedural criteria or some other type of criteria.

Putting all these provisions together, a D.O. or LDR is consistent with the comprehensive plan if:

1. The aspects of development allowed by the D.O./LDR are:
 - A. Not in conflict with; and
 - B. Advance or assist in moving forward the goals, objectives, policies, land uses, densities, and intensities in the comprehensive plan; and
2. The D.O./LDR meets all the other criteria enumerated by the local government.

The part of the comprehensive plan relevant in a consistency evaluation.

Once it is determined what is meant by “consistent,” the issue becomes what parts of the comprehensive plan a D.O. or LDR must be measured against for consistency. The easy, but perhaps too simple, answer is all parts. The growth management act say development is expected to conform with the comprehensive plan, elements, or portions thereof. §§ 163.3161(5) and 163.3194(1)(a) and (b), F.S. An often cited case said that the review is to determine conformity with “each element and the objectives of the land use plan” [Machado v. Musgrove, 519 So.2d 629, 632 \(Fla. 3d DCA 1987\)](#). Although certainly highly relevant, courts have also said that all of the elements, not just the future land use element, that should be considered. [Sw. Ranches Homeowners Ass’n, Inc. v. Broward County, 502 So.2d 931, 935 \(Fla. 4th DCA 1987\)](#).

But the reality is that not every part of the comprehensive plan is necessarily relevant to the particular aspects of development allowed by each D.O./LDR. If, for example, the D.O. is for a use that has no wetland impacts (positive or negative), the comprehensive plan policies related to wetlands would not be relevant. There may be whole sections of the comprehensive plan that may have no relevance to a specific D.O or LDR (e.g. the Capital Improvement Element is not relevant to a D.O. for a use that has no impact on public facilities).

A recent case reflects this position, saying the section 163.3194(4)(a), F.S., admonition that courts should consider the “reasonableness of the comprehensive plan” means that irrelevant provisions in the comprehensive plan should not be considered and that the relevant provision should be reviewed as a whole, to produce “the most reasonable and holistic interpretation, based on both the text and the synthesis of the document” [Arbor Properties, Inc. v.](#)

[Lake Jackson Prot. Alliance, Inc., 51 So. 3d 502 \(Fla. 1st DCA 2010\)](#), reh'g denied (Jan. 26, 2011). Similarly, another recent case, [Katherine's Bay, LLC v. Fagan 52 So. 3d 19 \(Fla. 1st DCA, 2010\)](#), stated that, in a review of consistency with the comprehensive plan, not only should the rule of construction that all provisions on related subjects be read in pari materia and harmonized so that each is given effect be applied, but the rules of construction that specific provisions control over general ones and that one provision should not be read in such a way that it renders another provision meaningless also apply.

Another recent case, however, seems to suggest that, in at least some circumstances, the controlling factor is whether the requested D.O. is consistent with the land uses allowed in the applicable land use category, without regard to other potential violations of the goals, policies, or objectives of the comprehensive plan. [Rehman v. Lake County, 56 So. 3d 852 \(Fla. 5th DCA 2011\)](#).

Level of Review – Strict Scrutiny

The expectation of consistency with the comprehensive plan is very high. When courts examine the issue, they do not defer to the local government in the government's decision of what is or isn't consistent, as is done in some other reviews of local government determinations, *Pinecrest Lakes, Inc. v. Shidel*, 795 So.2d 191 (Fla, 4th DCA 2001); the standard of court review is "strict scrutiny." *Machado v. Musgrove*, 519 So.2d 629, 633 (Fla. 3d DCA 1987). So what does that mean?

First, although the name is the same, strict scrutiny in the comprehensive plan consistency context is not the same as the type of strict scrutiny review in some constitutional cases. [Bd. of County Com'rs of Brevard County v. Snyder, 627 So.2d 469, 475 \(Fla. 1993\)](#). The court in *Machado*, defined strict scrutiny based on the meaning of the two words, saying "[s]trict implies rigid exactness or precision. A thing scrutinized has been subjected to minute investigation. Strict scrutiny is thus the process whereby a court makes a detailed examination of a statute, rule or order of a tribunal for exact compliance with, or adherence to, a standard or norm. It is the antithesis of a deferential review." *Machado*, 519 So.2d at 632 (internal citations omitted). This means that, since the courts will hold them to that standard, every decision on a development order and every change to a land development regulation must exactly comply with the applicable provisions of the comprehensive plan.

Consistency of Land Development Regulations with Comprehensive Plan

Putting the components of consistency together, to achieve consistency with the comprehensive plan, a LDR provision, new or existing, must regulate the subject aspects of development in a way that not only does not conflict with the relevant provisions of the comprehensive plan, but also implements the applicable provisions of the plan, and must do so with exactness and precision. Given the way many LDRs, not to mention comprehensive plans, are written, this is a pretty tall order.

Consistency of Development Orders with Comprehensive Plan

Putting the components of consistency together, for a D.O., to achieve consistency with the comprehensive plan, an approved D.O. must allow the specific aspects of development in a way that not only does not conflict with the relevant provisions of the comprehensive plan, but also implements the applicable provisions of the plan, with exactness and precision; and must meet all of the applicable criteria of the LDRs or other applicable regulations. For an approval through a quasi-judicial hearing process, at least, there must be competent substantial evidence in the record demonstrating such consistency compliance. See the article [What is competent substantial evidence in Florida land use hearings](#) for more on competent substantial evidence.

Because §163.3215 consistency challenges may be brought to challenge a denial, as well as an approval, of the D.O., if the applicant provides evidence that the D.O. will be consistent with the comprehensive plan, to deny it, the local government must counter that evidence or, in the case of a rezoning application, show that the existing zoning is also consistent with the comprehensive plan. *County Com'rs of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993).

A §163.3215 consistency challenge to a D.O. can arise in three instances: “1) where it materially alters the use of a property; 2) where it materially alters the density of [the] property; or 3) where the intensity of the use of the property is materially altered.” *Lake Rosa v Board of County Com'rs*, 911 So. 2d 206 (Fla. 5th DCA 2005) referencing §163.3215(1), F.S. The limitation to these three instances raises the question of whether such a challenge can be brought when the challenge is to the characteristics of the use, other than density or intensity, rather than the allowance of the use (i.e. can suit be brought when a use is a permitted use, of permitted intensity or density, but has characteristics, such as aesthetic impacts or the potential to increase traffic congestion, that may be inconsistent with provisions in the comprehensive plan). Although not specifically addressed in the opinion, this might be the situation in *Rehman v. Lake County*, [56 So. 3d 852 \(Fla. 5th DCA 2011\)](#), discussed above, and the reason the court found the D.O. consistent with the comprehensive plan.

In bringing a §163.3215 consistency challenge, it is the comprehensive plan that is in place at the time of the decision on the D.O. that governs. [Lake Rosa v. Board of County Com'rs](#), [911 So.2d 206](#), [209 \(Fla. 5th DCA 2005\)](#). The action that governs when the filing time frame begins to run for a §163.3215 challenge is when the clerk for the governing body files the development order in the official records. [5220 Biscayne Blvd., LLC v. Stebbins](#), [937 So.2d 1189 \(Fla. 3rd DCA 2006\)](#).

In the judicial review of the consistency question, the statutes say a reviewing court “may consider, among other things, the reasonableness of the comprehensive plan, [relative to the issue raised for the court’s consideration,] or the appropriateness and completeness of the comprehensive plan ... in relation to the governmental action or development regulation under consideration,” §163.3194(4)(a), F.S., but that the act is to be “construed broadly to accomplish its stated purposes and objectives.” §163.3194(4)(b), F.S. This has been found to be “a recognition of the court’s inherent power to take into account fundamental fairness questions as may arise from a strict application of the plan” *Machado v. Musgrove*, 519 So.2d 629, 635 (Fla. 3d DCA 1987).

OVERVIEW OF THE SUNSHINE AND PUBLIC RECORDS LAWS

2016 edition

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I. GOVERNMENT IN THE SUNSHINE LAW

A. WHAT IS THE SCOPE OF THE SUNSHINE LAW?

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There are three basic requirements of section 286.011, Florida Statutes:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken and promptly recorded.

A right of access to meetings of collegial public bodies is also recognized in the Florida Constitution. Article I, section 24, Florida Constitution, was approved by the voters in the November 1992 general election and became effective July 1, 1993. Virtually all collegial public bodies are covered by the open meetings mandate of the open government constitutional amendment with the exception of the judiciary and the state Legislature which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution.

B. WHAT AGENCIES ARE COVERED BY THE SUNSHINE LAW?

1. *Are all public agencies subject to the Sunshine Law?*

The Government in the Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision." The statute thus applies to public *collegial* bodies within this state, at the local as well as state level. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). It is equally applicable to elected and appointed boards or commissions. Op. Att'y Gen. Fla. 73-223 (1973).

The judiciary and the Legislature are not subject to the Sunshine Law. See, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992); Op. Att'y Gen. Fla. 83-97 (1983).

Note: 2016 additions are marked in bold text.

Federal agencies, *i.e.*, agencies created under federal law, operating within the state do not come within the purview of the state Sunshine Law. Op. Att'y Gen. Fla. 71-191 (1971). *Cf.*, Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by *state* agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law).

2. Are advisory boards which make recommendations or committees established for fact-finding only subject to the Sunshine Law?

a. Publicly created advisory boards which make recommendations

Advisory boards created pursuant to law or ordinance or otherwise established by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). See also, *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (Sunshine Law applies to a university's search and screening committee). And see, *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county commission to serve in an advisory capacity to the county manager).

b. Fact-finding committees

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). And see, *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985).

However, when a committee has been delegated a decision-making function (i.e., sorting through options and making recommendations to the governmental body), in addition to fact-finding, the Sunshine Law applies. Inf. Op. to Randolph, June 10, 2010. Moreover, the 'fact-finding exception' does not apply to boards, like school boards, that have the "ultimate decision-making authority"; thus the school board could not take a fact-finding tour without compliance with the Sunshine Law. *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008). See *Citizens for Sunshine, Inc. v. School Board of Martin County*, 125 So. 3d 184 (Fla. 4th DCA 2013) (three members of school board violated Sunshine Law when they visited an adult education center without providing reasonable notice).

3. Are private organizations providing services to public agencies subject to the Sunshine Law?

"Generally . . . the Government in the Sunshine Law does not apply to private organizations providing services to a state or local government, unless the private entity has been created by a public entity, there has been a delegation of the public entity's governmental functions, or the private organization plays an integral part in the decision-making process of the public entity." Op. Att'y Gen. Fla. 07-27 (2007). Thus, the Sunshine Law would not ordinarily apply to meetings of a homeowners' association. Inf. Op. to Fasano, June 7, 1996. Compare, Op. Att'y Gen. Fla. 07-44 (2007) (property owners association subject to open government laws when it is acting on behalf of a municipal services taxing unit).

A private corporation which performs services for a public agency and receives compensation for such services pursuant to a contract or otherwise, is not by virtue of this relationship alone necessarily subject to the Sunshine Law unless the public agency's

governmental or legislative functions have been delegated to it. *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law).

However, although private organizations are generally not subject to the Sunshine Law, open meetings requirements can apply if the public entity has delegated "the performance of its public purpose" to the private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 383 (Fla. 1999). Thus, a not-for-profit corporation that contracted with a city to carry out affordable housing responsibilities and also reviewed and screened applicant files is an agency for purposes of the Sunshine Law. Op. Att'y Gen. Fla. 08-66 (2008).

Similarly, the Sunshine Law applies to a private economic development council when there has been a delegation of the county commission's authority to conduct public business such as carrying out the terms of the county's strategic economic development plan. Op. Att'y Gen. Fla. 10-30 (2010). See also, Op. Att'y Gen. Fla. 11-01 (2011) (Biscayne Park Foundation, a charitable foundation created by the Village of Biscayne Park to serve as 'the Village's fundraising arm,' subject to the Sunshine Law. Compare, Inf. Op. to Gaetz and Coley, December 17, 2009, concluding that the open government laws did not apply to Florida's Great Northwest, Inc., a private not-for-profit corporation, since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of a public agency).

4. Does the Sunshine Law apply to staff?

Meetings of staff of boards or commissions covered by the Sunshine Law are not ordinarily subject to section 286.011, Florida Statutes. *Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977), *disapproved in part on other grounds*, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992). Thus, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a licensee's alleged failure to follow state law, and an assistant director made the decision to file a complaint. *Baker v. Florida Department of Agriculture and Consumer Services*, 937 So. 2d 1161 (Fla. 4th DCA 2006).

Similarly, in *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 766 (Fla. 2010), the Supreme Court ruled that a deputy county administrator delegated authority to negotiate with a baseball team considering a move to the area for spring training, did not violate the Sunshine Law when he consulted with county staff because the administrator's "so-called negotiations team only served an informational role." And see, *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000), in which the court concluded that the Sunshine Law did not apply to informal meetings of staff where the meetings were "merely informational;" where none of the individuals attending the meetings had any decision-making authority during the meetings; and where no formal action was taken or could have been taken at the meetings; *Knox v. District School Board of Brevard*, 821 So. 2d 311, 315 (Fla. 5th DCA 2002) ("A sunshine violation does not occur when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties").

However, when a staff member ceases to function in a staff capacity and is appointed to a committee which is given "a policy-based decision-making function," the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee. It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law. *Wood v. Marston*,

442 So. 2d 934 (Fla. 1983). *And see, Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners*, 810 So. 2d 526 (Fla. 2d DCA 2002) (when public officials delegate their fact-finding duties and decision-making authority to a committee of staff members, those individuals no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

For example, in *Wood v. Marston, supra*, the Court concluded that a committee composed of staff which was created for the purpose of screening applications and making recommendations for the position of a law school dean was subject to section 286.011, Florida Statutes, since the committee members performed a decision-making function outside of their normal staff activities. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university.

Similarly, in *Silver Express Company v. Miami-Dade Community College*, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee (composed of staff and one outside person) that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the Sunshine Law. According to the court, the committee's job was to weed through the various proposals, to determine which were acceptable and to rank them accordingly. This function was sufficient to bring the committee within the scope of the Sunshine Law because "[g]overnmental advisory committees which have offered up structured recommendations such as here involved -- at least those recommendations which eliminate opportunities for alternative choices by the final authority, or which rank applications for the final authority -- have been determined to be agencies governed by the Sunshine Law." 691 So. 2d at 1101. *And see, Op. Att'y Gen. Fla. 05-06* (2005) (city development review committee composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law); and *Op. Att'y Gen. Fla. 07-54* (2007), concluding that while post-termination hearings held before the city manager are not subject to the Sunshine Law, hearings held before a three member panel appointed by the city manager pursuant to the city personnel policy should be held in the Sunshine.

In making the determination as to whether a staff committee has "decision-making authority" so as to bring the group within the scope of the Sunshine Law, a key factor may be whether the committee deliberates with the person who makes the final decision. For example, the Fourth District held that deliberations of a pre-termination panel composed of the department head, personnel director and equal opportunity director should have been held in the Sunshine. *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004). *Compare, McDougall v. Culver*, 3 So. 3d 391, 394 (Fla. 2d DCA 2009) (circulation of memoranda by senior officials in sheriff's office which contained findings and recommendations in connection with an internal affairs investigation did not constitute a "meeting" for purposes of the Sunshine Law because the sheriff alone made the final decision on discipline; "the senior officials provided only a recommendation to the Sheriff but they did not deliberate with him nor did they have decision-making authority."); *Jordan v. Jenne*, 938 So. 2d 526, 530 (Fla. 4th DCA 2006) ("Because the [group] provided only a recommendation to the inspector general and did not deliberate with the inspector general, the ultimate authority on termination, we conclude that the [group] does not exercise decision-making authority so as to constitute a 'board' or commission within the meaning of section 286.011, and as a result, its meetings are not subject to the Sunshine Act"); and *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 763 (Fla. 2010) (county administrator's consultations with staff did not violate the Sunshine Law because the individuals served "an informational role;" "[t]his is not a situation where the [administrator] and the individuals he consulted made joint decisions").

5. Does the Sunshine Law apply to members of public boards who also serve as administrative officers or employees?

Occasionally, members of public boards also serve as administrative officers or employees. The Sunshine Law is not applicable to discussions of those individuals when serving as administrative officers or employees, provided such discussions do not relate to matters which will come before the public board on which they serve. Thus, a board member who also serves as an employee of an agency may meet with another board member on issues relating to his or her duties as an employee *provided* such discussions do not relate to matters that will come before the board for action. See, Ops. Att'y Gen. Fla. 93-41 (1993) and 11-04 (2011). Cf. section 286.01141, Florida Statutes (2013), providing an exemption for portions of meetings of local advisory criminal justice commissions.

C. WHAT IS A MEETING SUBJECT TO THE SUNSHINE LAW?

1. Number of board members required to be present

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes. Instead, the law is applicable to *any* gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which *foreseeable* action will be taken by the public board or commission. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973).

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion of a pending employment appeal during a recess of the board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012). Compare Op. Att'y Gen. Fla. 04-58 (2004) ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency not subject to s. 286.011 if the issues do not require action by the county commission).

2. Circumstances in which the Sunshine Law may apply to a single individual or where two board members are not physically present

The Sunshine Law applies to public boards and commissions, *i.e.*, collegial bodies. As discussed *supra*, section 286.011, Florida Statutes, applies to meetings of "two or more members" of the same board or commission when discussing some matter which will foreseeably come before the board or commission.

Therefore, section 286.011, Florida Statutes, would not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members. See, *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988) (requisite to application of the sunshine law is a meeting between two or more public officials); *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989); *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976); and *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (private one-on-one informational briefings between individual county commissioners and staff did not violate the Sunshine Law).

Certain factual situations, however, have arisen where, in order to assure public access to the decision-making processes of public boards or commissions, it has been necessary to conclude that the presence of two individuals of the same board or commission is not necessary to trigger application of section 286.011, Florida Statutes. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

a. *Written communications between board members*

A city commissioner may, outside a public meeting, send documents that the commissioner wishes other members of the commission to consider on matters coming before the commission for official action, provided that there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting. Op. Att'y Gen. Fla. 07-35 (2007). In such cases, the records, which are subject to disclosure under the Public Records Act, are not being used as a substitute for action at a public meeting as there is no interaction among the commissioners prior to the meeting. Op. Att'y Gen. Fla. 89-23 (1989).

If, however, a report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to section 286.011, Florida Statutes. Op. Att'y Gen. Fla. 90-3 (1990). Accordingly, while a school board member may prepare and circulate an informational memorandum or position paper to other board members, the use of a memorandum to solicit comment from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law. Op. Att'y Gen. Fla. 96-35 (1996).

Similarly, a procedure whereby a board takes official action by circulating a memorandum for each board member to sign whether the board member approves or disapproves of a particular issue, violates the Sunshine Law. Inf. Op. to Blair, May 29, 1973. *And see Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting").

b. *Meetings conducted over the telephone or using electronic media technology*

(1) Discussions conducted via telephones, email, text messaging or other electronic means are not exempted from the Sunshine Law.

As stated previously, the Sunshine Law applies to discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of section 286.011, Florida Statutes. *See, State v. Childers*, No. 02-21939-MM; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam affirmed*, 886 So. 2d 229 (Fla. 1st DCA 2004) (telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law).

Similarly, board members may not use computers to conduct private discussions among themselves about board business. Op. Att'y Gen. Fla. 89-39 (1989). Thus, while a

city commissioner is not prohibited from posting comments on the city's Facebook page, commissioners "must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action." Op. Att'y Gen. Fla. 09-19 (2009). *Cf.*, Inf. Op. to Galaydick, October 15, 1995, advising that school board members may share a laptop computer even though the hard drive of the computer contains information reflecting the ideas of an individual member as long as the computer is not being used as a means of communication between members; and Op. Att'y Gen. Fla. 01-20 (2001) (a one-way e-mail communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law; however, such e-mail communications are public records).

(2) Authority of boards to conduct public meetings via electronic media technology (e.g. telephone or video conferencing).

A related issue is whether a board is authorized to conduct *public* meetings via electronic media technology (e.g., telephone or video conferencing). The answer to this question depends upon whether the board is a state or local government agency.

In Op. Att'y Gen. Fla. 98-28 (1998), the Attorney General's Office concluded that section 120.54(5)(b)2., Florida Statutes, authorizes *state* agencies to conduct meetings via electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. *See*, Rule 28-109, Florida Administrative Code.

As to *local* boards, the Attorney General's Office advised that the authorization in section 120.54(5)(b)2., Florida Statutes, to conduct meetings entirely through the use of communications media technology applies only to state agencies. Op. Att'y Gen. Fla. 98-28 (1998). Thus, since section 1001.372(2)(b), Florida Statutes, requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.*

However, if a quorum of a local board is physically present at the public meeting site, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." Op. Att'y Gen. Fla. 03-41 (2003).

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public, and to hear discussions taking place during the meeting. Op. Att'y Gen. Fla. 94-55 (1994). *See also*, Op. Att'y Gen. Fla. 02-82 (2002) (physically-disabled members of a city advisory committee participating and voting by electronic means).

However, the use of electronic media technology does not satisfy *quorum* requirements necessary for official action to be taken by local boards. Op. Att'y Gen. Fla. 06-20 (2006). "[W]here a quorum is necessary for action to be taken, physical presence of the members making up the quorum is required in the absence of a statute requiring

otherwise.” Op. Att’y Gen. Fla. 09-56 (2009). Accordingly, a city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum. Op. Att’y Gen. Fla. 10-34 (2010).

The physical presence of a quorum has not been required, however, where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. Thus, the Attorney General’s Office concluded that local boards may use electronic media technology to conduct informal discussions and workshops over the Internet, provided that proper notice is given, and interactive access by members of the public is provided. Op. Att’y Gen. Fla. 01-66 (2001). *See also* Op. Att’y Gen. Fla. 06-20 (2006).

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks violates the Sunshine Law by circumventing the notice and access provisions of that law. Op. Att’y Gen. Fla. 02-32 (2002). *Compare*, Op. Att’y Gen. Fla. 08-65 (2008) (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided and the city ensures that operating-type assistance is available where the computers for the public are located).

c. Delegation of authority to single individual

If a member of a public board is authorized only to explore various contract proposals with the applicant selected for the position of executive director, with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law. Op. Att’y Gen. Fla. 93-78 (1993). If, however, the board member has been delegated the authority to reject certain options from further consideration by the entire board, the board member is performing a decision-making function that must be conducted in the sunshine. Ops. Att’y Gen. Fla. 95-06 (1995) and Op. Att’y Gen. Fla. 93-78 (1993). *And see, News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate *de facto* authority to act on their behalf in the formulation, preparation, and promulgation of plans upon which foreseeable action will be taken by the public officials, then delegates stand in the shoes of such public officials insofar as the Sunshine Law is concerned). *Compare, Lee County v. Pierpont*, 693 So. 2d 994 (Fla. 2d DCA 1997) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law).

Thus, the Attorney General’s Office has advised that while the Sunshine Law would not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members, the Sunshine law does apply when there has been a delegation of a board’s decision-making authority. Op. Att’y Gen. Fla. 10-15 (2010).

It must be recognized, however, that the applicability of the Sunshine Law relates to the discussions of a single individual who has been delegated decision-making authority on behalf of a board or commission. If the individual, rather than the board, is vested by law, charter or ordinance with the authority to take action, such discussions are not subject to section 286.011, Florida Statutes. *See, City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989). *Cf.* Op. Att’y Gen. Fla. 13-14 (2013) (where contract terms regarding the police chief’s employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the written

employment contract drafted by the town attorney as directed by the commission be subsequently presented to, considered and approved by the commission at a Sunshine Law compliant meeting).

d. Use of nonmembers as liaisons between board members or to conduct a "de facto" meeting of board members

The Sunshine Law is applicable to meetings between a board member and an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a de facto meeting of, board members. For example, in *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to section 286.011, Florida Statutes, these meetings were held in "rapid-fire succession" in order to avoid a public airing of a controversial redistricting problem. They amounted to a de facto meeting of the school board in violation of section 286.011, Florida Statutes.

Not all decisions taken by staff, however, need to be made or approved by a board. Thus, the district court concluded in *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of the commission was not subject to the Sunshine Law.

D. WHAT TYPES OF DISCUSSIONS ARE COVERED BY THE SUNSHINE LAW?

1. Investigative meetings or meetings to consider confidential material

The Sunshine Law is applicable to investigative inquiries of public boards or commissions. The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. *Op. Att'y Gen. Fla. 74-84 (1974)*; *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973). The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, section 286.011, Florida Statutes, should be construed as containing no exceptions. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

Section 119.07(7), Florida Statutes, provides that an exemption from section 119.07, Florida Statutes, "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act, do not by implication allow a public agency to close a meeting in which exempted material is to be discussed in the absence of a specific exemption from the Sunshine Law. See, *Ops. Att'y Gen. Fla. 10-04 (2010)* (school board discussing confidential student records) and *91-88 (1991)* (pension board). *Cf. Op. Att'y Gen. Fla. 12-20 (2012)* (county board designated as "appropriate local official" authorized by statute to receive and investigate whistle-blower complaints must comply with the Sunshine Law, and must also "protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the [whistle-blower law] is present").

2. Legal matters

In the absence of legislative exemption, discussions between a public board and its attorney are subject to section 286.011, Florida Statutes. *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985) (section 90.502, Florida Statutes, which provides for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings). *Cf.*, section 90.502(6), Florida Statutes, stating that a discussion or activity that is not a meeting for purposes of the Sunshine Law shall not be construed to waive the attorney-client privilege.

There are statutory exemptions, however, which apply to some discussions of pending litigation between a public board and its attorney.

a. Settlement negotiations or strategy sessions related to litigation expenditures

Section 286.011(8), Florida Statutes, provides:

Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, *provided that the following conditions are met:*

- (a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.
- (b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- (c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- (d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the

conclusion of the attorney-client session, the meeting shall be reopened and the person chairing the meeting shall announce the termination of the session.

- (e) The transcript shall be made part of the public record upon conclusion of the litigation. (e.s.)

(1) Is section 286.011(8), Florida Statutes, to be liberally or strictly construed?

It has been held that the Legislature intended a strict construction of section 286.011(8), Florida Statutes. *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995); *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99 (Fla. 1st DCA 1996).

(2) Who may call an attorney-client meeting?

While section 286.011(8), Florida Statutes, does not specify who calls the closed attorney-client meeting, it requires as one of the conditions that must be met that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation."

The requirement that the board's attorney advise the board at a public meeting that he or she desires advice concerning litigation, is not satisfied by a previously published notice of the closed session. Op. Att'y Gen. Fla. 04-35 (2004). Rather, such an announcement must be made at a public meeting of the board. *Id. Cf.*, Op. Att'y Gen. Fla. 07-31 (2007) (a board attorney's request for a section 286.011[8], Florida Statutes, meeting may be made at a special meeting of the board provided that the special meeting at which the request is made is open to the public, reasonable notice has been given, and minutes are taken).

(3) Who may attend?

Only those persons listed in the statutory exemption, *i.e.*, the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Other staff members or consultants are not allowed to be present. *School Board of Duval County v. Florida Publishing Company. And see, Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), *review denied*, 735 So. 2d 1284 (Fla. 1999) (rejecting city's argument that charter provision requiring that city clerk attend all council meetings authorized clerk to attend closed attorney-client meeting); Op. Att'y Gen. Fla. 09-52 (2009) (attorneys representing superintendent of schools in an administrative action where the school board is a named party not authorized to meet privately with school board); and Op. Att'y Gen. Fla. 01-10 (2001) (clerk of court not authorized to attend).

However, because the entity's attorney is permitted to attend the closed session, if the school board hires outside counsel to represent it in pending litigation, both the school board attorney and the litigation attorney may attend a closed session. Op. Att'y Gen. Fla. 98-06 (1998). *And see, Zorc v. City of Vero Beach* (attendance of Special Counsel authorized). And, a qualified interpreter may attend to interpret for hearing impaired board members without violating the Sunshine Law. Op. Att'y Gen. Fla. 08-42 (2008).

(4) *Is substantial compliance with the conditions established in the statute adequate?*

In *City of Dunnellon v. Aran, supra*, the court said that a city council's failure to announce the names of the lawyers participating in a closed attorney-client session violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session [but did not give the names of the individuals], his "substantial compliance" was sufficient to satisfy the statute. *Cf., Zorc v. City of Vero Beach*, at 901, noting that deviation from the agenda at an attorney-client session is not authorized; while such deviation is permissible if a *public* meeting has been properly noticed, "there is no case law affording the same latitude to deviations in closed door meetings."

(5) *What kinds of matters may be discussed at the attorney-client session?*

Section 286.011(8) states that the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures. Section 286.011(8)(b), Florida Statutes.

Moreover, section 286.011(8), Florida Statutes, "simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 100 (Fla. 1st DCA 1996), *quoting* Staff of Fla.H.R.Comm. on Government Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement at 3. If a board goes beyond the "strict parameters of settlement negotiations and strategy sessions related to litigation expenditures" and takes "decisive action," a violation of the Sunshine Law results. *Zorc v. City of Vero Beach*, at 900. *And see*, Op. Att'y Gen. Fla. 99-37 (1999).

Thus, "[t]he settlement of a case is exactly that type of final decision contemplated by the drafters of section 286.011(8) which must be voted upon in the sunshine." *Zorc v. City of Vero Beach*, at 901. *Accord*, Op. Att'y Gen. Fla. 08-17 (2008) ("any action to approve a settlement or litigation expenditures must be voted on in a public meeting"). *See also, Anderson v. City of St. Pete Beach*, 161 So. 3d 548 (Fla. 2d DCA 2014) (city violated the Sunshine Law when it held closed meetings that "covered a wide range of political and policy issues not connected to settlement of the pending litigation or relating to the expenses of litigating the pending cases, which at that point were on appeal"). *Compare, Bruckner v. City of Dania Beach*, 823 So. 2d 167, 172 (Fla. 4th DCA 2002) (closed city commission meeting to discuss various options to settle a lawsuit involving a challenge to a city resolution, including modification of the resolution, authorized because the commission "neither voted, took official action to amend the resolution, nor did it formally decide to settle the litigation"); and *Brown v. City of Lauderhill*, 654 So. 2d 302, 303 (Fla. 4th DCA 1995) (closed-door session between city attorney and board to discuss claims for attorney's fees, authorized).

(6) *When is an agency a "party to pending litigation" for purposes of the exemption?*

In *Brown v. City of Lauderhill, supra*, the court said it could "discern no rational basis for concluding that a city is not a 'party' to pending litigation in which it is the real party in

interest." *Accord*, Op. Att'y Gen. 09-15 (2009) (where city is a "real party in interest" of a pending lawsuit, it may conduct a closed attorney-client session even though it is not a named party to the litigation at the time of the meeting). *And see*, *Zorc v. City of Vero Beach*, at 900 (city was presently a party to ongoing litigation by virtue of its already pending claims in bankruptcy proceedings).

Although the *Brown* decision established that the exemption could be used by a city that was a real party in interest on a claim involved in *pending* litigation, that decision does not mean that an agency may meet in executive session with its attorney where there is only the *threat* of litigation. *See*, Op. Att'y Gen. Fla. 98-21 (1998) (section 286.011[8] exemption "does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable"). *And see*, Ops. Att'y Gen. Fla. 09-25 (2009) (town council that has received a pre-suit notice under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting to discuss settlement negotiations), **06-03 (2006) (exemption not applicable to pre-litigation mediation proceedings)**; 13-17 (2013) (exemption may not be used to conduct a closed meeting during a mandatory arbitration proceeding, when there is no pending legal proceeding in a court or before an administrative agency); **and Inf. Op. to Barrett, February 17, 2016 (board not entitled to use exemption to discuss pending investigation and subpoena where there is no on-going judicial or administrative proceeding)**.

Accordingly, discussions between the city attorney and the city commission relating to settlement of a conflict under the Florida Governmental Conflict Resolution Act would not come within the scope of the exemption because "[n]othing in section 286.011(8), Florida Statutes, extends the coverage of the exemption to discussions of mediated disputes or to issues arising through the conflict resolution procedure whether or not litigation has been filed." Op. Att'y Gen. Fla. 09-14 (2009).

(7) When is litigation "concluded" for purposes of section 286.011(8)(e)?

Section 286.011(8)(e), Florida Statutes, provides that transcripts of closed meetings "shall be made part of the public record upon conclusion of the litigation." The exemption does not continue for "derivative claims" made in separate, subsequent litigation. Op. Att'y Gen. Fla. 13-13 (2013). For example, a transcript of a closed meeting to discuss settlement of a lawsuit became a public record upon the entry of a final judgment in that case even though the same parties were now embroiled in an inverse condemnation lawsuit. *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 (Fla. 2d DCA 2014).

However, litigation that is ongoing but temporarily suspended pursuant to a stipulation for settlement has not been concluded for purposes of section 286.011(8), and a transcript of meetings held between the city and its attorney to discuss such litigation may be kept confidential until conclusion of the litigation. Op. Att'y Gen. Fla. 94-64 (1994). *And see*, Op. Att'y Gen. Fla. 94-33 (1994), concluding that to give effect to the purpose of section 286.011(8), a public agency may maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice or the applicable statute of limitations has run. *And see* Inf. Op. to Boutsis, December 13, 2012, noting that the exemption continues through the appeals segment of the litigation.

The release by the city council of attorney-client transcripts from meetings held pursuant to section 286.011(8), Florida Statutes, prior to the "conclusion of litigation" would not constitute a violation of that statutory provision, but would represent a waiver of the

limited exemption afforded to government agencies and their attorneys to discuss pending litigation issues. Op. Att'y Gen. Fla. 13-21 (2013).

b. Risk management

Section 768.28(16)(c), Florida Statutes, states that portions of meetings and proceedings relating solely to the evaluation of claims or to offers of compromise of claims filed with a risk management program of the state, its agencies and subdivisions, are exempt from the Sunshine Law.

This exemption is limited and applies only to tort claims for which the agency may be liable under section 768.28, Florida Statutes. Op. Att'y Gen. Fla. 04-35 (2004). The exemption is not applicable to meetings held prior to the filing of a tort claim with the risk management program. Op. Att'y Gen. Fla. 92-82 (1992). Moreover, a meeting of a city's risk management committee is exempt from the Sunshine Law only when the meeting relates solely to the evaluation of a tort claim filed with the risk management program or relates solely to an offer of compromise of a tort claim filed with the risk management program. Op. Att'y Gen. Fla. 04-35 (2004).

Unlike section 286.011(8), Florida Statutes, however, section 768.28(16), Florida Statutes, does not specify the personnel who are authorized to attend the meeting. See, Op. Att'y Gen. Fla. 00-20 (2000), advising that personnel of the school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

3. Personnel matters

Meetings of a public board or commission at which personnel matters are discussed are not exempt from the provisions of section 286.011, Florida Statutes, in the absence of a specific statutory exemption. *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). And see, Op. Att'y Gen. Fla. 10-14 (2010) (collegial board created by board of directors of a charter school to oversee personnel decisions of the school is subject to the Sunshine Law).

a. Collective bargaining discussions

A limited exemption from section 286.011, Florida Statutes, exists for discussions between the chief executive officer of the public employer and the legislative body of the public employer relative to collective bargaining. Section 447.605(1), Florida Statutes. *Cf.*, Op. Att'y Gen. Fla. 99-27 (1999), noting that a committee (composed of the city manager and various city managerial employees) formed by the city manager to represent the city in labor negotiations qualifies as the "chief executive officer" and thus may participate in closed executive sessions conducted pursuant to this section.

Section 447.605(1), Florida Statutes, does not directly address the dissemination of information that may be obtained at a closed labor negotiation meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure. Op. Att'y Gen. Fla. 03-09 (2003).

The section 447.605(1) exemption applies only when there are actual and impending collective bargaining negotiations. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d 408 (Fla. 2d DCA 1987). It does not apply to other nonexempt topics which

may be discussed during the course of the same meeting. Op. Att'y Gen. Fla. 85-99 (1985).

Moreover, the collective bargaining negotiations between the chief executive officer and a bargaining agent are not exempt and, pursuant to section 447.605(2), Florida Statutes, must be conducted in the Sunshine. See *Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in mediation agreement changing pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

b. Disciplinary hearings and grievance committees

A meeting of a municipal housing authority commission to conduct an employee termination hearing is subject to the Sunshine Law. Op. Att'y Gen. Fla. 92-65 (1992). Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that deliberations of pre-termination panel composed of the department head, personnel director and equal opportunity director should have been held in the Sunshine. And see *Citizens for Sunshine Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012) (two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment termination appeal during a recess).

However, the Sunshine Law does not apply to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general as to whether the charges should be sustained, dismissed, or whether the case should be deferred for more information. *Jordan v. Jenne*, 938 So. 2d 526 (Fla. 4th DCA 2006). And see, Op. Att'y Gen. Fla. 07-54 (2007), concluding that while post-termination hearings held before the city manager are not required to be open, hearings held before a three member panel appointed by the city manager pursuant to the city personnel policy should be held in the Sunshine. *Accord*, Op. Att'y Gen. Fla. 10-14 (2010) (while a single officer, accomplishing his or her official duties and responsibilities may not be subject to the Sunshine Law while discharging those duties, the creation of a board or commission to accomplish these duties or the delegation of responsibility to a collegial body may implicate the Sunshine Law).

The Sunshine Law applies to board discussions concerning grievances and other personnel matters. Op. Att'y Gen. Fla. 76-102 (1976). A staff grievance committee created to make nonbinding recommendations to a county administrator regarding disposition of employee grievances is also subject to section 286.011, Florida Statutes. Op. Att'y Gen. Fla. 84-70 (1984). And see, *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), in which the court affirmed the lower court's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing. A collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in section 286.011, Florida Statutes. *Id.* at 1376.

c. Interviews

The Sunshine Law applies to meetings of a board of county commissioners when interviewing applicants for county positions appointed by the board, when conducting job evaluations of county employees answering to and serving at the pleasure of the board, and when conducting employment termination interviews of county employees who serve at the pleasure of the board. Op. Att'y Gen. Fla. 89-37 (1989).

d. Screening advisory committees

In *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), a committee composed of staff which was created for the purpose of screening applications for the position of a law school dean and making recommendations to the faculty senate was held to be subject to section 286.011, Florida Statutes, since the committee performed a decision-making function outside of their normal staff activities. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university.

However, if the sole function of the screening committee is simply to gather information for the decision-maker, rather than to accept or reject applicants, the committee's activities are outside the Sunshine Law. See, *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985); *Knox v. District School Board of Brevard*, 821 So. 2d 311 (Fla. 5th DCA 2002).

4. Quasi-judicial proceedings

The Florida Supreme Court has stated that there is no exception to the Sunshine Law which would allow closed-door hearings or deliberations when a board or commission is acting in a "quasi-judicial" capacity. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

5. Purchasing committees

A committee appointed by a public college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to "weed through the various proposals, to determine which were acceptable and to rank them accordingly." *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). And see *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"). See now section 286.0113(2)(b)1. and 2., Florida Statutes, providing a limited exception from the Sunshine Law for certain activities conducted pursuant to a competitive solicitation). Cf. section 255.0518, Florida Statutes (sealed bids received pursuant to a competitive solicitation for construction or repairs on a public building or public work must be opened at a public meeting conducted in compliance with section 286.011, Florida Statutes).

6. Real property negotiations

In the absence of a statutory exemption, the negotiations by a public board or commission for the sale or purchase of property must be conducted in the sunshine. See, *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). In addition, if the authority of the public board or commission to acquire or lease property has been delegated to a single member, that member is subject to section 286.011, Florida Statutes, and is prohibited from negotiating the acquisition or lease of the property in secret. Op. Att'y Gen. Fla. 74-294 (1974).

E. DOES THE SUNSHINE LAW APPLY TO:

1. Members-elect or candidates

Section 286.011, Florida Statutes, applies to meetings of public boards or commissions "including meetings with or attended by any person elected to such board or commission, but who has not yet taken office" Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. *See also, Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973). The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. Op. Att'y Gen. Fla. 92-05 (1992).

2. Members of different boards

The Sunshine Law does not apply to a meeting between individuals who are members of *different* boards *unless* one or more of the individuals has been delegated the authority to act on behalf of his board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984). *Accord*, Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization).

3. A mayor and a member of the city council

If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. Ops. Att'y Gen. Fla. 83-70 (1983) and 75-210 (1975).

Where, however, the mayor is *not* a member of the city council and does not possess any power to vote even in the case of a tie vote but only possesses the power to veto legislation, then the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided he or she is not acting as a liaison between members and neither the mayor nor the council member has been delegated the authority to act on behalf of the council. Ops. Att'y Gen. Fla. 90-26 (1990) and 85-36 (1985). *And see*, Inf. Op. to Cassady, April 7, 2005 (meeting between a mayor and a council member to discuss prospective employees).

4. A board member and his or her alternate

Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law. Op. Att'y Gen. Fla. 88-45 (1988).

5. Ex officio board members

An *ex officio* board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. Op. Att'y Gen. Fla. 05-18 (2005).

6. Community forums sponsored by private organizations

A "Candidates' Night" sponsored by a private organization at which candidates for public office, including several incumbent city council members, will speak about their

political philosophies, trends, and issues facing the city, is not subject to the Sunshine Law unless the council members discuss issues coming before the council among themselves. Op. Att'y Gen. Fla. 92-5 (1992).

Similarly, in Op. Att'y Gen. Fla. 94-62 (1994), the Attorney General's Office concluded that the Sunshine Law does not apply to a political forum sponsored by a private civic club during which county commissioners express their position on matters that may foreseeably come before the commission, so long as the commissioners avoid discussions among themselves on these issues.

However, caution should be exercised to avoid situations in which private political or community forums may be used to circumvent the statute's requirements. *Id. See, Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (Sunshine Law is to be construed "so as to frustrate all evasive devices"). For example, in *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the argument that a private breakfast meeting at which the sheriff spoke and city commissioners individually questioned the sheriff but did not direct comments or questions to each other, did not violate the Sunshine Law. The court denied the commissioners' motion for summary judgment and held that a discussion is subject to the Sunshine Law where there is a common facilitator who is receiving comments from each commissioner in front of other commissioners. Similarly, a public forum that is hosted by a city council member with other council members invited to attend and discuss matters which may foreseeably come before the city council for action is subject to the Sunshine Law. Inf. Op. to Jove, January 12, 2009.

7. Board members attending meetings of another public board

The Attorney General has advised that county commissioners who are also members of a regional planning council may take part in council meetings and express their opinions without violating the Sunshine Law. Op. Att'y Gen. Fla. 07-13 (2007). "However, these officials should not discuss or debate these issues with one another outside the Sunshine as either county commissioners or as regional planning council members." *Id. See also*, Op. Att'y Gen. Fla. 00-68 (2000) (Sunshine Law does not prohibit city commissioners from attending other city board meetings and commenting on agenda items that may subsequently come before the commission for final action; however, city commissioners attending such meetings may not discuss those issues among themselves).

8. Social events

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings. Op. Att'y Gen. Fla. 92-79 (1992). Thus, there is no *per se* violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of section 286.011, Florida Statutes. Op. Att'y Gen. Fla. 89-6 (1989).

F. WHAT ARE THE NOTICE AND PROCEDURAL REQUIREMENTS OF THE SUNSHINE LAW?

1. What kind of notice of the meeting must be given?

a. Reasonable notice required

A key element of the Sunshine Law is the requirement that boards subject to the law provide "reasonable notice" of all meetings. See, section 286.011(1), Florida Statutes. Although section 286.011 did not contain an express notice requirement until 1995, many court decisions had stated prior to the statutory amendment that in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. *Hough v. Stembridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973). *Accord, Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985). Notice is required even though meetings of the board are "of general knowledge" and are not conducted in a closed door manner. *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991). *And see, Baynard v. City of Chiefland*, No. 38-2002-CA-00078 (Fla. 8th Cir. Ct. July 8, 2003) (reasonable notice required even if subject of meeting is "relatively unimportant").

The type of notice that must be given is variable, however, depending on the facts of the situation and the board involved. In some instances, posting of the notice in an area set aside for that purpose may be sufficient; in others, publication in a local newspaper may be necessary. In each case, however, an agency must give notice at such time and in such a manner as will enable interested members of the public to attend the meeting. Ops. Att'y Gen. Fla. 04-44 (2004) and 80-78 (1980). *Cf., Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (where county attorney provided citizen with "personal due notice" of a committee meeting and its function, it would be "unjust to reward" the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee); and *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), *per curiam affirmed*, 79 So. 3d 36 (Fla. 4th DCA 2012) (no violation of Sunshine Law where notice of special meeting held on Monday September 15 was posted at city hall and faxed to the media on Friday September 12, and members of the public [including the media] attended the meeting).

b. Notice requirements when quorum not present or when meeting adjourned to a later date

Reasonable public notice is required for all meetings subject to the Sunshine Law. Thus, notice is required for meetings between members of a public board even though a quorum is not present. Ops. Att'y Gen. Fla. 71-346 (1971) and 90-56 (1990). If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. Op. Att'y Gen. Fla. 90-56 (1990).

c. Effect of notice requirements imposed by other statutes, codes or ordinances

The Sunshine Law only requires that reasonable public notice be given. As stated above, the type of notice required is variable and will depend upon the circumstances. A public agency, however, may be subject to additional notice requirements imposed by other statutes, charter or code. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Michael Mattimore, February 6, 1996.

For example, a board or commission subject to Chapter 120, Florida Statutes, the Administrative Procedure Act, must comply with the notice requirements of that act. See, e.g., section 120.525, Florida Statutes.

d. Notice requirements when board acting as quasi-judicial body or taking action affecting individual rights

Section 286.0105, Florida Statutes, requires:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Where a public board or commission acts as a quasi-judicial body or takes official action on matters that affect individual rights of citizens, in contrast with the rights of the public at large, the board or commission is subject to the requirements of section 286.0105, Florida Statutes. Op. Att'y Gen. Fla. 81-06 (1981).

2. Does the Sunshine Law require that an agenda be made available prior to board meetings or restrict the board from taking action on matters not on the agenda?

The Sunshine Law does not mandate that an agency provide notice of each item to be discussed via a published agenda. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). And see, *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (posted agenda unnecessary); and *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996) ("[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature"). See, Inf. Op. to Mattimore, February 6, 1996 (notice of each item to be discussed at public meeting is not required under section 286.011, Florida Statutes, although other statutes, codes, or rules, such as Chapter 120, Florida Statutes, may impose such a requirement).

Thus, while Florida courts have recognized that notice of public meetings is a mandatory requirement of the Government in the Sunshine Law, the preparation of an agenda that reflects every issue that may come before the governmental entity at a noticed meeting is not. Op. Att'y Gen. Fla. 03-53 (2003). Therefore, the Sunshine Law does not prohibit a city commission from adding additional items to the agenda at a regularly noticed meeting and taking formal action on the added items. *Id.* And see, *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (Sunshine Law does not prohibit use of consent agenda procedure). However, the Attorney General's Office has advised a commission to "postpone formal action on controversial matters coming before the board at a meeting where the public has not been given notice that such an issue will be discussed." Op. Att'y Gen. Fla. 03-53 (2003).

3. Does the Sunshine Law limit where meetings of a public board or commission may be held?

a. Out-of-town meetings

The courts have recognized that the mere fact that a meeting is held in a public

room does not make it public within the meaning of the Sunshine Law. *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974). For a meeting to be "public," the public must be given advance notice and provided with a reasonable opportunity to attend. *Id.* Accordingly, a school board workshop held outside county limits over 100 miles away from the board's headquarters violated the Sunshine Law where the only advantage to the board resulting from the out-of-town gathering (elimination of travel time and expense due to the fact that the board members were attending a conference at the site) did not outweigh the interests of the public in having a reasonable opportunity to attend. *Rhea v. School Board of Alachua County*, 636 So. 2d 1383 (Fla. 1st DCA 1994). *And see*, Ops. Att'y Gen. Fla. 08-01 (2008) and 03-03 (2003) (municipality may not hold commission meetings at facilities outside its boundaries). *See now* section 166.0213, Florida Statutes, authorizing certain meetings outside municipal boundaries).

b. Meetings at facilities that discriminate or unreasonably restrict access prohibited

Section 286.011, Florida Statutes, prohibits boards or commissions subject to its provisions from holding their meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access to such a facility. Section 286.011(6), Florida Statutes. Thus, a police pension board should not hold its meetings in a facility where the public has limited access and where there may be a "chilling" effect on the public's willingness to attend by requiring the public to provide identification, to leave the such identification while attending the meeting and to request permission before entering the room where the meeting is held. Op. Att'y Gen. Fla. 96-55 (1996). The Attorney General's Office has also expressed concerns about holding a public meeting in a private home in light of the possible "chilling effect" on the public's willingness to attend. *See*, Inf. Op. to Galloway, August 21, 2008.

If a huge public turnout is expected for a particular issue and the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology (e.g. a television screen outside the meeting room) may be appropriate. *See Kennedy v. St. Johns River Water Management District*, No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), *per curiam affirmed*, 84 So. 3d 331 (Fla. 5th DCA 2011) (even though not all members of the public were able to enter the meeting room, board did not violate the Sunshine Law when it held a meeting at the board's usual meeting place and in the largest available room; the court noted, however, that the board set up a computer with external speakers so that those who were not able to enter the meeting room could view and hear the proceedings).

c. Inspection or fact-finding trips

The Sunshine Law does not prohibit *advisory* boards from conducting inspection trips provided that the board members do not discuss matters which may come before the board for official action. *See, Bigelow v. Howse*, 291 So. 2d 645 (Fla. 2d DCA 1974). *See also*, Op. Att'y Gen. Fla. 02-24 (2002) (two or more members of an *advisory* group created by a city code to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the notice and minutes requirements of the Sunshine Law, provided that they do not discuss among themselves any recommendations the committee may make to the council or planning commission, or comments on the proposed development that the committee may make to city officials).

However, the exception to the Sunshine Law for “fact-finding” missions does not apply to boards with the “ultimate decision-making authority.” See, *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008), in which the court held that a school board violated the Sunshine Law when board members, together with several school officials and two members of the media, took a bus tour of neighborhoods affected by a proposed rezoning even though there was no open discussion regarding the rezoning; no one either discussed or expressed a preference for any plan; and no decisions were made. Since the board was the ultimate decision-making body, the bus tour constituted a violation of the Sunshine Law.

4. Can restrictions be placed on the public's attendance at, or participation in, a public meeting?

a. Exclusion of certain members of the public

The term “open to the public” as used in the Sunshine Law means open to *all* who choose to attend. Op. Att’y Gen. Fla. 99-53 (1999). A board’s request that certain members of the public “voluntarily” leave the room during portions of a public meeting is not authorized. See *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169 (Fla. 4th DCA 1995). **Cf. *Ribaya v. Board of Trustees of the City Pension Fund for Firefighters and Police Officers in City of Tampa*, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law “squarely resolving” whether a wrongful exclusion of one person would void all actions taken at the meeting, “there is legal support for that proposition”).**

Staff of a public agency clearly are members of the public as well as employees of the agency; they cannot, therefore, be excluded from public meetings. Op. Att’y Gen. Fla. 79-01 (1979). Section 286.011, Florida Statutes, however, does not preclude the reasonable application of ordinary personnel policies, for example, the requirement that annual leave be used to attend meetings, provided that such policies do not frustrate or subvert the purpose of the Sunshine Law. *Id.*

b. Cameras and tape recorders

Reasonable rules and policies which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of those persons attending a public meeting may be adopted by the board or commission. However, a board may not ban videotaping of an otherwise public meeting. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002). Similarly, a rule or policy that prohibits nondisruptive or silent tape recording devices at public meetings is invalid. Op. Att’y Gen. Fla. 77-122 (1977).

c. Identification

A city may not require persons wishing to attend public meetings to provide identification as a condition of attendance. Op. Att’y Gen. Fla. 05-13 (2005). This is not to say that an agency may not impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors. *Id.*

d. Public comment

Prior to the adoption of section 286.0114, Florida Statutes (2013), Florida courts had determined that section 286.011, Florida Statutes, establishes a right to *attend* public board meetings, but does not provide a right to be heard. See *Herrin v. City of Deltona*, 121 So.

3d 1094, 1097 (Fla. 5th DCA 2013) (phrase "open to the public" as used in the Sunshine Law means that "meetings must be "properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings"). See also *Keesler v. Community Maritime Park Associates*, 32 So. 3d 659 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010).

However, as noted in the *Herrin* case, section 286.0114, Florida Statutes (2013), now mandates, subject to specified exceptions, that the public be given "a reasonable opportunity to be heard on a proposition before a board or commission." The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the "opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action." Section 286.0114(2), Florida Statutes.

The terms "proposition" or "official action" are not defined in the statute, nor is there a distinction between official actions taken at a formal meeting versus an informal setting such as a workshop. Inf. Op. to Jacquot, April 25 2014. "In light of the purpose of the statute to allow public participation during the decisionmaking process on a proposition, it should be liberally construed to facilitate that purpose." *Id.*

Boards are not prohibited from "maintaining orderly conduct or proper decorum in a public meeting." In addition, boards are authorized to adopt specified rules or policies governing the opportunity to be heard *i.e.*, time limits for speakers; procedures for designating a representative of a group or faction to address the board rather than all members of the group or faction; forms to indicate a speaker's position on a matter; and designation of a specified period of time for public comment. Section 286.0114(4), Florida Statutes.

While section 286.0114(6), Florida Statutes, authorizes a circuit court to issue injunctions for the purpose of enforcing the statute, section 286.0114(8), Florida Statutes, states that an action taken by a board or commission which is found to be in violation of section 286.0114, Florida Statutes, is not void as a result of that violation.

5. Must written minutes be kept of all sunshine meetings?

Section 286.011(2), Florida Statutes, specifically requires that minutes of a meeting of a public board or commission be promptly recorded and open to public inspection. Thus, a city violated the Sunshine Law when it failed to provide public access to minutes until after they had been approved by the city commission. *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010).

The minutes required to be kept for "workshop" meetings are no different than those required for any other meeting of a public board or commission. Op. Att'y Gen. Fla. 08-65 (2008). And see, *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010) (minutes required to be kept for city council agenda review meetings).

While tape recorders may be used to record the proceedings before a public body, written minutes of the meeting must also be taken and promptly recorded. See, Op. Att'y Gen. Fla. 75-45 (1975). Similarly, while a board may archive the full text of all workshop discussions conducted on the Internet, written minutes of these workshops must also be prepared and promptly recorded. Op. Att'y Gen. Fla. 08-65 (2008).

Draft minutes of a board meeting may be circulated to individual board members for corrections and studying prior to approval by the board, so long as any changes, corrections, or deletions are discussed and adopted during the public meeting when the board adopts the minutes. Op. Att'y Gen. Fla. 02-51 (2002).

6. *In addition to minutes, does the Sunshine Law also require that meetings be transcribed or tape recorded?*

Minutes of Sunshine Law meetings need not be verbatim transcripts of the meetings; rather the use of the term "minutes" in section 286.011, Florida Statutes, contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting. Op. Att'y Gen. Fla. 82-47 (1982). However, an agency is not prohibited from using a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

There is no requirement that tape recordings be made by the public board or commission at each public meeting. However, once made, such recordings are public records and their retention is governed by the Public Records Act and the schedules established by the Division of Library and Information Services of the Department of State. Op. Att'y Gen. Fla. 86-21 (1986).

7. *May members of a public board vote by written or secret ballot?*

Board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act. Op. Att'y Gen. Fla. 73-344 (1973).

By contrast, a secret ballot violates the Sunshine Law. See, Op. Att'y Gen. Fla. 73-264 (1973) (members of a personnel board may not vote by secret ballot during a hearing concerning a public employee). *Accord*, Ops. Att'y Gen. Fla. 72-326 (1972) and 71-32 (1971) (board may not use secret ballots to elect the chairman and other officers of the board). Thus, a judge found that a board violated the Sunshine Law when the board members' individual written votes for each applicant were not announced at the public meeting. According to the court, "[t]he fact that the ballots are preserved as public records available for public inspection does not satisfy the requirement of openness." *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013).

G. WHAT ARE THE CONSEQUENCES IF A PUBLIC BOARD OR COMMISSION FAILS TO COMPLY WITH THE SUNSHINE LAW?

1. *Criminal penalties*

Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), Florida Statutes. Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3)(c), Florida Statutes. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, Florida Statutes. The criminal penalties apply

to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. Op. Att'y Gen. Fla. 01-84 (2001) (school advisory council members).

2. Removal from office

When a method for removal from office is not otherwise provided by the Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his official duties. Section 112.52, Florida Statutes. If convicted, the officer may be removed from office by executive order of the Governor. A person who pleads guilty or nolo contendere or who is found guilty is, for purposes of section 112.52, Florida Statutes, deemed to have been convicted, notwithstanding the suspension of sentence or the withholding of adjudication. *Cf.*, section 112.51, Florida Statutes, and article IV, section 7, Florida Constitution.

3. Noncriminal infractions

Section 286.011(3)(a), Florida Statutes, imposes noncriminal penalties for violations of the Sunshine Law by providing that any public official violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. The state attorney may pursue actions on behalf of the state against public officials for violations of section 286.011, Florida Statutes, which result in a finding of guilt for a noncriminal infraction. *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). *Accord*, Op. Att'y Gen. Fla. 91-38 (1991).

4. Attorney's fees

Reasonable attorney's fees will be assessed against a board or commission found to have violated section 286.011, Florida Statutes. Such fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney, such fees may not be assessed against the individual members of the board. Section 286.011(4), Florida Statutes.

Section 286.011(4) also authorizes an award of appellate fees if a person successfully appeals a trial court order denying access. *See, School Board of Alachua County v. Rhea*, 661 So. 2d 331 (Fla. 1st DCA 1995), *review denied*, 670 So. 2d 939 (Fla. 1996).

5. Civil actions for injunctive or declaratory relief

Section 286.011(2), Florida Statutes, states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. The burden of prevailing in such actions has been significantly eased by the judiciary in sunshine cases. While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the *mere showing* that the law has been violated constitutes "irreparable public injury." *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). *And see*, *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009) *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010) (injunctive relief to enjoin city from future violations of the Sunshine Law due to a failure to record minutes of certain meetings is "appropriate" in light of City's past conduct and consistent refusal to record minutes even after being advised to do so by the City Attorney and also because the City "has continuously taken the legal

position that local governments are not required by the Sunshine Law to record minutes.”).

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law on a showing that it was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995). The future conduct must be "specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture." *Id.*, quoting from *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

6. Validity of action taken in violation of the Sunshine Law and subsequent corrective action

Section 286.011, Florida Statutes, provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting. "Therefore, where officials have violated section 286.011, the official action is void ab initio." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). *And see, Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (resolutions made during meetings held in violation of section 286.011, Florida Statutes, had to be re-examined and re-discussed in open public meetings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under section 286.011, Florida Statutes); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (city could have cured Sunshine Law violation by reconsidering the matter, but did not; accordingly, action taken in violation of the law was void)

Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). *See, Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008) (school board remedied inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a rezoning plan) and *Sarasota Citizens for Responsible Government v. City of Sarasota*, *supra* (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by subsequent public meetings). *Cf., Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998) (meeting did not cure the Sunshine defect because it was not a "full, open public hearing convened for the purpose of enabling the public to express its views and participate in the decision-making process"); and *Bert Fish Foundation v. Southeast Volusia Hospital District*, No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011) (series of public meetings did not "cure" Sunshine Law violations that resulted from 21 closed door meetings over 16 months; "[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late").

Moreover, "even when an illicit action is 'cured' it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine." *Anderson v. City of St. Pete Beach*, 161 So. 3d 548 (Fla. 2d DCA 2014).

7. Damages

"The only remedies available pursuant to the Sunshine Act are a declaration of the wrongful action as void and reasonable attorney's fees." *Dascott v. Palm Beach County*, 988 So. 2d 47, 49 (Fla. 4th DCA 2008), *review denied*, 6 So. 3d 51 (Fla. 2009). Accordingly, an employee who prevailed in a lawsuit alleging that her termination violated the Sunshine Law "may not recover the equitable relief of back pay because money damages are not a remedy provided for by the Act." *Id.*

II. PUBLIC RECORDS

A. WHAT IS A PUBLIC RECORD WHICH IS OPEN TO INSPECTION?

1. What materials are public records?

Section 119.011(12), Florida Statutes, defines "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). Accordingly, "the form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." Op. Att'y Gen. Fla. 04-33 (2004).

2. When are notes or nonfinal drafts of agency proposals subject to Chapter 119, Florida Statutes?

There is no "unfinished business" exception to the public inspection and copying requirements of Chapter 119, Florida Statutes. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980). *See also, Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (working papers used in preparing a college budget were public records).

Accordingly, any agency document, however prepared, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. Examples of such materials would include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.

In each of these cases, the fact that the records are part of a preliminary process does not detract from their essential character as public records. See, *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229 (Fla. 3d DCA 1998) (book selection forms completed by state university instructors and furnished to campus bookstore “are made in connection with official business, for memorialization and communication purposes[;] [t]hey are public records”); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (canvassing board minutes constitute final work product of the Board, not a preliminary draft or note; therefore, city violated public records law by refusing to produce minutes until after approval by the city commission). It follows then that such records are subject to disclosure unless the Legislature has specifically exempted the documents from inspection or has otherwise expressly acted to make the records confidential. See, for example, section 119.071(1)(d), Florida Statutes, providing a limited work product exemption for agency attorneys.

Similarly, so-called “personal notes” can constitute public records if they are intended to communicate, perpetuate or formalize knowledge of some type. For example, in *Miami Herald Media Company v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official, summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting. See *also* Op. Att’y Gen. Fla. 05-23 (2005).

However, “under chapter 119 public employees’ notes to themselves which are designed for their own personal use in remembering certain things do not fall within the definition of ‘public record.’” *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *Accord, Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys’ own personal use are not public records;

More recently, the Attorney General advised that handwritten personal notes, taken by a city employee in the course of conducting his official duties and made for the purpose of assisting him in remembering matters discussed, are not public records “if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge.” Op. Att’y Gen. Fla. 10-55 (2010).

3. When are records made or received “in connection with the transaction of official business?”

The determination as to whether certain records constitute “public records” can be difficult if the records are produced by a public officer or employee on government equipment but are “personal” in nature. The Florida Supreme Court has ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003). “Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of ‘public records,’ . . . private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer.” *Id.* at 154. *Accord, Bent v. State*, 46 So. 3d 1047 (Fla. 4th DCA 2010) (sound recordings made by sheriff’s office of personal telephone calls between minors in jail awaiting trial and third parties are not public records when contents of the phone calls do not involve criminal activity or a security breach); *Media General Operations, Inc. v. Feeney*,

849 So. 2d 3 (Fla. 1st DCA 2003) (cellular phone records of private calls of staff employees do not constitute official business of the Florida House of Representatives). *And see Butler v. City of Hallandale Beach*, 68 So. 3d 278 (Fla. 4th DCA 2011) (e-mail sent by mayor from her personal account using her personal computer and blind copied to friends and supporters did not constitute a public record because the e-mail was not made pursuant to law or ordinance or in connection with the transaction of official business).

The *Clearwater* decision does not mean, however, that all records relating to personal matters which are found in agency files are outside the scope of the Public Records Act. As the *Clearwater* Court noted, the personal e-mails involved in that decision were not e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *State v. City of Clearwater*, at 151n.2.

For example, if a state inspector general is reviewing allegations of misuse of agency equipment for private purposes, the personal emails obtained by the inspector general for his or her investigation are public records and subject to disclosure in the absence of statutory exception. *And see, Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009), concluding that when the county aviation unit's written procedures required pilots to maintain a personal flight log, the logs were subject to the Public Records Act. "The officers are thus paid by the County to make these logbook entries, and the entries are made 'in connection with the transaction of official business' of the aviation unit;" therefore, "[t]he entries are readily distinguishable from the purely personal e-mails at issue in *State v. City of Clearwater* [citation omitted]." *Id.* at 1290-1291. *See also, Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010) (billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; "and, the 'official business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls"); and *Op. Att'y Gen. Fla. 09-19* (2009) (because the creation of a city Facebook page must be for a municipal, not private purpose, the "placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes.").

B. WHAT AGENCIES ARE SUBJECT TO THE PUBLIC RECORDS ACT?

Section 119.011(2), Florida Statutes, defines "agency" to include:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Article I, section 24, Florida Constitution, establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law pursuant to Article I, section 24, Florida Constitution, or specifically made confidential by the Constitution. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties,

municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. However, although a right of access exists under the Constitution to all three branches of government, the Public Records Act, as a legislative enactment, does not apply to the Legislature or the judiciary. *See, Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

1. Advisory boards

The definition of "agency" for purposes of Chapter 119, Florida Statutes, is not limited to governmental entities. A "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency" is also subject to the requirements of the Public Records Act. *See also*, Article I, section 24, Florida Constitution, providing that the constitutional right of access to public records extends to "any public body, officer, or employee of the state, or persons acting on their behalf...." (e.s.)

2. Private organizations

A more complex question is presented when a private corporation or entity provides services for a governmental body. The term "agency" as used in the Public Records Act includes private entities "acting on behalf of any public agency." Section 119.011(2), Florida Statutes. *And see* s. 119.0701, F.S., mandating that all agency contracts for services with "contractors" must contain specific provisions requiring the contractor to comply with public records laws, including retention and public access requirements. The term "contractor" is defined to mean "an individual, partnership, corporation or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2), [F.S.]." *See* Op. Att'y Gen. Fla. 14-06 (2014).

The Florida Supreme Court has stated that this broad definition of "agency" ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). *Cf.*, *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229 n.4 (Fla. 3d DCA 1998), *review denied*, 729 So. 2d 389 (Fla. 1999) (private company operating college bookstores was an "agency" as defined in section 119.011[2], Florida Statutes, "notwithstanding the language in its contract with the universities that purports to deny any agency relationship").

The fact that an entity is incorporated as a nonprofit corporation is not dispositive as to its status under the Public Records Act, but rather the issue is whether the entity is "acting on behalf of" a public agency. The Attorney General's Office has issued numerous opinions advising that if a nonprofit entity is established by law or by a governmental entity, it is subject to Chapter 119 disclosure requirements. *See*, Op. Att'y Gen. Fla. 94-34 (1994) (*Pace Property Finance Authority, Inc.*, created as a Florida nonprofit corporation by Santa Rosa County as an instrumentality of the county to provide assistance in the funding and administration of certain governmental programs)

a. Receipt of public funds by private entity not dispositive

A private corporation does not act "on behalf of" a public agency merely by entering into a contract to provide professional services to the agency. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, *supra*. *And see*, *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970 (Fla. 2d DCA 2002) (fact that private development is located on land the developer leased from a governmental agency does not transform the leases between the developer and other private entities into public records).

Similarly, the receipt of public funds, standing alone, is not dispositive of the organization's status for purposes of Chapter 119, Florida Statutes. *See, Sarasota Herald-Tribune Company v. Community Health Corporation, Inc.*, 582 So. 2d 730 (Fla. 2d DCA 1991), in which the court noted that the mere provision of public funds to the private organization is not an important factor in this analysis, although the provision of a substantial share of the capitalization of the organization is important. *See also, Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (attorneys retained by individual county commissioners in a criminal matter were not "acting on behalf of" a public agency so as to become subject to the Public Records Act, even though the board of county commissioners subsequently voted to pay the legal expenses in accordance with a county policy providing for reimbursement of legal expenses to individual county officers who successfully defend criminal charges filed against them arising out of the performance of their official duties).

b. Application of Chapter 119, Florida Statutes, to private entities contracting with public agencies

The case law has established "two general sets of circumstances" when records belonging to a private entity must be produced as public records. *See, Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002) and *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 (Fla. 1st DCA 2008); *County of Volusia v. Emergency Communications Network, Inc.*, 39 So. 3d 1280 (Fla. 5th DCA 2010). First, when a public entity contracts with a private entity to provide goods or services to facilitate the agency's performance of its duties and the "totality of factors" indicates a significant level of involvement by the public agency. Each of these situations is discussed below. Second, when a public entity delegates a statutorily authorized function to a private entity.

(1) Contract to provide services and the "totality of factors" test

Recognizing that "the statute provides no clear criteria for determining when a private entity is 'acting on behalf of' a public agency," the Supreme Court adopted a "totality of factors" approach to use as a guide for evaluating whether a private entity which is providing services to a public agency is subject to Chapter 119, Florida Statutes. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, *supra* at 1031. *And see, Wells v. Aramark Food Service Corporation*, 888 So. 2d 134 (Fla. 4th DCA 2004) (trial judge should have applied totality of factors analysis rather than denying petition for writ of mandamus seeking to require Aramark to provide a copy of the food service contract between it and the Department of Corrections).

The factors listed by the Supreme Court include the following:

- 1) the level of public funding;
- 2) commingling of funds;
- 3) whether the activity was conducted on publicly-owned property;
- 4) whether the contracted services are an integral part of the public agency's chosen decision-making process;
- 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- 6) the extent of the public agency's involvement with, regulation of, or control over the private entity;
- 7) whether the private entity was created by the public agency;
- 8) whether the public agency has a substantial financial interest in the private entity;

- 9) for whose benefit the private entity is functioning.

(2) Delegation of statutorily authorized function to private entity

"[W]hen a public entity delegates a statutorily authorized function to a private entity, the records generated by the private entity's performance of that duty become public records." *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

As stated previously, the mere fact that a private entity is under contract with, or receiving funds from, a public agency is not sufficient, standing alone, to bring that agency within the scope of the Public Records Act. *See, Stanfield v. Salvation Army*, 695 So. 2d 501, 503 (Fla. 5th DCA 1997) (contract between Salvation Army and county to provide services does not in and of itself subject the organization to Chapter 119 disclosure requirements).

However, there is a difference between a party contracting with a public agency to provide services *to* the agency and a contracting party which provides services *in place of* the public body. *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997), *approved*, 729 So. 2d 373 (Fla. 1999). Stated another way, business records of entities which merely provide services for an agency to use (such as legal professional services, for example) are probably not subject to the open government laws. *Id.* But, if the entity contracts to relieve the public body from the operation of a public obligation (such as operating a jail or providing fire protection) the open government laws do apply. *Id.*

Thus, in *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 (Fla. 1st DCA 2008), *review denied*, 4 So. 3d 1220 (Fla. 2009), the court held that a private engineering firm which contracted to provide engineering services for a city and acted *de facto* as the city's engineer, was an "agency" subject to Chapter 119, Florida Statutes. *And see, Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (a consortium of private businesses created to manage a massive renovation of an airport is an "agency" for purposes of the Public Records Act because it was created for and had no purpose other than to work on the airport contract; "when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Act, as the government would be").

However, the trial judge erred when he used the "delegation" test instead of the "totality of factors" test established in *Schwab* to determine that a nonprofit entity was an "agency" based on the entity's contract with the county to perform economic development services because there was not a "clear, compelling, complete" delegation of a governmental function to the entity. *See Economic Development Commission v. Ellis*, 178 So. 3d 118 (Fla. 5th DCA 2015).

c. Application of Chapter 119 to private entity that has been delegated authority to keep certain records

If a public agency has delegated its responsibility to maintain records necessary to perform its functions, such records will be deemed accessible to the public. *Op. Att'y Gen.* Fla. 98-54 (1998) (registration and disciplinary records stored in a computer database maintained by a national securities association which are used by the Department of Banking and Finance in licensing and regulating securities dealers doing business in Florida are public records). *See also, Harold v. Orange County*, 668 So. 2d 1010 (Fla. 5th DCA 1996) (where a county hired a private company to be the construction manager on a

renovation project and delegated to the company the responsibility of maintaining records necessary to show compliance with a "fairness in procurement ordinance," the company's records for this purpose were public records).

3. Officers-elect

Section 119.035, Florida Statutes, requires an "officer-elect" [defined for purposes of that section to mean the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture] to adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in chapter 119, Florida Statutes. *Cf.*, section 286.011(1), Florida Statutes, providing that meetings subject to the Sunshine Law include "meetings with or attended by any person elected to such board or commission, but who has not yet taken office. . . ."

C. WHAT KINDS OF AGENCY RECORDS ARE SUBJECT TO THE PUBLIC RECORDS ACT?

1. Electronic records

In 1982, the Fourth District Court of Appeal stated that information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet" *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983). Thus, the Public Records Act includes computer records as well as paper documents, tape recordings, and other more tangible materials. *See, e.g.*, Op. Att'y Gen. Fla. 98-54 (1998) (applications and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records subject to Chapter 119); Op. Att'y Gen. Fla. 91-61 (1991) (computer data software disk is a public record); and Op. Att'y Gen. Fla. 89-39 (1989) (information stored in computer utilized by county commissioners to facilitate and conduct their official business is subject to Chapter 119, Florida Statutes). *Cf. Grapski v. Machen*, No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007) (spam or bulk mail received by a public agency does not necessarily constitute a public record).

Thus, computerized public records made or received in the course of official business are governed by the same rule as written documents and other public records -- the records are subject to public inspection unless a statutory exemption exists which removes the records from disclosure. *See, National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form). *Cf.*, AGO 90-04, stating that a county official is not authorized to assign the county's right to a public record (a computer program developed by a former employee while he was working for the county) as part of a settlement of a lawsuit against the county.

a. E-Mail, Facebook and text messages

E-mail messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption from public inspection. *See, Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013), noting that "electronic communications, such as e-mail are covered [by the Public Records Act] just like communications on paper." *And see*, 07-14 (2007) (e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or "blind" recipients and their e-mail addresses).

Like other public records, e-mail messages are subject to the statutory restrictions on *destruction* of public records, which require agencies to adopt a schedule for the disposal of records no longer needed. Op. Att'y Gen. Fla. 96-34 (1996). For example, the e-mail communication of factual background information and position papers from one official to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. Op. Att'y Gen. Fla. 01-20 (2001). See, section 257.36(6), Florida Statutes, stating that a public record may be destroyed only in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. *Id. Cf.*, section 668.6076, Florida Statutes (e-mail address public record disclosure statement).

The Attorney General's Office has stated that the placement of material on a city's Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S. Thus, to the extent that the information on a city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established by law. Op. Att'y Gen. Fla. 09-19 (2009). *And see* Op. Att'y Gen. Fla. 08-07 (2008) (postings relating to city business which are submitted by a city council member to a privately-owned and operated internet website are public records).

In Inf. Op. to Browning, March 17, 2010, the Attorney General's Office advised the Department of State (which is statutorily charged with development of public records retention schedules) that "the same rules that apply to e-mail should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging), MMS communications (multimedia content) and instant messaging conducted by government agencies." In response, the Department of State revised its records retention schedule to note that text messages may be public records and that retention of text messages could be required depending upon the content of those texts.

b. Formatting issues

Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to Chapter 119, a copy of any public record in that system which is not exempted by law from public disclosure. Section 119.01(2)(f), Florida Statutes. An agency that maintains a public record in an electronic recordkeeping system must provide a copy of the record in the medium requested by the person making a Chapter 119 demand, if the agency maintains the record in that medium, and the fee charged shall be in accordance with Chapter 119, Florida Statutes. *Id.* Thus, a custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript would not satisfy the requirements of section 119.07(1), Florida Statutes. Op. Att'y Gen. Fla. 91-61 (1991).

However, an agency is not generally required to reformat its records to meet a requestor's particular needs. As stated in *Seigle v. Barry*, the intent of Ch. 119, Florida Statutes, is "to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." 422 So. 2d at 66. Thus, the Attorney General's Office concluded that a school district was not required to furnish electronic public records in electronic format other than the standard format routinely maintained by the district. Op. Att'y Gen. Fla. 97-39 (1997). *Cf.* Op. Att'y Gen. Fla. 13-07 (2013) (agency not required to allow direct access to its electronic records through a hard drive provided by a requestor, but must allow inspection and copying of the requested records in a manner that protects exempt and confidential information from disclosure).

Despite the general rule, however, the *Seigle* court recognized that an agency may be required to provide access through a specially designed program prepared by or at the expense of the applicant where:

- (1) available programs do not access *all* of the public records stored in the computer's data banks; or
- (2) the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or
- (3) for any reason the form in which the information is proffered does not fairly and meaningfully represent the records; or
- (4) the court determines other exceptional circumstances exist warranting this special remedy. 422 So. 2d at 66, 67.

c. Remote access

Section 119.07(2)(a), Florida Statutes, authorizes but does not require agencies to provide remote electronic access to public records. However, unless otherwise required by law, the custodian may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public must be in accordance with the provisions of section 119.07(4), Florida Statutes. *And see*, section 119.07(2)(b), Florida Statutes, which requires the custodian to provide safeguards to protect the records from unauthorized disclosure or alteration.

2. Financial records

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. *See*, Op. Att'y Gen. Fla. 96-96 (1996) (financial information submitted by harbor pilots in support of a rate increase application is not exempt from disclosure requirements).

a. Bids

Section 119.071(1)(b)2., Florida Statutes, provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" or until such time as the agency provides notice of an intended decision or until 30 days after opening, whichever is earlier. *And see*, s. 119.071(1)(b)3., Florida Statutes, providing a temporary exemption if an agency rejects all bids, proposals or replies and concurrently provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws it.

b. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974).

c. Personal financial records

In the absence of statutory exemption, financial information prepared or received by an agency is usually subject to Chapter 119, Florida Statutes. See, *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by public officials as part of an application to organize a bank are subject to disclosure).

However, the Legislature has exempted some financial information from disclosure. For example, bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), Florida Statutes.

d. Trade secrets

The Legislature has created a number of specific exemptions from Ch. 119, Florida Statutes, for trade secrets. See, e.g., section 1004.22(2), Florida Statutes (trade secrets produced in research conducted within state universities); and section 570.544(8), Florida Statutes (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services).

However, even in the absence of a specific statutory exemption for particular trade secrets, section 815.045, Florida Statutes, "should be read to exempt from disclosure as public records *all* trade secrets as defined in [section 812.081(1)c), Florida Statutes]. . . ." *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 785 (Fla. 1st DCA 2003), *review denied sub nom.*, *Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005). (e.s.)

In *Sepro*, the court ruled that while "a conversation with a state employee is not enough to prevent the information from being made available to anyone who makes a public records request," documents submitted by a private party which constituted trade secrets as defined in s. 812.081, and which were stamped as confidential at the time of submission to a state agency, were not subject to public access. *Sepro*, at 784. Compare, *James, Hoyer, Newcomer, Smiljanich & Yanchunis, P.A. v. Rodale, Inc.*, 41 So. 3d 386 (Fla. 1st DCA 2010) (customer complaints and company responses are not protected trade secrets); *Cubic Transportation Systems, Inc. v. Miami-Dade County*, 899 So. 2d 453, 454 (Fla. 3d DCA 2005) (company, which supplied documents to an agency and failed to mark them as "confidential" and which continued to supply them without asserting even a legally ineffectual post-delivery claim to confidentiality for some thirty days failed adequately to protect an alleged trade secret claim). Cf., *Allstate Floridian Ins. Co. v. Office of Ins. Regulation*, 981 So. 2d 617 (Fla. 1st DCA 2008), *review denied*, 987 So. 2d 79 (Fla. 2008) (to the extent Allstate believed any documents sought by the Office of Insurance Regulation were privileged as trade secrets, Allstate was required to timely seek a protective order in circuit court).

3. Litigation records

a. Attorney-client communications subject to Chapter 119, Florida Statutes

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Chapter 119, Florida Statutes). See also, *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although section 90.502, Florida Statutes, of the Evidence Code establishes an attorney-client privilege for public and private

entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Chapter 119, Florida Statutes).

Moreover, public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company*, *supra*. Accord, *Brevard County v. Nash*, 468 So. 2d 240 (Fla. 5th DCA 1984); *Edelstein v. Donner*, 450 So. 2d 562 (Fla. 3d DCA 1984), *approved*, 471 So. 2d 26 (Fla. 1985).

b. Limited statutory work product exemption

(1) Application of the exemption

The Supreme Court has ruled that the Legislature and not the judiciary has exclusive authority to exempt litigation records from the scope of Chapter 119, Florida Statutes. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). With the enactment of section 119.071(1)(d), Florida Statutes, the Legislature has created a narrow exemption for certain litigation work product of agency attorneys. However, this exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively in the section relating to "attorney notes," certain preliminary trial preparation materials, such as handwritten notes for the personal use of the attorney, are not considered to be within the definitional scope of the term "public records" and, therefore, are outside the scope of Chapter 119, Florida Statutes. See, *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

a. Attorney bills and payments

Only those records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" are included within the parameters of the work product exemption. Accordingly, a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption. Op. Att'y Gen. Fla. 85-89 (1985). If the bills and invoices contain exempt work product under section 119.071(1)(d) -- *i.e.*, "mental impression[s], conclusion[s], litigation strateg[ies], or legal theor[ies]," -- the exempt material may be deleted and the remainder disclosed. *Id.* However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the exemption. *Id.*

Thus, an agency which improperly "blocked out" most notations on invoices prepared in connection with services rendered by and fees paid to attorneys representing the agency, "improperly withheld" nonexempt material when it failed to limit its redactions to those items "genuinely reflecting its 'mental impression, conclusion, litigation strategy, or legal theory.'" *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So. 2d 216 (Fla. 2d DCA 1994). And see, Op. Att'y Gen. Fla. 00-07 (2000) (records of outside attorney fee bills received by the county's risk management office for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

b. Scope of the exemption

Section 119.071(1)(d), Florida Statutes, does not create a blanket exception to the Public Records Act for all attorney work product. Op. Att'y Gen. Fla. 91-75 (1991). The exemption is narrower than the work product privilege recognized by the courts for private litigants. Op. Att'y Gen. Fla. 85-89 (1985). The records must have been prepared "exclusively" for litigation or adversarial administrative proceedings, or prepared in

anticipation of imminent litigation or adversarial administrative proceedings; records prepared for other purposes may not be converted into exempt material simply because they are also used in or related to the litigation. For example, memoranda prepared by a state corrections department attorney regarding lethal injection procedures do not constitute exempt attorney work product because neither memorandum "relates to any pending litigation or appears to have been prepared 'exclusively for litigation.'" *Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007).

Moreover, only those records which are prepared by or at the express direction of the agency attorney and reflect "a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency" are exempt from disclosure until the conclusion of the proceedings. (e.s.) See, *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218, 219 (Fla. 1985) (noting application of exemption to "government agency, attorney-prepared litigation files during the pendency of litigation"); and *City of Miami Beach v. DeLapp*, 472 So. 2d 543 (Fla. 3d DCA 1985) (opposing counsel not entitled to city's legal memoranda as such material is exempt work product). Compare, *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city's litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city) and *Lightbourne v. McCollum*, *supra* (memoranda do not constitute exempt work product because they appear to be "final in form" and convey "specific factual information" rather than mental impressions or litigation strategies). See also, Op. Att'y Gen. Fla. 91-75 (1991) (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the school board to conduct an investigation of certain school district departments).

(2) Commencement and termination of exemption

Unlike the open meetings exemption in section 286.011(8), Florida Statutes, for certain attorney-client discussions between a governmental agency and its attorney, section 119.071(1)(d), Florida Statutes, is not limited to records created for pending litigation or proceedings, but applies also to records prepared "in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings." See, Op. Att'y Gen. Fla. 98-21 (1998), discussing the differences between the public records work product exemption in section 119.071(1)(d), and the Sunshine Law exemption in section 286.011.

But, the exemption from disclosure provided by section 119.071(1)(d), Florida Statutes, is *temporary* and limited in duration. *City of North Miami v. Miami Herald Publishing Co.*, *supra*. The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if other issues remain. *Seminole County v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988). Cf., *Lightbourne v. McCollum*, *supra* (even if memoranda might have been exempt work product at one time, the state waived the exemption by producing them as part of a public records response and filing copies in the court file).

For example, if the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990). And see, *Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. Aug. 19, 1991) (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the case and their litigation strategy). Thus, a school board failed to meet its burden to show that items contained in a school board litigation report

were exempt from disclosure where there was no evidence that the cases in question were pending and open when the board received the public records request. *Barfield v. School Board of Manatee County*, 135 So. 3d 560 (Fla. 2d DCA 2014).

The Legislature has, however, established specific exemptions which address disclosure of some risk management files when other related claims remain. For example, section 768.28(16), Florida Statutes, provides an exemption for claim files maintained by agencies pursuant to a risk management program for tort liability until the termination of the litigation and settlement of all claims arising out of the same incident. *See, Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007) (section 768.28, Florida Statutes, exemption continues to apply to county's litigation file when plaintiff pursues a portion of judgment entered against the county through the state legislative claims bill process).

The exemption afforded by section 768.28(16)(d), Florida Statutes, however, is limited to tort claims for which the agency may be liable under section 768.28, Florida Statutes, and does not apply to federal civil rights actions under 42 U.S.C. section 1983. *Ops. Att'y Gen. Fla. 00-20 (2000) and 00-07 (2000). And see, Op. Att'y Gen. Fla. 92-82 (1992)* (open meetings exemption provided by section 768.28, Florida Statutes, applies only to meetings held after a tort claim is filed with the risk management program). *Cf., Op. Att'y Gen. Fla. 07-47 (2007)* (nothing in section 768.28 expressly includes or excludes the "notice of claim" from the exemption and the Attorney General's Office may not conclude that all such notices are per se exempt from disclosure; it is the public agency "which must make the determination in good faith whether the notice of claim falls within the public records exemption for claims files").

Regarding draft settlements received by an agency in litigation, a circuit court has held that draft settlement agreements furnished to a state agency by a federal agency were public records despite the department's agreement with the federal agency to keep such documents confidential. *Florida Sugar Cane League, Inc. v. Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct. Sept. 20, 1991), *affirmed*, 606 So. 2d 1267 (Fla. 1st DCA 1992). **See also Informal Opinion to Gastesi, August 27, 2015 (settlement demand furnished by plaintiff to agency).**

c. Attorney notes

Relying on its conclusion in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), the Florida Supreme Court has recognized that "not all trial preparation materials are public records." *State v. Kokal*, 562 So. 2d 324, 327 (Fla. 1990). In *Kokal*, the Court approved the decision of the Fifth District in *Orange County v. Florida Land Co.*, 450 So. 2d 341, 344 (Fla. 5th DCA 1984), *review denied*, 458 So. 2d 273 (Fla. 1984), which described certain documents as not within the term 'public records.'

Similarly, in *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998), the Court ruled that "outlines, time lines, page notations regarding information in the record, and other similar items" in the case file, did not fall within the definition of public record, and thus were not subject to disclosure. *See also, Lopez v. State*, 696 So. 2d 725 (Fla. 1997) (handwritten notes dealing with trial strategy and cross examination of witnesses, not public records); and *Atkins v. State*, 663 So. 2d 624 (Fla. 1995) (notes of state attorney's investigations and annotated photocopies of decisional case law, not public records).

By contrast, documents prepared to communicate, perpetuate, or formalize knowledge constitute public records and are, therefore, subject to disclosure in the absence of statutory exemption. *See, Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), in which the Court noted that "[i]nter-office memoranda and intra-office memoranda communicating information from one public employee to

another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business."

Thus, in *Orange County v. Florida Land Company, supra*, the court concluded that trial preparation materials consisting of interoffice and intraoffice memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency's formal work product, were public records. As public records, such circulated trial preparation materials might be exempt from disclosure pursuant to section 119.071(1)(d), Florida Statutes, while the litigation is ongoing; however, once the case is over the materials would be open to inspection. *And see*, Op. Att'y Gen. Fla. 05-23 (2005).

4. Personnel records

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted an agency's personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under section 119.07(1), Florida Statutes. *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985). For more information on the statutory exemptions for information contained in personnel records, please refer to the Government in the Sunshine Manual, available online at myfloridalegal.com.

a. Privacy concerns

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. *See, Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist. "Absent an applicable statutory exception, pursuant to Florida's Public Records Act . . . public employees (as a general rule) do not have privacy rights in such records." *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002).

Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. *See, News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276 (Fla. 2d DCA 1980), stating that a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure.

b. Conditions for inspection of personnel records

An agency is not authorized to unilaterally impose special conditions for the inspection of personnel records. An automatic delay in the production of such records is invalid. *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (automatic 48 hour delay unauthorized by Chapter 119, Florida Statutes).

Thus, an agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. Op. Att'y Gen. Fla. 94-75 (1994). Nor may an agency agree to remove disciplinary records from an employee's personnel file and maintain them in separate disciplinary file for the purpose of removing such records from public access. Op. Att'y Gen. Fla. 94-54 (1994). *Accord* Op. Att'y Gen. Fla. 11-19 (2011) (superintendent's failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee's personnel file

does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). *Cf.*, section 69.081(8)(a), Florida Statutes, providing, subject to limited exceptions, that any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of a claim against the state or its subdivisions is "void, contrary to public policy, and may not be enforced." See *also* section 215.425(4)(b), Florida Statutes (on or after July 1, 2011, settlements to resolve employment disputes which result in the payment of severance pay authorized by that statute "may not include provisions that limit the ability of any party to the settlement to discuss the dispute or settlement").

5. Social security numbers

Section 119.071(5)(a)5., Florida Statutes, states that social security numbers held by an agency are confidential and exempt from disclosure requirements. Disclosure to another governmental agency is authorized if disclosure is necessary to the performance of the receiving agency's duties and responsibilities. Section 119.071(5)(a)6., Florida Statutes.

Upon verified written request which contains the information specified in the statute, a commercial entity engaged in a commercial activity as defined in the exemption may be allowed access to social security numbers, provided that the numbers will be used only in the performance of a commercial activity. Section 119.071(5)(a)7., Florida Statutes. The question of whether a particular type of activity constitutes "commercial activity" for purposes of this provision cannot be resolved by the Attorney General's Office. Op. Att'y Gen. Fla. 10-06 (2010).

D. TO WHAT EXTENT MAY AN AGENCY REGULATE OR LIMIT INSPECTION AND COPYING OF PUBLIC RECORDS?

1. *May an agency impose its own restrictions on access to or copying of public records?*

Any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. See, *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315, (1985). See *also*, *James v. Loxahatchee Groves Water Control District*, 820 So. 2d 988 (Fla. 4th DCA 2002) (trial court should have held a hearing before denying a request to inspect records at the agency's offices rather than at an off-premises location).

2. *What agency employees are responsible for responding to public records requests?*

Section 119.011(5), Florida Statutes, defines the term "custodian of public records" to mean "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee." A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records. Section 119.07(1)(b), Florida Statutes.

However, the statutory reference to the records custodian does not alter the "duty of disclosure" imposed by section 119.07(1), Florida Statutes, upon "[e]very person who has custody of a public record." *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA

1996).

Thus, the term "custodian" for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records. *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998), *citing to*, *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). But, "the mere fact that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07." *Mintus, supra*, at 1361.

3. What individuals are authorized to inspect and receive copies of public records?

Section 119.01, Florida Statutes, provides that "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person*." (e.s.) *See, Curry v. State*, 811 So. 2d 736 (Fla. 4th DCA 2002) (defendant's conduct in making over 40 public records requests concerning victim constituted a "legitimate purpose" within the meaning of the aggravated stalking law "because the right to obtain the records is established by statute and acknowledged in the state constitution").

4. Must an individual show a "special interest" or "legitimate interest" in public records before being allowed to inspect or copy same?

No. The requestor is not required to explain the purpose or reason for a public records request. "The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act." *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). Similarly, "the fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida's public records law." *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005).

Note, however, that section 817.568, Florida Statutes, provides criminal penalties for unauthorized use of personal identification information for fraudulent or harassment purposes. *And see*, section 817.569, Florida Statutes, providing penalties for criminal use of a public record or public records information.

5. May an agency refuse to allow inspection or copying of public records on the grounds that the request for such records is "overbroad" or lacks particularity?

No. The custodian is not authorized to deny a request to inspect and/or copy public records because of a lack of specifics in the request. *See, Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985), recognizing that the "breadth of such right [to inspect] is virtually unfettered, save for the statutory exemptions" *Cf., Woodard v. State*, 885 So. 2d 444 (Fla. 4th DCA 2004) (records custodian must furnish copies of records when the person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record and forwards the statutory fee).

6. When must an agency respond to a public records request?

A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), Florida Statutes. A good faith response includes making reasonable efforts to

determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed. *Id.*

The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted under Chapter 119, Florida Statutes, is the reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt. *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985).

A municipal policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company v. Cannella*, *supra*. Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his records. *Tribune Company v. Cannella*, *supra*. Nor may a city delay public access to board meeting minutes until after the city commission has approved them. *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010). *And see* 96-55 (1996) (board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote).

An agency's unreasonable and excessive delays in producing public records can constitute an unlawful refusal to provide access to public records. *See Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) ("Unlawful refusal . . . includes not only affirmative refusal to produce records, but also unjustified delay in producing them"). *See also*, *State v. Webb*, 786 So. 2d 602, 604 (Fla. 1st DCA 2001), in which the court held that it was error for a lower court judge to vacate a misdemeanor conviction of a records custodian who had been found guilty of willfully violating section 119.07(1)(a), Florida Statutes, based on her "dilatatory" response to public records requests filed by a citizen; *Hewlings v. Orange County, Florida*, 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly *responded* to public records request by voicemail and fax is not dispositive of whether county unjustifiably delayed in *complying* with the request); and *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (agency violated the Public Records Act by "delaying access to non-exempt public records for legally insufficient reasons"). ***Compare Consumer Rights, LLC v. Union County*, 159 So. 3d 882 (Fla. 1st DCA 2015), review denied, 177 So. 3d 1264 (Fla. 2015) (agency's delay was not "unjustifiable" where petitioner made the public records request "in a suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything and then sued . . ."). Accord, Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.**, 41 F.L.W. D1233 (Fla. 4th DCA May 25, 2016) (contractor's delay in responding to a "curious e-mail request for records" was not unjustified; "public records law should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney's fees").

An agency is not authorized to establish an arbitrary time period during which records may or may not be inspected. Op. Att'y Gen. Fla. 81-12 (1981).

7. May an agency require that a request to examine or copy public records be made in writing or require that the requestor furnish background information to the custodian?

No. Nothing in Chapter 119, Florida Statutes, requires that a requesting party make

a demand for public records in person or in writing. See, *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305n. 1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing"); and *Chandler v. City of Greenacres*, 140 So. 3d 1080 (Fla. 4th DCA 2014) (city not authorized to require form as a condition for production of public records). And see Inf. Op. to Cook, May 27, 2011 (agency may not require public records requestor to provide physical address for mailing copies or to be physically present in order to inspect records).

If a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require that the *custodian* complete an appropriate form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request to inspect or copy public records. See, *Sullivan v. City of New Port Richey*, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), *affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a public records requestor's failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records.

8. *Is an agency required to give out information from public records or to otherwise reformat records in a particular form as demanded by the requestor?*

A custodian is not required to give out *information* from the records of his or her office. Op. Att'y Gen. Fla. 80-57 (1980). The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. Op. Att'y Gen. Fla. 92-38 (1992).

Similarly, if an agency maintains a list of the names of officers and employees who have requested the exemption of their home addresses and telephone numbers under section 119.071(4)(d), Florida Statutes, the agency must provide the list. Op. Att'y Gen. Fla. 08-29 (2008). However, the agency is not required to reformat its records to make such a list in order to comply with a request under Chapter 119. *Id.* Nor is the clerk of court required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request. *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991). However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs. *Id.* And see, *Woodard v. State*, 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004) (case remanded where agency provided only information relating to statutory fee schedule rather than total copying cost of requested records).

An agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. *Seigle v. Barry*, 422 So. 2d 63 (Fla. 2d DCA 1982). However, an agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium. Section 119.01(2)(f), Florida Statutes. See Op. Att'y Gen. Fla. 91-61 (1991) (if asked, custodian must provide copy of computer disk; a typed transcript would not satisfy the requirements of section 119.07[1], Florida Statutes). Cf., *Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (the fact that pertinent information may exist in more than one format is not a basis for exemption or denial of a public records request).

Thus, upon receipt of a public records request, the agency must comply by producing all non-exempt records in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, Florida Statutes. However, this mandate applies only to those records in the custody of the agency at the time for request; nothing in the Public Records Act appears to require that an agency respond to a so-called

"standing" request for production of public records that it may receive in the future. See, Inf. Op. to Worch, June 15, 1995.

9. May an agency refuse to comply with a request to inspect or copy the agency's public records on the grounds that the records are not in the physical possession of the custodian?

No. An agency is not authorized to refuse to allow inspection of public records on the grounds that the documents have been placed in the actual possession of an agency or official other than the records custodian. See, *Tober v. Sanchez*, 417 So. 2d 1053 (Fla. 3d DCA 1982), *review denied sub nom.*, *Metropolitan Dade County Transit Agency v. Sanchez*, 426 So. 2d 27 (Fla. 1983) (official charged with maintenance of records may not transfer actual physical custody of records to county attorney and thereby avoid compliance with request for inspection under Chapter 119, Florida Statutes); and *Chandler v. City of Sanford*, 121 So. 3d 657, 660 (Fla. 5th DCA 2013) (City "cannot be relieved of its legal responsibility for the public records by transferring the records to another agency").

10. May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency?

No. The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption. Op. Att'y Gen. Fla. 86-69 (1986).

11. In the absence of express legislative authorization, may an agency refuse to allow public records made or received in the normal course of business to be inspected or copied if requested to do so by the maker or sender of the document?

No. To allow the maker or sender of documents to dictate the circumstances under which the documents are to be deemed confidential would permit private parties as opposed to the Legislature to determine which public records are subject to disclosure and which are not. Such a result would contravene the purpose and terms of Chapter 119, Florida Statutes. See, *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (a city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of all material in their personnel files). Accord, *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003), *review denied sub nom.*, *Crist v. Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005), (private party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential). Cf., *Hill v. Prudential Ins. Co. of America*, 701 So. 2d 1218 (Fla. 1st DCA 1997), *review denied*, 717 So. 2d 536 (Fla. 1998) (materials obtained by state agency from anonymous sources during the course of its investigation of an insurance company were public records and subject to disclosure in the absence of statutory exemption, notwithstanding the company's contention that the records were "stolen" or "misappropriated" privileged documents that were delivered to the state without the company's permission).

Similarly, it has been held that an agency "cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements." *Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. Aug. 19, 1991), stating that a confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act. Cf., section 69.081(8), Florida Statutes, part of the "Sunshine in Litigation Act," providing, subject to certain

exceptions, that any portion of an agreement which conceals information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced, and requiring that settlement records be maintained in compliance with Chapter 119, Florida Statutes. *And see, National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), holding that a confidentiality agreement entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA's secure custodial website that were used by the university in preparing a response to possible NCAA sanctions, had no impact on whether such records were public records stating that "[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private"; and Inf. Op. to Barry, June 24, 1998, stating that "a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file."

12. Must an agency state the basis for its refusal to release an exempt record?

Yes. Section 119.07(1)(e), Florida Statutes, states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection. Section 119.07(1)(f), Florida Statutes. *See, Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000)(agency's response that it had provided all records "with the exception of certain information relating to the victim" deemed inadequate because the response "failed to identify with specificity either the reasons why the records were believed to be exempt, or the statutory basis for any exemption. *Cf., City of St. Petersburg v. Romine*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), noting that the Public Records Act "may not be used in such a way as to obtain information that the Legislature has declared must be exempt from disclosure."

13. May an agency refuse to allow inspection and copying of an entire public record on the grounds that a portion of the record contains information which is exempt from disclosure?

No. Where a public record contains some information which is exempt from disclosure, section 119.07(1)(d), Florida Statutes, requires the custodian of that document to redact only that portion of the record for which a valid exemption is asserted and to provide the remainder of the record for inspection and copying. *See, Ocala Star Banner Corp. v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact confidential identifying information from police report but must produce the rest for inspection). The fact that an agency believes that it would be impractical or burdensome to redact confidential information from its records does not excuse noncompliance with the mandates of the Public Records Act. Op. Att'y Gen. Fla. 99-52 (1999). *Cf., Op. Att'y Gen. Fla. 02-73* (2002) (agency must redact confidential and exempt information and release the remainder of the record; agency is not authorized to release records containing confidential information, albeit anonymously.)

14. May an agency refuse to allow inspection of public records because the agency believes disclosure could violate privacy rights?

It is well established in Florida that "neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested

inspection of a public record which is in the hands of a government agency." *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991). Thus, to the extent that information on a city's Facebook page constitutes a public record within the meaning of the Public Records Act, the state constitutional privacy provision in Article I, section 23, Florida Constitution, "is not implicated." Op. Att'y Gen. Fla. 09-19 (2009).

15. What is the liability of a custodian for release of public records?

It has been held that there is nothing in Chapter 119, Florida Statutes, indicating an intent to give private citizens a right to recovery for negligently maintaining and providing information from public records. *Friedberg v. Town of Longboat Key*, 504 So. 2d 52 (Fla. 2d DCA 1987).

However, a custodian is not protected against tort liability resulting from that person *intentionally* communicating public records or their contents to someone outside the agency which is responsible for the records unless the person inspecting the records has made a bona fide request to inspect the records or the communication is necessary to the agency's transaction of its official business. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

E. WHAT IS THE LEGAL EFFECT OF STATUTORY EXEMPTIONS FROM DISCLOSURE?

1. Creation of exemptions

"Courts cannot judicially create any exceptions, or exclusions to Florida's Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.*, 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *Accord, Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure).

Article I, section 24(c), Florida Constitution, authorizes the *Legislature* to enact general laws creating exemptions provided that such laws "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." *See, Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999), in which the Court refused to "imply" an exemption from open records requirements, stating "we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in Article I, section 24(c) of the Florida Constitution."

2. Exemptions are strictly construed

The Public Records Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Krischer v. D'Amato*, 674 So. 2d 909 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988). *And see, Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (1995 exemption to the Sunshine Law for certain hospital board meetings ruled unconstitutional because it did not meet the constitutional standard for exemptions set forth in article I, section 24[b] and [c], Florida Constitution). An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. *See, Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).

Access to public records is a substantive right. *Memorial Hospital-West Volusia, Inc.*

v. News-Journal Corporation, 784 So. 2d 438 (Fla. 2001). Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *Id.* See also, *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004) (generally, the critical date in determining whether a document is subject to disclosure is the date the public records request is made; the law in effect on that date applies).

However, if the Legislature is "clear in its intent," an exemption may be applied retroactively. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). *Accord* Op. Att'y Gen. Fla. 11-16 (2011) (applying exemption to a public records request received before the statute's effective date because the legislation creating the exemption states that it "applies to information held by an agency, before, on or after the effective date of this exemption").

3. Release or transfer of confidential or exempt records

There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act and confidential. *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004). If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute. *Id.* And see, Ops. Att'y Gen. Fla. 04-09 (2004) and 86-97 (1986).

On the other hand, if the records are not made confidential but are simply exempt from the mandatory disclosure requirements in section 119.07(1)(a), Florida Statutes, the agency is not prohibited from disclosing the documents in all circumstances. See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to section 119.07(3)(d), Florida Statutes, [now section 119.071(2)(c), Florida Statutes] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not *prohibit* the showing of such information." 575 So. 2d at 686.

In *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995), the court stated that when a criminal justice agency transfers exempt information to another criminal justice agency, the information retains its exempt status. And see, *Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) ("the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands").

F. TO WHAT EXTENT DOES FEDERAL LAW PREEMPT STATE LAW REGARDING PUBLIC INSPECTION OF RECORDS?

The general rule is that records which would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Article VI, section 2, United States Constitution, the state must keep the records confidential. *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); Ops. Att'y Gen. Fla. 90-102 (1990), 85-3 (1985), 81-101 (1981), 80-31 (1980), 74-372 (1974), and 73-278 (1973). And see, *Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal

law prohibits public disclosure of social security numbers in state teacher certification database).

Thus, tenant records of a public housing authority are not exempt, by reason of the Federal Privacy Act, from disclosure otherwise required by the Florida Public Records Act. *Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994). And see, *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (exemptions from disclosure in Federal Freedom of Information Act apply to documents in the custody of federal agencies; the Act is not applicable to state agencies).

In the absence of statutory authorization, a public official is not empowered to obtain a copyright for material produced by his or her office in connection with the transaction of official business. Ops. Att'y Gen. Fla. 03-42 (2003) and 88-23 (1988). Thus, a property appraiser is not authorized to assert copyright protection in the Geographic Information Systems maps created by his office. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005).

The federal copyright law, when read together with Florida's Public Records Act, authorizes and requires the custodian of records of the Department of State to make maintenance manuals *supplied* to that agency pursuant to law available for examination and inspection purposes. With regard to reproducing, copying, and distributing copies of these maintenance manuals which are protected under the federal copyright law, state law must yield to the federal law on the subject. Op. Att'y Gen. Fla. 03-26 (2003). *Cf., State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377 (Fla. 1st DCA 1994) (agency copy of administrative hearing transcript is a public record regardless of who ordered the transcription or bore its expense; thus, agency can charge only the fees authorized in Chapter 119, Florida Statutes, regardless of the fact that the court reporter may have copyrighted the transcript).

G. WHAT FEES MAY LAWFULLY BE IMPOSED FOR INSPECTING AND COPYING PUBLIC RECORDS

1. When may an agency charge a fee for the mere inspection of public records?

As noted in Op. Att'y Gen. Fla. 85-03 (1985), providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law. See, *State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905).

Section 119.07(4)(d), Florida Statutes, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. Thus, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during their inspection. Op. Att'y Gen. Fla. 00-11 (2000). In doing so, however, the county's policy should reflect no more than the actual cost of the personnel's time and be sensitive to accommodating the request in such a way as to ensure unfettered access while safeguarding the records. *Id.*

2. Is an agency required to provide copies of public records if asked, or may the agency allow inspection only?

Section 119.07(4), Florida Statutes, provides that the custodian shall furnish a copy or a certified copy of a public record upon payment of the fee prescribed by law. *See, Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944) ("The best-reasoned authority in this country holds that the right to inspect public records carries with it the right to make copies.")

3. What fees may be charged for copies?

Chapter 119 does not prohibit agencies from providing informational copies of public records without charge. *Op. Att'y Gen. Fla. 90-81* (1990). An agency may, however, charge a fee for copies provided that the amount of the fee does not exceed that authorized by Chapter 119, Florida Statutes, or established elsewhere in the statutes for a particular record. *See, Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are "in the same position as anyone else seeking public records who cannot pay" the required costs); and *City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006) (labor union must pay costs stipulated in Chapter 119, Florida Statutes, for copies of documents it has requested from a public employer for collective bargaining purposes).

If no fee is prescribed elsewhere in the statutes, section 119.07(4)(a)1., Florida Statutes, authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 ½ inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. Section 119.07(4)(a)2., Florida Statutes. A charge of up to \$1.00 per copy may be assessed for a certified copy of a public record. Section 119.07(4)(c), Florida Statutes.

For other copies, the charge is limited to the actual cost of duplication of the record. Section 119.07(4)(a)3., Florida Statutes. The phrase "actual cost of duplication" is defined to mean "the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication." Section 119.011(1), Florida Statutes. An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and overhead associated with their duplication. Section 119.07(4)(b), Florida Statutes. *And see*, the discussion on the special service charge.

4. May an agency charge for travel costs, search fees, development costs and other incidental costs?

With the exception of county maps or aerial photographs supplied by county constitutional officers, the Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records. *Op. Att'y Gen. Fla. 99-41* (1999). Thus, an agency may not charge for travel time and retrieval costs for public records stored off-premises. *Op. Att'y Gen. Fla. 90-07* (1990). *And see*, *Op. Att'y Gen. Fla. 02-37* (2002) (although an agency may contract with a private company to provide information also obtainable through the agency, it may not abdicate its duty to provide such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services).

Similarly, an agency may not charge fees designed to recoup the original cost of developing or producing the records. *Op. Att'y Gen. Fla. 88-23* (1988) (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual

cost of duplication of the tape). *And see, State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382 (Fla. 1st DCA 1994) (once a transcript of an administrative hearing is filed with the agency, the transcript becomes a public record regardless of who ordered the transcript or paid for the transcription; the agency can charge neither the parties nor the public a fee that exceeds the charges authorized in the Public Records Act).

5. When may an agency charge a special service charge for extensive use of clerical or supervisory labor or extensive information technology resources?

Section 119.07(4)(d), Florida Statutes, states that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a special service charge which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. The special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required. *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008). The fact that a request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather an extensive use of such resources is required before the special service charge is authorized. Op. Att'y Gen. Fla. 13-03 (2013).

a. Labor costs may include salary and benefits but must be reasonable

The term "labor cost" for purposes of the special service charge may include both salary and benefits. *Board of County Commissioners v. Colby, supra*. However, the statute requires that the special service charge be "reasonable" and based on actual costs. *Id. See, Carden v. Chief of Police*, 696 So. 2d 772, 773 (Fla. 2d DCA 1996), stating that an "excessive charge" under section 119.07(4)(d), Florida Statutes, "could well serve to inhibit the pursuit of rights conferred by the Public Records Act." Moreover, in *State v. Gudinas*, No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999), the court concluded that an agency could charge only a clerical rate for the time spent making copies, even if due to staff shortages, a more highly paid person did the work.

b. What is an "extensive" use of labor or information technology resources?

Section 119.07(4)(d), Florida Statutes, does not contain a definition of the term "extensive." In 1991, a divided First District Court of Appeal upheld a hearing officer's order rejecting an inmate challenge to a Department of Corrections (DOC) rule that defined "extensive" for purposes of the special service charge. *Florida Institutional Legal Services, Inc. v. Florida Department of Corrections*, 579 So. 2d 267 (Fla. 1st DCA 1991), review denied, 592 So. 2d 680 (Fla. 1991). The agency rule defined "extensive" to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material.

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. Op. Att'y Gen. Fla. 84-81 (1984). However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. *See, Florida Institutional Legal Services, Inc. v. Florida Department of Corrections*, 579 So. 2d at 269.

And see, Herskovitz v. Leon County, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), noting that "it would not be unreasonable in these types of cases [involving many documents and several different exemptions] to charge a reasonable special fee for the supervisory personnel necessary to properly review the materials for possible application of exemptions."

c. May an agency require an advance deposit?

A county policy to require an advance deposit "seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." *Board of County Commissioners v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008). ***Accord Morris Publishing Group, LLC*, 154 So. 3d 528 (Fla. 1st DCA 2015), review denied, 163 So. 3d 512 (Fla. 2015) (finding agency policy of requiring payment of a deposit before redaction and production of public records to be "facially reasonable").**

An agency may require that a public records requestor pay past due fees for records compiled for a previous request before complying with the requestor's subsequent request. *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008).

H. WHAT ARE THE OPTIONS IF AN AGENCY REFUSES TO PRODUCE PUBLIC RECORDS FOR INSPECTION AND COPYING?

1. Voluntary mediation program

Section 16.60, Florida Statutes, establishes the open government mediation program as a voluntary alternative for resolution of public access disputes. For more information about mediation, please contact the Attorney General's Office at the following address and telephone number: The Capitol, PL-01, Tallahassee, Florida 32399-1050; telephone: (850) 245-0140.

2. Civil action

a. Remedies

A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119, Florida Statutes.

Before filing a lawsuit, the petitioner must have furnished a public records request to the agency. *Villarreal v. State*, 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied*, 694 So. 2d 741 (Fla. 1997), *cert. denied*, 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply).

Section 119.11(1), Florida Statutes, mandates that actions brought under Ch. 119 are entitled to an immediate hearing and take priority over other pending cases. *See, Matos v. Office of the State Attorney for the 17th Judicial Circuit*, 80 So. 3d 1149 (Fla. 4th DCA 2012) ("[a]n immediate hearing does not mean one scheduled within a reasonable time, but means what the statute says: immediate"). *See also Clay County Education Association v. Clay County School Board*, 144 So. 3d 708 (Fla. 1st DCA 2014).

Generally, mandamus is the appropriate remedy to enforce compliance with the Public Records Act. *See Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014). *See also, Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). If the requestor's petition presents a prima facie claim for relief, an order to show cause should be

issued so that the claim may receive further consideration on the merits. *Gay v. State*, 697 So. 2d 179 (Fla. 1st DCA 1997).

Mandamus is a "one time order by the court to force public officials to perform their legally designated employment duties." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). Thus, a trial court erred when it retained continuing jurisdiction to oversee enforcement of a writ of mandamus granted in a public records case. *Id.* However, it has been recognized that injunctive relief may be available upon an appropriate showing for a violation of Chapter 119, Florida Statutes. See, *Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3d DCA 1989). And see, *Areizaga v. Board of County Commissioners of Hillsborough County*, 935 So. 2d 640 (Fla. 2d DCA 2006) (circuit courts may not refer extraordinary writs to mediation; thus, trial judge should not have ordered mediation of petition for writ of mandamus seeking production of public records).

b. Procedural issues

(1) *In camera* inspection

Section 119.07(1)(g), Florida Statutes, provides that in any case in which an exemption to the public inspection requirements in section 119.07(1), Florida Statutes, is alleged to exist pursuant to section 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), Florida Statutes, the public record or part of the record in question shall be submitted to the trial court for an *in camera* examination.

While section 119.07(1)(g), Florida Statutes, states that an *in camera* inspection is "discretionary" in cases where an exemption is alleged under section 119.071(2)(c), Florida Statutes, it has been held that an *in camera* inspection is necessary in order for the court to determine whether the exemption applies to the records at issue. See *Woolling v. Lamar*, 764 So. 2d 765 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).

While the trial court's failure to conduct an *in camera* inspection usually constitutes reversible error, where the petitioner objected to an inspection and thereby precluded the trial judge from conducting "an intelligent review of the documents," the appellate court was "compelled to affirm" the trial court's denial of a petition seeking documents relating to a pending criminal investigation. *Althouse v. Palm Beach County Sheriff's Office*, 89 So. 3d 288 (Fla. 4th DCA 2012).

(2) Mootness

In *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996), the court noted that "[p]roduction of the records after the [public records] lawsuit was filed did not moot the issues raised in the complaint." See also, *Mazer v. Orange County, Florida*, 811 So. 2d 857 (Fla. 5th DCA 2002) ("the fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute") and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (city's refusal to provide canvassing board minutes until they had been approved by city commission "denied any realistic access for the only purpose appellants sought to achieve—review of the Minutes before the Commission meeting[;]" accordingly, "the damage to appellants was not mooted").

(3) Stay

If the person seeking public records prevails in the trial court, the public agency

must comply with the court's judgment within 48 hours unless otherwise provided by the trial court or such determination is stayed within that period by the appellate court. Section 119.11(2), Florida Statutes. An automatic stay shall exist for 48 hours after the filing of the notice of appeal for public records and public meeting cases. Rule 9.310(b)(2), Florida Rules of Appellate Procedure.

(4) Attorney's fees

Section 119.12, Florida Statutes, provides that if a civil action is filed against an agency to enforce the provisions of this chapter and the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award against the agency responsible the reasonable costs of enforcement including reasonable attorney's fees.

A successful pro se litigant is entitled to reasonable costs of enforcement. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). *Accord: Weeks v. Golden*, 846 So. 2d 1247 (Fla. 1st DCA 2003) (prevailing pro se inmate entitled to an award of costs including postage, envelopes and copying, in addition to filing and service of process fees).

"[A]ttorney's fees are awardable for unlawful refusal to provide public records under two circumstances: first, when a court determines that the reason proffered as a basis to deny a public records request is improper, and second, when the agency unjustifiably fails to respond to a public records request by delaying until after the enforcement action has been commenced." *Office of the State Attorney v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007). *And see Hewlings v. Orange County, Florida*, 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request via voicemail and fax is not dispositive of whether the county's 45-day delay in *complying* with the request was unjustified; thus trial court erred in ruling that petitioner was not entitled to recover attorney's fees simply because county had *responded* to the request in a timely manner

Similarly, an agency that misplaced a public records request and thus failed to produce the documents until a lawsuit was filed, was required to pay fees. *Office of the State Attorney v. Gonzalez, supra*. *And see, Weeks v. Golden*, 798 So. 2d 848 (Fla. 1st DCA 2001)(where prison inmate made public records request and state attorney offered no reason for failing to respond to request, trial judge erred in refusing to award costs to inmate); and *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 984 (Fla. 1st DCA 2014) (agency's "production on the evening of the enforcement hearing did not cure its unjustified delay"). *Cf., Alston v. City of Riviera Beach*, 882 So. 2d 436 (Fla. 4th DCA 2004) (denial of attorney's fee claim affirmed because "[t]he record supports the trial court's conclusion that the city had a good faith and reasonable belief that Alston's request applied only to documents under the control of the parks and recreation department and that Alston failed to establish that the city unlawfully withheld police department records").

"Although fees are not warranted when the [private] entity in charge of the public records at issue was reasonably and understandably unsure of its status as an agency, *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993), there is no comparable requirement when agency status is not in doubt, nor has there been since the 1984 amendment of section 119.12, when the legislature removed the necessity of showing that an agency 'unreasonably' refused inspection of public records." *Lee v. Board of Trustees, Jacksonville Police & Fire Pension Fund*, 113 So. 3d 1010 (Fla. 1st DCA 2013), **approved, 41 F.L.W. S149 (Fla. April 14, 2016).**

c. Criminal penalties

In addition to judicial remedies, section 119.10(1)(b), Florida Statutes, provides that

a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both. *See, State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001).

Section 119.10(1)(a), Florida Statutes, provides that a violation of any provision of Chapter 119, Florida Statutes, by a public official is a noncriminal infraction, punishable by fine not exceeding \$500. A state attorney may prosecute suits charging public officials with violations of the Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. *Op. Att'y Gen. Fla. 91-38 (1991)*.

I. HOW LONG MUST AN AGENCY RETAIN A PUBLIC RECORD?

1. Delivery of records to successor

Section 119.021(4)(a), Florida Statutes, provides that whoever has custody of public records shall deliver such records to his successor at the expiration of his term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. *See, Maxwell v. Pine Gas Corporation*, 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer). *And see, Op. Att'y Gen. Fla. 09-39 (2009)* (delivery of public records to records custodian of successor agency).

2. Retention and disposal of records

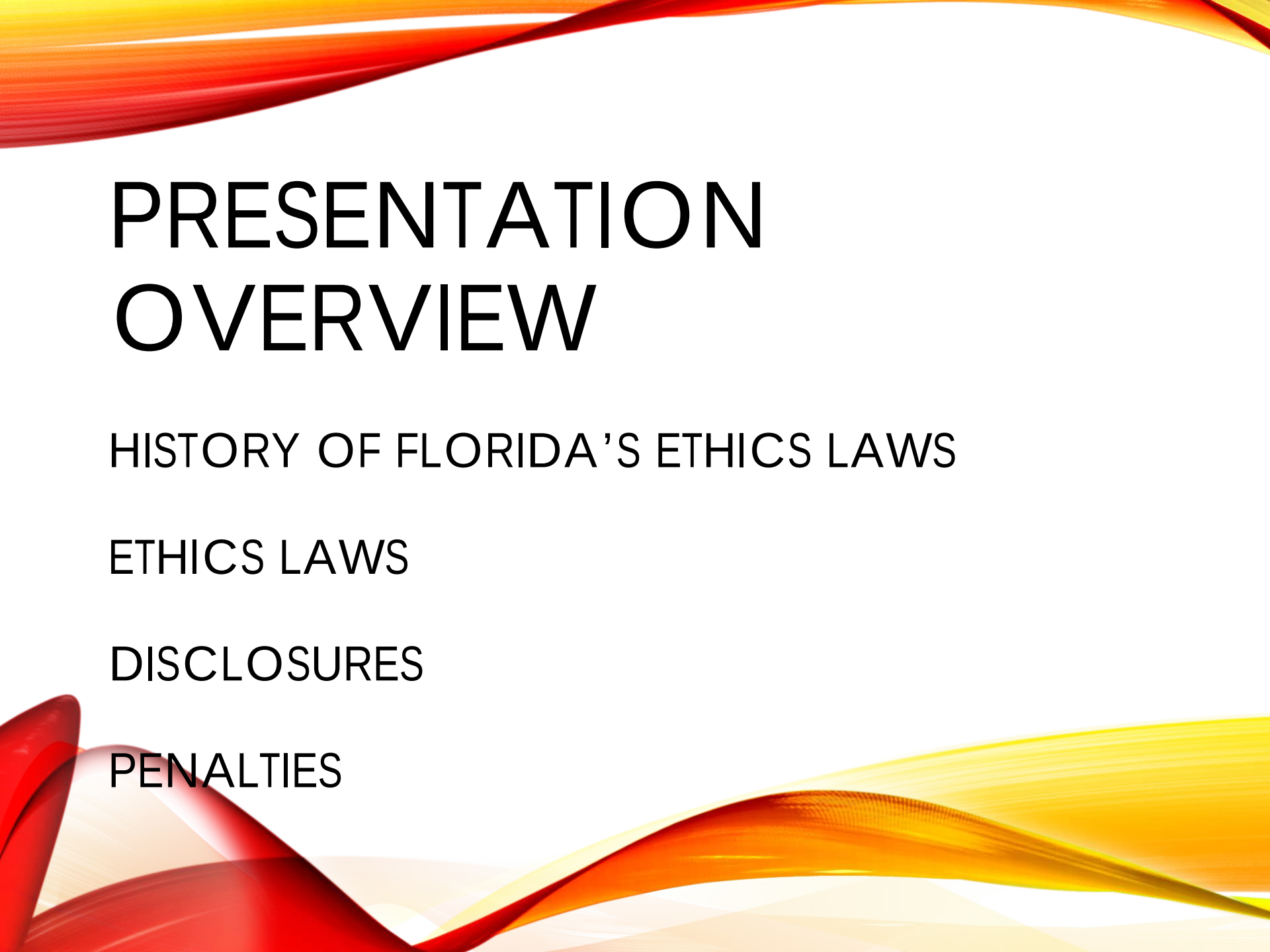
Pursuant to section 257.36(6), Florida Statutes, "[a] public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the [Division of Library and Information Services of the Department of State]." This statutory mandate applies to exempt records as well as those subject to public inspection. *See, Ops. Att'y Gen. Fla. 94-75 (1994), 87-48 (1987) and 81-12 (1981)*. Questions regarding record destruction schedules should be referred to the Department of State, Bureau of Archives and Records Management.

August 8, 2016



Florida's Ethics Laws
Presented by
Tammi E. Bach, City Attorney

March 1, 2017



PRESENTATION OVERVIEW

HISTORY OF FLORIDA'S ETHICS LAWS

ETHICS LAWS

DISCLOSURES

PENALTIES



HISTORY OF ETHICS LAWS

- Florida Constitution revised in 1968
- Required a code of ethics for all state employees and non-judicial officers
- Prohibited conflict between public duty and private interests be prescribed by law



SUNSHINE AMENDMENT

- Adopted in 1976
- Provided additional constitutional guarantees concerning ethics in government
- Created independent Commission to investigate complaints
 - Commission on Ethics



COMMISSION ON ETHICS

The “Code of Ethics for Public Officers and Employees” adopted by the Florida Legislature is found in Chapter 112 of the Florida Statutes.



COMMISSION ON ETHICS

- Primary goals
 - Promote public interest and maintain respect of the people for their government
 - Ensure that public officials conduct themselves independently and impartially
 - Ensure that public officials are not using their office for personal gain
 - Avoid creation of unnecessary barriers to public service while maintaining integrity of government



ROLE OF THE COMMISSION ON ETHICS

- Investigate complaints
- Renders advisory opinions to public officials
- Prescribes forms for disclosure
- Administers the Executive Branch Lobbyist Registration and Reporting Law



ROLE OF THE COMMISSION ON ETHICS

- Maintains financial disclosure filings of constitutional officers and state officers and employees
- Administers automatic fines for public officers and employees who fail to timely file and financial disclosures
- May file suit to void contracts, prepares mailing lists of officials subject to disclosure and makes recommendations to disciplinary officials when appropriate

FLORIDA'S ETHICS LAWS

- **Primarily two types of provisions:**
 - Those prohibiting certain actions or conduct
 - Those requiring certain disclosures be made to public
- **Application of Ethic Laws:**
 - Generally apply to all public officers and employees, State and local as well as members of advisory bodies.
 - Principal exclusion are judges – fall under jurisdiction of Judicial Qualifications Commission
 - Public Service Commission members and employees are subject to additional ethics standards enforced by the Ethics Commission under Sec 350 of Florida Statutes.



PROHIBITED ACTIONS OR CONDUCT

- Voting Conflicts
- Gifts
- Honoraria
- Misuse of Public Position
- Employment and Business Relationships
- Lobbying

VOTING CONFLICTS

- NO COUNTY, MUNICIPAL, or other LOCAL PUBLIC OFFICER shall vote in an official capacity upon measure which would inure to his/her special private gain or loss or to PRINCIPAL, RELATIVE, BUSINESS ASSOCIATE or PARENT ORGANIZATION or SUBSIDIARY of CORPORATE PRINCIPAL of which he/she is retained
- Must publicly announce his/her interest before the vote and file Form 8A with recording officer within 15 days after the vote occurs



VOTING CONFLICTS

- No Appointed State or Local Officer shall participate in any matter inuring to the officer's private gain or loss or to Principal, Relative, Business Associate or Parent Organization or Subsidiary of Corporate Principal to which he/she is retained without first disclosing the matter on Form 8A

GIFTS

- **Solicitation and Acceptance of Gifts**

- Public officers, employees, local government attorneys AND CANDIDATES are prohibited from soliciting or accepting anything of value based on understanding that their vote, official action or judgment would be influenced by such gift [S112.313(2) Fla. Stat.]
- Any person required to file financial disclosure Form 1 or Form 6 is prohibited from soliciting any gift from political action committee, lobbyist who has lobbied his/her agency in last 12 months or the partner, firm, employer or principal of such lobbyist

HONORARIA

- **Solicitation or Acceptance of Honoraria**

- Person required to file financial disclosure Form 1 or Form 6 as well as State procurement employee prohibited from
 - soliciting honoraria which is related to his or her public duties or
 - accepting an honorarium from political action committee, lobbyist who has lobbied his/her agency in last 12 months or the partner, firm, employer or principal of such lobbyist except reimbursement of expenses related to an event provided the expense is disclosed office



HONORARIA (CONT'D)

- Lobbyist and their partners, firms, employers or principals or political action committee prohibited from giving an honorarium to persons required to file financial disclosure Form 1 or Form 6 as well as State procurement employees
- Violations can result in a fine of up to \$5,000 and prohibitions from lobbying for 2 years



MISUSE OF PUBLIC POSITION

- Prohibited from corruptly using or attempting to use their official positions to obtain a special privilege for themselves or others
- Disclosure or Use of Certain Information
- Information not available to the public and obtained by reason of their position for the personal benefit of themselves or others



EMPLOYMENT AND BUSINESS RELATIONSHIPS

- Doing business with one's agency
- 5% ownership test – his/her spouse or child
- Conflicting employment or Contractual Relationship
- Public officer or employee prohibited from holding any employment or contract with any entity or agency regulated by or doing business with his/her public agency



EMPLOYMENT AND BUSINESS RELATIONSHIPS (CONT'D)

- Public officer or employee prohibited from holding any employment or contractual relationship which will pose a frequently recurring conflict between private interests and public duties or impede full and faithful performance of public duties
- Limited exceptions exist for legislative bodies, certain special tax and drainage districts and persons whose professions qualify them to hold their public positions



EMPLOYMENT AND BUSINESS RELATIONSHIPS (CONT'D)

- Local government attorneys and their law firms are prohibited from representing private individuals or entities before the unit of local government which they serve
- Can't refer or recommend to his/her firm legal work involving the local government he/she serves

EMPLOYMENT AND BUSINESS RELATIONSHIPS (CONT'D)

- Conflicting Employment or Contractual Relationship
Exemptions from Prohibitions:
 - Business rotated among all qualified suppliers
 - Business awarded by sealed competitive bidding and the official has not tried to influence or persuade agency personnel (Disclosure required on Form 3A)
 - In cases of legal advertising, utilities or passage on common carrier

EMPLOYMENT AND BUSINESS RELATIONSHIPS

(CONT'D)

- Conflicting Employment or Contractual Relationship
Exemptions from Prohibitions:
 - Emergency purchase required to protect public health, safety or welfare
 - Business entity is sole source of supply and full disclosure on Form 4A
 - Aggregate of such business < \$500 in calendar year
 - If public officer or employee is employed by tax exempt organization and the officer or employee is not directly compensated as a result



NEPOTISM ANTI-NEPOTISM LAW

- Restrictions on appointing, employing and contracting with relatives
 - Public official prohibited from seeking for a relative any appointment, employment, promotion or advancement in the agency which he/she is serving or over which he/she exercises control
 - No person shall be appointed, employed, promoted or advanced in or to a position if such action was advocated by a related public official



NEPOTISM ANTI-NEPOTISM LAW EXEMPTIONS

- Prohibition DOES NOT apply to school districts (except as provided in Fla. Stat. 1012.23), community colleges, and State universities, or to appointments of boards of municipalities with < 35,000 population
- Approval of budgets does not constitute “jurisdiction or control” for purposes of this prohibition other than volunteer emergency medical, fire fighting or police service providers



LOBBYING

- Lobbying by Former Local Government Officers and Employees
 - Any person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency he/she was an officer of for two (2) years after leaving office
 - Appointed officers and employees of above may be subject to same prohibition by local ordinance or resolution



LOBBYING

- Lobbying by Former Local Government Officers and Employees
 - Lobbying State Agencies by Legislators
 - Prohibition is for representing another person or entity for compensation during his/her term in office
 - Employees Holding Office
 - Prohibition from holding office which governs his/her employer (i.e. County Commission and being Parks Dir)



LOBBYING

- Lobbying by Former Local Government Officers and Employees
 - Professional and Occupational Licensing Board Members prohibited from serving as officer, director, or administrator of state, county or regional professional or occupational organization or association



DISCLOSURES

FORM 1 – LIMITED FINANCIAL

- Persons include State officers, local officers, candidates for local elective office and specified State employees
 - Elected public officials not serving in a political subdivision
 - Commissioner of Education & members of Board of Education
 - Appointed member of local governing bodies, expressway authorities, community colleges, code enforcement boards



DISCLOSURES

FORM 1 – LIMITED FINANCIAL

- Mayor and chief administrative officer of a county, municipality or other political subdivision
- Chief of police, fire chief, municipal clerk, school superintendent, medical examiner, purchasing agent with authority > \$15,000
- Each employee of the Commission on Ethics
- Senior managers of the Citizens Property Insurance Corp.

DISCLOSURES

FORM 1 – LIMITED FINANCIAL

- Exception is for those required to file FORM 6 (including Constitutional Officers)
- Lobbying by Former Local Government Officers and Employees
 - Any person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency he/she was an officer of for two (2) years after leaving office
 - Appointed officers and employees of above may be subject to same prohibition by local ordinance or resolution



FORM 1

INFORMATION TO BE DISCLOSED

- Sources and types of financial interests
- Names of employers and addresses of real property holdings
- NO DOLLAR VALUES are required to be listed
- Certain relationships with and ownership interests in banks, insurance companies and utility companies



FORM 1 INFORMATION TO BE DISCLOSED

- ***Candidates must file FORM 1 together with and at same time as their qualifying papers***
- All others required to file by July 1 of each year



DISCLOSURES

FORM 6 – FULL AND PUBLIC

- All elected constitutional officers and candidates for such offices
 - Mayor and members of City Council and candidates for such offices in Jacksonville
- Duval County Superintendent of Schools
- Members of Florida Housing Finance Corporation Board
- The Florida Prepaid College Board

FORM 6

INFORMATION TO BE DISCLOSED

- Detailed disclosure of assets, liabilities and sources of income over \$1,000 and their values, and net worth
- Option to file their most recent income tax return in lieu of listing sources of income (does not eliminate reporting of assets, liabilities and net worth)
- Certain relationships with and ownership interests in banks, insurance companies and utility companies
- Incumbents file by July 1 to Commission on Ethics
- Candidates file at time of qualifying with Supervisor of Elections

DISCLOSURES

- **Others**

- Form 2 – Quarterly Client Disclosure
- Form 3A – Statement of Interest in Competitive Bid for Public Business
- Form 4A – Disclosure of Business Transaction, Relationship or Interest
- Form 8A – Memorandum of Voting Conflict (State Officers)
- Form 8B – Memorandum of Voting Conflict (County, City or other Local Officers)
- Form 9 – Quarterly Gift Disclosure
- Form 10 – Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event Related Expenses



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- **Penalties may include:**
 - Impeachment
 - Removal from office or employment
 - Suspension
 - Public censure
 - Reprimand
 - Demotion



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- Reduction in salary level
- Forfeiture of no more than 1/3 salary per month for no more than 12 months
- Civil penalty not to exceed \$10,000
- Restitution of pecuniary benefits received



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- ***Candidates***

- Disqualification from being on ballot
- Public censure
- Reprimand
- Civil penalty not to exceed \$10,000



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- ***Former Officers and Employees***
 - Public censure and reprimand
 - Civil penalty not to exceed \$10,000
 - Restitution of pecuniary benefits received



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- ***Lobbyists***

- Failure to Register as an Executive Branch Lobbyist may result in being:
 - Fined up to \$5,000
 - Public censured
 - Reprimanded



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- Prohibited from lobbying executive branch agencies for 2 years
- Failure to comply with gift rules and honorarium rules may result in being:
- Fined up to \$5,000
- Prohibited from lobbying the agency for 2 years

PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- **Felony Convictions**

- (Forfeiture of Retirement Benefits)*

- Public officers and employees subject to loss of retirement benefits if convicted of:
 - Embezzlement or theft of public funds
 - Bribery and felonies under Fla. Stat. 838 misuse of public office
 - Impeachable offenses
 - Felonies connected with intent to defraud the public



PENALTIES VIOLATION OF THE SUNSHINE AMENDMENT AND THE CODE OF ETHICS

- Automatic penalties for failure to file annual disclosure
 - Fines of up to \$25 each day late the form is filed after Sept. 1
 - Maximum of \$1,500



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would you, a member of the Parks & Recreation Advisory Board to the City Commission have a prohibited conflict of interest if your company contracts with the City?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would you have a prohibited conflict of interest if your company receives a permit from the City Parks & Recreation Department, when your advisory board can make recommendations concerning the permitting program?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would you have a prohibited conflict of interest if your company receives a permit from the City Parks & Recreation Department, when your advisory board can make recommendations concerning the permitting program?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would the Ethics Code be violated if you were to place issues concerning the same permit program on the PRAC agenda?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would you have a voting conflict concerning measures regarding guidelines to be considered by the PRAC for this same permit program?

Can you vote on this measure?

Can you participate in the discussion?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would a prohibited conflict of interest be created if you, a municipal police officer owns and operates a private investigation firm that conducts targeted surveillance of “unfaithful spouses” and employees suspected of stealing from their businesses?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would expenses of the Mayor's travel to conferences and events paid directly by others be considered gifts to the City or gifts given to her personally?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Whether monetary donations to a City-maintained fund that would be used to pay for official travel by the Mayor and other City officials would be considered “gifts to the City”?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would a voting conflict of interest be presented for you regarding a vote on the City's budget, which contains a line-item appropriation for a \$20,000 grant to the Chamber, your employer?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Does a prohibited conflict of interest exist where you are employed as a the president of the Chamber of Commerce and the Chamber receives in-kind services from the City at annual community events?

CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Does a prohibited conflict of interest exist where you are employed as the president of the Chamber of Commerce and Chamber receives a one-day permit from the City Commission to dispense alcohol at the Chamber's annual golf tournament?



CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Would a voting conflict of interest be presented for you regarding a vote on the City's millage rate?

CONFLICT OF INTEREST; VOTING CONFLICT; MISUSE OF POSITION

Do you have a voting conflict regarding a vote to grant the Chamber a permit to dispense alcohol, a vote to donate in-kind City services to the Chamber annual events, or a vote on a measure to approve or deny a redevelopment plan for a commercial complex where the Chamber has a lease for its office space?

Can you participate in the discussion?

The Florida Municipal Officials' Manual



the John Scott Dailey

FLORIDA
INSTITUTE OF
GOVERNMENT

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Preface

The *Florida Municipal Officials' Manual* is a publication of the Florida League of Cities. Our appreciation goes to the FLC legal, legislative and membership staff who assisted with revisions to this edition, and to the John Scott Dailey Florida Institute of Government at FSU for their longtime assistance with the research for the manual. Inquiries concerning the manual should be addressed to: Sharon Berrian, Florida League of Cities at sberrian@flcities.com or by phone at (850) 222-9684.

A. NATURE OF THE MANUAL

This manual is intended as a reference on common topics of municipal government for use by municipal officials, both elected and appointed. We believe that newly elected mayors and council members will find it a handy reference, as will the appointed administrator and/or clerk who may be unfamiliar with Florida statutes governing particular municipal affairs.

This manual is primarily a review of state statutory provisions affecting the conduct of municipal affairs; therefore, it will be useful primarily to the reader who seeks this sort of information. However, other types of information are presented which we believe will be useful to municipal officials. The attempt has been made to be simple and concise, rather than all-inclusive.

This manual should not be viewed as containing definitive information on matters of law or statutory interpretation. Legal counsel should be obtained from one's city attorney.

It should be noted that the terms "municipality" and "city" are used interchangeably throughout this manual, as well as "municipal governing body" and "city council."

B. SUGGESTIONS FOR IMPROVEMENTS

From time to time, the manual will be expanded, updated and corrected. Suggestions as to needed corrections and additions are appreciated.

C. NOTE ABOUT CITATIONS

In this manual: "Const." and Florida Constitution refer to the 1968 Constitution of the State of Florida, as amended; "F.S." refers to *Florida Statutes*; "Laws" refers to *Laws of Florida*; "F.A.C." refers to Florida Administrative Codes; and "C.F.R." refers to Code of Federal Regulation.

The Florida Legislature meets annually in regular session and sometimes in special session. All "acts" of the Legislature (that is, legislative bills which are enacted into law) in each year are compiled in an annual collection entitled *Laws of Florida*. Each act is identified by the year and the number; e.g., "2001-57" means the 57th act of the 2001 legislative year. *Laws of Florida* contains the complete text of each act, exactly as it was enacted.

The ongoing body of laws of a general and permanent nature of the State of Florida is codified and published as *Florida Statutes*. Each new act of a general and permanent nature is incorporated into the pre-existing body of statutes. The statutes are organized in terms of chapters (e.g., "ch. 166"), sections (e.g., "s. 166.021"), and subsections (e.g., "s. 166.021(4)"). Publication of *Florida Statutes* is done every two years, following each odd-year regular legislative session, and a supplement is published following each even-year regular legislative session. All statutes and the Florida Constitution are available online at www.leg.state.fl.us.

Because of the frequency of statutory amendments, this manual does not give exact citations; please consult your city attorney for such details.

The administrative rules and regulations adopted by state departments and agencies are contained in the Florida Administrative Code. Such administrative rules have the force of law when properly adopted by an agency in accordance with guidelines established by law. The administrative rules and regulations adopted by federal departments and agencies are contained in the Code of Federal Regulation.

Also cited throughout this manual are various judicial decisions. The application of each of these decisions is explained in the text, with the reference itself cited in bold italic; for example: ***Gibbons v. Ogden***.

Chapter 1

Florida Municipal Government in Nation and State

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Section 1-1

Municipalities in the Federal System

Florida municipalities exist within the American federal system. This fact has many implications for the functioning of a municipal government and even for the personal performance of duties by an elected official or administrator.

A. THE FEDERAL SYSTEM

When the U.S. Constitution was written in 1787, the two familiar forms of government were termed “unitary” and “confederal.” A unitary government was one in which all powers were held and exercised by a central government; regional units might exist, but they exercised only such powers as were granted (delegated) by the central government. A confederal government was one such as the 13 states had previously adopted under the Articles of Confederation. In it, each participating state was an independent unit which could not be controlled by the central government; rather, the central government was created by the states and exercised only such powers as the states saw fit to grant it. In confederal arrangements, the central government is hardly a “government” at all. Similar arrangements may be found today in the United Nations, the North Atlantic Treaty Organization, the European Common Market, and the Organization of American States.

The Founding Fathers labored mightily and produced a new, “hybrid” form of government – something between the two other forms. In it, the national government, as represented in the Congress, was granted certain enumerated powers (“enumerated” because they are listed, or enumerated) in Article 1, Section 8, U.S. Constitution; in addition, Congress was authorized to enact any other laws “necessary and proper” for carrying out these powers. Early decisions of the U.S. Supreme Court (*McCulloch v. Maryland*, 1819, and *Gibbons v. Ogden*, 1824) established a broad, permissive interpretation of these powers, that is, one which interpreted the lawmaking power of Congress very generously. Meanwhile the 10th Amendment, which states that all powers not given to the Congress shall be reserved to the states or to the people thereof, was interpreted as having little meaning at all. So, while the original intent of the Founding Fathers was to create a system which was balanced between centralization and decentralization, early judicial interpretations of the powers granted to Congress in the U.S. Constitution established a basis for a strong, wide-ranging, central government.

This constitutional basis of the central government’s role was enlarged significantly in the 19th century by the addition of the 14th and 15th Amendments. Each of these post- Civil War amendments did two things: first, restrictions were placed on state governments (and their local-government components); second, the central government was empowered to enforce the restrictions.

The 14th Amendment read as follows:

Section 1....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5....The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The 15th Amendment read as follows:

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

These amendments expanded tremendously the potential power of the national government in its relationship to the states. First, and most obviously, they gave a broad new grant of lawmaking power to the Congress, specifically, power to regulate actions of the states and the local governments. Second, and by implication rather than by explicit statement, they empowered the federal judiciary to enforce these new restrictions on the states, thereby greatly expanding the federal courts' potential authority over state and local government actions. In short, both the Congress and the federal judiciary were given potentially significant new powers in relation to state and local governments.

Thus, through the original languages of the Constitution, early interpretations of the Constitution, and the addition of the 14th and 15th Amendments, the basis was laid for a powerful, expansive national government. Despite this, little centralization occurred in the 19th century, for the forces of decentralization – and even of division – were dominant throughout the first two-thirds of the century.

After the Civil War, the Congress began to assert the authority which the earlier Supreme Court had said it had. By this time, however, the Supreme Court had become a conservative institution which sought to prevent such Congressional activism. For several decades, the “progressive” Congress and the conservative judiciary battled over the national government's role, and little change occurred in federal relations.

This period ended in 1937 when a new Supreme Court majority began to consistently uphold New Deal legislation, which involved great expansions of the national government's role. Since the 1930s, the national government's role in American society has grown even larger; meanwhile, state and local governments have found their powers limited, yet their responsibilities enlarged, by decisions of the Congress, federal agencies and the federal judiciary.

B. FEDERAL STATUS OF MUNICIPALITIES TODAY

The U.S. Constitution makes no mention of local governments. It is concerned solely with the relationship between the central (or national) government and the states. Municipalities, therefore, are simply parts of the state governments, so far as the Constitution is concerned. The standing of the municipalities under the U.S. Constitution, therefore, is the same as that of the states.

Today, this shared constitutional standing is not very strong. Since the 1930s, Congress has greatly enlarged the body of federal legislation, extending national power over policy matters and greatly intensifying federal control of public policy in many policy areas. Federal regulation has taken over areas once governed solely by state or local regulation, and state and local governments themselves have become the object of thick webs of federal regulation. Other federal policies, meanwhile, have mandated various and sundry functions and expenses on municipalities. Municipalities are restricted and entangled, on the one hand, while being required to perform various mandated activities, on the other hand.

The prospects for radical change in this situation are not very bright. For more than 75 years, Congress has been aggressive both in usurping traditional state and local powers and in mandating new state and local responsibilities. For more than 75 years, the federal judiciary has mostly approved such Congressional actions while extending its own authority over state and local governments. There has been little retreat from these positions by either Congress or the judiciary.

The U.S. Congress adopted an unfunded mandates voting provision, signed by then-President Bill Clinton in 1996, but it is not enforced. Local governance issues have been of federal concern only in light of regulatory issues during the 1990s and into the early 21st century. States' rights continue to be balanced against national concerns.

REFERENCES

U.S. Constitution: Article I and 14th and 15th Amendments.

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Section 1-2

Municipal Government and the State

A. THE ENGLISH BACKGROUND

The origins of American municipal government lie in English history. As England emerged from the non-urbanized medieval period and began to develop urban centers, citizens with vested interests in the development of their communities as trade centers sought authority from the Crown to exercise some control over local affairs. The king (or queen) would respond to these requests by granting “charters” to these groups, whereby they were empowered to promote local improvements and to regulate certain aspects of community life. The charter was viewed as a grant only of those powers which were specifically and explicitly granted therein; in other words, the grant of authority was narrowly defined and strictly limited. Eventually, these chartered groups came to be recognized as “municipal corporations,” similar to private, commercial corporations, which also were authorized by the Crown. At first, such grants of authority were given only to narrowly defined groups, usually the leading businessmen of the community. Over time, as democratic institutions developed, control of charters shifted from such narrow groups to the general population of the community, complete with the democratic election of leaders to exercise the granted powers.

This pattern for the formation of English municipal governments was extended to the American colonies. In America, municipal charters were granted by the Crown to a handful of urban centers. When the Revolution transformed the colonies into states, the state governments assumed the role of the Crown as the source of municipal government authority; that is the state governments assumed the role of granting municipal charters. From this practice evolved the traditional American legal principle that a municipality is a creature of the state, may exist only with the consent of the state, derives its powers from the state, and enjoys only those powers which are granted it by the state, through the state constitution and actions of the state legislature.

B. EARLY FLORIDA HISTORY

In the Spanish era of Florida history, the two principal communities were Pensacola and St. Augustine. Each enjoyed a municipal government under Spanish rule, it appears; in any event, Provisional Gov. Andrew Jackson specifically recognized the cities of Pensacola and St. Augustine as existing governmental entities only four days after formally receiving possession of Florida for the United States in 1821. In Florida’s territorial period, 1821-1838, the territorial legislative council granted municipal charters for other population centers – Apalachicola, Key West, Ocheese (which no longer exists), and perhaps others.

After Florida became a state in 1845, municipal government was treated in a manner common to other states. The Legislature was the source of authority, granting municipal charters and specifying the powers of each municipal government through its charter. In addition, the Legislature often affected local governments through the enactment of “general acts” and “local or special acts.” With reference to municipalities, a “general” act is a legislative act which applies uniformly to all municipalities and prescribes their jurisdictions and powers. The Legislature’s control over municipal governments was absolute. Municipalities were regarded as creatures of the state, without inherent powers. Constitutional language specifically permitted the Legislature to utilize local acts in regulating municipal courts as

well as the jurisdiction and duties of municipal officers. Special and local acts dealing with municipalities were permitted, with no requirement that notice of such legislation be published in the affected community. In short, the Legislature was free to control municipal affairs by means of local acts. A 1934 constitutional amendment prohibited local acts, but it was ignored by the Legislature in following years.

One feature of the 1885 Florida Constitution, as it came to be amended, was that a special or local act required either that notice be published in the affected community or that the change caused by the act be approved by referendum in the affected community. Due to this requirement of local acts, the Legislature began using “general acts of local application” rather than local acts. General acts of local application have been described by the Florida Supreme Court as “relating to subdivisions of the State or to subjects or to persons or things as a class based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class.” As applied to legislation affecting municipalities, the practice has been to use population as the basis for determining the “class” to which any legislation applied and to define the population range so narrowly that the legislation actually applied to only a single municipality. By utilizing such legislation (sometimes called “population acts”), the Legislature avoided the notification-or-referendum requirement which applied to local acts.

To summarize, under the 1885 Florida Constitution, municipal governments were completely controlled by the state Legislature, which enjoyed not only the power of enacting legislation which applied to municipalities, but also the power to affect selected municipalities through the enactment of local acts and general acts of local application.

During this period, in the absence of any grant of municipal “home rule,” municipal governments’ authority was limited to that expressly granted by the Legislature or that which could be necessarily implied from an express grant, and any reasonable doubt regarding a municipality’s right to exercise a power was to be resolved (by a court) against the municipality. This statement of municipal authority was widely known as “Dillon’s Rule” and prevailed generally throughout the United States, in the absence of grants of municipal home-rule powers.

C. THE CURRENT ERA: MUNICIPAL HOME RULE

In 1968, the people of Florida approved a new state constitution, which became the 1969 Florida Constitution. In it, a dramatic break was made with past treatment of municipal government. The new approach to municipal government is commonly referred to as “municipal home rule,” and it is the prevailing state policy in many American states today.

1. Constitutional Provision for Home Rule

The home-rule provisions are found in Article VIII, Section 2(b), of the 1969 Florida Constitution:

Municipalities shall have 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 as otherwise provided by law...

The crucial part of the passage is “and may exercise any power for municipal purposes except as otherwise provided by law.” Previously, a municipal government could exercise **only** (a) those powers granted to all municipalities through general law and (b) any additional powers which may have been granted to that particular municipal government by the Legislature.

Under the new constitutional language, a municipal government may exercise any power which is not prohibited by law, so long as its exercise is for a valid “municipal purpose.” Before 1969, a municipality could do only those things which it was **clearly authorized** to do (and, in keeping with Dillon’s Rule, any doubts were to be resolved against the municipality); after 1969, a municipality may do **anything**

which it is **not prohibited** from doing. Such is the essence of the constitutional doctrine under which Florida's municipalities have operated since 1969.

2. Statutory Home-Rule Provisions

The 1969 Legislature promptly enacted Chapter 69-33, Laws of Florida, which repeated the constitutional home-rule provision, with the most significant change of wording being that the clause "except as otherwise provided by law" was replaced by "except when prohibited by general or special law." Ch. 69-33 also contained an expression of legislative intent which appeared to strengthen the home-rule cause.

For a few years, the extent of municipal home-rule authority was left unclear. Then, in 1972, the state supreme court rendered an opinion which stripped the constitutional home-rule provision of all effect. In response, the 1973 Legislature enacted Chapter 73-129, Laws of Florida, the Municipal Home Rule Powers Act, which was codified as ch. 166, F.S. This act clearly was intended to **strengthen** the constitutional grant of home-rule power. It restates the language of Article VIII, Section 2(b), Florida Constitution, using identical language except for the last clause, where "except as otherwise provided by law" is replaced with "except when expressly prohibited by law." With this change, the 1973 Legislature made it clear that the authority of municipal governments to "exercise any power for municipal purposes" is to be abridged **only** when "expressly prohibited" by state law. The 1973 Legislature also defined "municipal purposes" as identical with those purposes for which the state itself might act – "'municipal purpose' means any activity or power which may be exercised by the state or its political subdivisions."

The Municipal Home Rule Powers Act of 1973 was explicitly upheld by the Florida Supreme Court in 1975. In decisions since 1973, the Supreme Court has consistently respected the home-rule principle. Consequently, Florida's municipal governments today enjoy "home rule." The Legislature is ultimately supreme, still, in that it may restrict the powers of municipal self-government by erecting specific prohibitions. Absent such prohibitions, however, municipal officials may exercise any power, so long as it be for a municipal purpose.

The Florida League of Cities played a critically important and pivotal role in the development and adoption of the constitutional home-rule provision, the 1969 home-rule act, and the Municipal Home Rule Powers Act of 1973. Municipal Home Rule stands as the League's crowning achievement, one which serves as the foundation of effective municipal self-government in Florida today.

3. Restrictions on Legislative Acts

In addition to providing for municipal Home Rule, the authors of the 1969 Florida Constitution also sought to restrict legislative use of local acts and general acts of local application. This effort is reflected in Article III, Sections 10 and 11, Const. Section 10 requires that all special laws (including local acts) be accompanied either by local notification or by provision for local referendum. Section 11 prohibits special laws and general laws of local application on certain subjects, some of which are significant to municipal governments; however, specifically exempted from such prohibitions are "election, jurisdiction or duties" of municipal officers. Section 11 also permits the state Legislature to add to the list of prohibited subjects and specifies that the basis of classification in general laws must be related to the subject matter of the law. The provisions of Sections 10 and 11, in the words of one legal commentator, "represent a significant narrowing of the scope of permissible general laws of local application and their most abused sub-type, population acts. Taken in conjunction with the new home-rule provisions, they fit into an over-all design to take local decisions out of the Legislature..."

The 1971 Legislature took additional action regarding population acts by enacting Chapter 71-29, Laws, which repealed almost all existing population acts – some 2,139 acts in all. Repealed acts relating

to municipalities were declared to be ordinances of the affected municipalities. Today, the Legislature is still constitutionally authorized to enact general laws of local application, as well as special legislation (which includes local acts). The Legislature does not use these methods with the frequency with which they once were used; however, they are still used, as is illustrated by Chapter 87-258, Laws, which authorized the levying of a convention-development tax. The act reads, in part, as follows:

Each county which was chartered under Art. VIII of the State Constitution and which on January 1, 1984, levied a tourist advertising ad valorem tax...may impose...a levy outside the boundaries of such special taxing district **and to the southeast of State Road 415 on...** transient rent accommodations... (emphasis added).

4. No Home-Rule Power re: Taxation

One very large exception to municipal Home Rule must be noted. Municipal Home Rule does **not** apply to general taxing authority. All taxing authority is retained by the state, with municipalities having only those taxing authorities specifically and explicitly granted by general law. (Refer to Chapter 7, "Municipal Finance," for further information.) In 1998, Florida voters made several changes and additions to the 1969 Constitution.

The Cabinet was reduced in size, strengthening the executive branch, but none of the amendments had a direct impact upon municipal governments.

REFERENCES

Florida Constitution: Article III, Sections 10-11, and Article VIII, Section 2. Florida Statutes: Chapter 166. Laws of Florida: Chapters 69-33, 71-29, 73-129 (the Municipal Home Rule Powers Act), and 87-258. Steven L. Sparkman, "The History and Status of Local Government Powers in Florida," *University of Florida Law Review*, 25, 271-307; Louis C. Deal, "Post Mortem – Home Rule," *Florida Municipal Record*, 54, 6, 2ff; Ralph Marsicano, "Development of Home Rule," *Florida Municipal Record*, 57, 10, 7ff. Also see W. Clark, J. Benton, and R. Kertein, "An Analysis of State-Local Relations in Florida" (Florida Institute of Government, September 1987). Quotations not otherwise attributed are from the article by Steven L. Sparkman.

Section 1-3

State Constitutional Provisions

Affecting Municipalities

The 1969 Florida Constitution, as amended, contains a dozen or so passages which affect municipal government in relatively direct ways. These include the following:

A. ART. II, SEC. 8: ETHICS IN GOVERNMENT

This section applies certain ethics requirements to municipal officers, especially, disclosure of campaign finances, and empowers the Legislature to require municipal officers, candidates, and employees to make public disclosure of their financial interests. This section also establishes the Florida Commission on Ethics, which may investigate allegations against municipal officers.

B. ART. III, SEC. 11: SPECIAL LAWS

This section prohibits legislative enactment of special laws and general laws application pertaining to certain topics, but permits the enactment of general laws applicable only to municipalities of specified population ranges, e.g., 150,000-200,000 population. The intent of the prohibition was to prevent the Legislature from enacting, on certain topics, legislation which applied to only one local unit; however, the permissive element has been used by the Legislature to achieve the same end.

C. ART. III, SEC. 14: CIVIL SERVICE SYSTEM

This section permits the creation of civil service systems and boards for municipal (and other local) governments.

D. ART. IV, SEC. 1, AND ART. IV, SEC. 7: GOVERNOR'S POWERS

Certain powers are granted to the governor in these sections. Among these are powers affecting municipal government. The governor may require information in writing from any executive or administrative municipal officer on any subject relating to his or her duties. The governor may initiate judicial proceedings in the name of the state against any such officer to enforce compliance with any duty or to restrain any unauthorized act. The governor may call out the militia to preserve the public peace and execute the laws of the state. The governor may suspend from office any municipal officer indicted for crime, until acquitted, and may appoint another person to the office for the period of the suspension, unless these powers are vested elsewhere by law or the municipal charter.

E. ART. V, SEC. 1: COURTS

This section, adopted in 1972, abolished municipal courts and prohibits municipalities from establishing courts.

F. ART. VI, SECS. 1-6: SUFFRAGE AND ELECTIONS

These sections preempt local discretion on several points. Elections must be by direct and secret vote. Residency requirements for suffrage shall be one year in the state and six months in the county. Voter registration shall be regulated by state law (not by municipal ordinance).

Article IV, Sec. 4(b) was amended by an Initiative Petition adopted in 1992 establishing term limits for certain elected officials by providing that no person may appear on the ballot for re-election for the offices of: 1) Florida representative; 2) Florida senator; 3) Florida lieutenant governor; 4) any office of the Florida Cabinet; 5) U.S. representative from Florida; and 6) U.S. senator from Florida if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years. However, the federal courts ruled that the state constitution could only regulate the terms of state offices and therefore would not apply to the U.S. Congressional and Senate offices. This applies to federal and state but not local. A city's charter can have run offs.

G. ART. VII, SECS. 1-3, 9: TAXATION

These sections have to do with taxing powers. The ad valorem tax on real property and tangible personal property is reserved to local governments. All other forms of taxation are preempted to the state, except as provided by general law. Ad valorem taxation of motor vehicles, boats, airplanes, trailers, trailer coaches, and mobile homes is prohibited. All ad valorem taxation shall be at a uniform rate within each taxing unit. All property owned by a municipality and used exclusively by it for public purposes is exempt from taxation. A municipality may grant ad valorem tax exemptions to certain businesses, under certain conditions. Local governments shall be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes. Municipal ad valorem taxes are limited to 10 mills or less, exclusive of taxes levied for bond payment and taxes levied for two years or less when authorized by referendum.

H. ART. VII, SECS. 10 AND 12: BONDS

A municipality may not become a joint owner with or a stockholder in a corporation, association, partnership, etc.; however, a municipality may issue revenue bonds in support of airport or port facilities and industrial or manufacturing plants. Municipalities may also issue bonds, certificates of indebtedness, and tax-anticipation certificates.

I. ART. VIII, SEC. 2: CREATION, POWERS AND CONSOLIDATION

Municipalities may be established or abolished and their charters amended by general or special law. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, and they may exercise any power for municipal purposes except as otherwise provided in law. Each municipal legislative body shall be elective. Annexation shall be as provided by law. Consolidation of a county government and one or more municipal governments is authorized, but only if approved by vote of the affected electors.

REFERENCES

1969 Florida Constitution: Articles II, III, IV, V, VI, VII, VIII.

Chapter 2

Primary Elements of Municipal Government

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Section 2-1

Basic Forms of Municipal Government

Borrowing from the English municipal model, America's cities, towns and villages are governed by a legislative body known as a city council (or city commission). This elected body has several responsibilities, which are specified in the charter or incorporating documents. In Florida, each municipality has a charter (see Section 2-2); this document specifies the composition of the elected body and duties of appointed officials.

The council is responsible for creating and enforcing the laws, called ordinances, of the city. The council also has an oversight role that varies in its responsibilities based upon the form of government specified in the charter. The council also adopts and appropriates the city's funds through its budgetary responsibilities, and has fiduciary responsibilities as trustees of public funds. In addition, the council is expected to have a vision for the city's future, which may or may not be detailed in a strategic plan. In Florida, each municipality is also required by state law to have a comprehensive plan, known as the "comp plan" for land-related decisions within its boundaries. Lastly, the city may choose to be a service provider for a utility, utilities or other services, as guided by the citizens and the council.

Throughout the U.S., cities adopt a form of government that sets their structures. The most common of these forms as found in Florida are specified below:

A. COUNCIL-WEAK MAYOR FORM

The original form of municipal government in America was the council-weak mayor form, which was near-universal in the nineteenth century. It is still widely used, particularly in small towns. In most weak-mayor systems, the office of mayor is simply rotated among the elected council members on an annual basis. The council retains collective control over administration, including appointment and dismissal of municipal employees and appointments to boards and commissions. Control of some functional areas (e.g., parks, library) may be delegated by charter or ordinance to semi-independent boards and commissions. In general, the mayor's authority is little, if any, greater than that of the other council members. Department heads – e.g., the clerk, police chief, public works director – report to the council as a whole or to the mayor in his or her capacity as spokesman for the council. Sometimes the municipal clerk functions as a de facto chief administrator.

B. COUNCIL-STRONG MAYOR FORM

The council-strong mayor form gradually evolved from the council-weak mayor form. It provides for a distinct division of powers between the council and the mayor. The mayor actually is the chief executive, that is, the office of mayor has substantial influence in the policy-making process and substantial control over administration. The mayor holds important budgetary and appointing powers, along with the power to veto legislative actions of the council. Administrative authority is not shared with a number of independent boards and commissions. The mayor enjoys general power to appoint people to boards and commissions. Depending upon the city charter, the mayor may (or may not) vote with the legislative body.

Some large cities with a strong mayor have established the position of chief administrative officer under the mayor to handle the day-to-day operations of the government, thus leaving the mayor free to concentrate on policy formulation and ceremonial tasks. In this way, administrative management by a hired assistant to the mayor may be combined with strong political and policy leadership by the mayor.

C. COMMISSION FORM

The commission form combines both executive and legislative powers in a governing board, the commission. There is no single chief executive; rather, the commissioners, who serve collectively as the policy-making body, also serve individually as heads of the principal departments. In the basic commission form, there is neither a mayor nor a city manager. Today, most commission-form cities do select or elect a mayor.

Early advocates of the commission form hoped that the concentration of power in the hands of a few elected council members would make administration more effective and would enhance accountability to the public.

The commission plan was first employed in Galveston, Texas, after a disastrous hurricane almost destroyed the city in 1900. It enjoyed widespread popularity for about two decades. Since 1920, however, its use has declined greatly. Although offering more integration of policy and administration than the council-weak mayor form, the commission form tends to provide inadequate coordination, insufficient internal control, and non-professional direction of administration.

It should be noted that, in Florida, municipalities use the terms “council” and “commission” without reference to the distinction between the commission form and other forms of municipal government. Many Florida municipalities designate their legislative bodies as the “commission” but do not employ the commission form of government. One should not presume that a Florida municipality employs the commission form merely because its policy-making body is labeled “commission.”

D. COUNCIL-MANAGER FORM

One of the key elements in 20th-century municipal reform has been the proposition that a strong and non-political executive office should be the administrative centerpiece of municipal government. This concept has been implemented in thousands of American cities in the 20th century by the adoption of the council-manager form of government. This form parallels the organization of the business corporation: voters (stockholders) elect the council (board of directors), including the mayor (chairman of the board), which, in turn, appoints the manager (chief administrative officer). Unlike the two council-mayor forms, where the emphasis is on political leadership, the prevailing norms in the council-manager form are administrative competence and efficiency.

Under the council-manager form, the manager is the chief administrative officer of the city. The manager supervises and coordinates the departments, appoints and removes their directors, prepares the budget for the council’s consideration, and makes reports and recommendations to the council. All department heads report to the manager. The manager is fully responsible for municipal administration.

The mayor in a council-manager form is the ceremonial head of the municipality, presides over council meetings, and makes appointments to boards. The mayor may be an important political figure, but has little, if any, role in day-to-day municipal administration. In some council-manager cities, the office of mayor is filled by popular election; in others, by council appointment of a council member.

The council-manager plan, first used in 1908 in Staunton, Va., received nationwide attention six years later when Dayton, Ohio, became the first sizable city to adopt it. Thereafter, the plan's popularity enjoyed steady but not spectacular growth until after World War II. At that time, many municipalities were confronted with long lists of needed services and improvements that had backlogged since the Depression years of the 1930s. Faced with such challenges, many municipalities adopted the council-manager form. The plan has been especially attractive to small- and medium-sized localities. It is used in a majority of American municipalities with populations of 25,000 to 250,000. It has been strongly promoted since the 1920s by the National Civic League.

The council-manager form is widely viewed as a way to take politics out of municipal administration. The manager himself is expected to abstain from any and all political involvement. At the same time, the council members and other "political" leaders are expected to refrain from intruding on the manager's role as chief executive. Of course, the manager, who is hired and fired by the council, is subject to the authority of the council, but council members are expected to abstain from seeking to individually interfere in administrative matters, including actions in personnel matters. Some city charters provide that interference in administrative matters by an elected city official is grounds for removal of the elected official from office.

E. MUNICIPAL-GOVERNMENT FORMS IN FLORIDA

In Florida, a municipality is free to adopt any of the basic municipal-government forms identified above or any variation thereof. State law does not prescribe one or more permissible forms, nor does it prohibit any. The Florida Constitution requires only that "each municipal legislative body shall be elective" (Art. 8, Sec. 2 (b), Const.); state statutes require only that an acceptable proposed municipal charter is one which "prescribes the form of government and clearly defines the responsibility for legislative and executive functions."

Many Florida cities have forms of government that combine elements of the four basic structures. These cities, having "hybrid" forms outlined in their charters, are difficult to categorize. More elements of the council-weak mayor form are identified in these hybrids, and carry-over elements of the commission form have also been found.

The most common form of city government in Florida today is the council-manager form. A second common form, found in many smaller municipalities, is the council-weak mayor form. In Florida, in recent years, most changes of municipal-government form have been from some other form to the council-manager form. Approximately 270 Florida cities (out of more than 400) have a position of manager or a similar position, such as "administrator."

In all Florida cities, members of the council or commission are elected by the voters of the city. The mayor may be simply a member of the council, elected by the council to serve as mayor; may be a separate office (that is, not a member of the council) or elected by the people. Certain administrative positions are filled by elections in a few cities. These include the offices of clerk, police chief and fire chief.

REFERENCES

Florida Constitution: Article 8, Section 2(b). Florida Statutes: Section 165.061. *Membership Directory*, Florida League of Cities. *Model City Charter*, 8th Edition, National Civic League, www.ncl.org.

Table 2-1

Comparison of Municipal Executive Types

SOURCE: International City/County Management Association, *Directory of Local Governments*, Washington, D.C.: ICMA, 1978, p. 5

DUTIES	TYPES OF EXECUTIVE	
	Municipal Manager (council-manager position)	Municipal Administrator (general management position)
Appointment	The manager should be appointed by a majority of the council for an indefinite term and removable only by a majority of the council.	The administrator should be appointed by the council or the mayor.
Policy Formulation	The manager should have direct responsibility for policy formulation on overall problems.	(same as municipal manager)
Budget	The manager should have responsibility for preparation of the budget presentation to the council, and direct responsibility for the administration of the council-approved budget.	The administrator should have major responsibilities for preparation and administration of the budget.
Appointing Authority	The manager should have full authority for the appointment and removal of at least most of the heads of the principal departments and functions of the municipal government.	The administrator should exercise significant influence in the appointment of key administrative personnel.
Organizational Relationships	Those department heads whom the manager appoints should be designated by legislation as administratively responsible to the manager.	The administrator should have continuing direct relationships with operating department heads on the implementation and administration of programs.
External Relationships	Responsibilities of manager should include extensive external relationships involving the overall problems of city operations.	(same as municipal manager)
Qualifications	The qualifications for the position should be based on the educational and administrative background of candidates.	(same as municipal manager)

Section 2-2

The Municipal Charter

A. SIGNIFICANCE OF THE CHARTER

The municipal charter is an essential and fundamental element of every Florida municipality. No municipal government may be created without a proposed charter, and no municipal government may exist without a charter.

In addition, the municipal charter is vital to the democratic and effective functioning of a municipal government. It must contain basic provisions for the organization of municipal government. A good charter is one which presents a concise and workable legal framework for the government of the municipality. In addition, says the National Civic League, a good charter is one which “sets before the citizens a clear picture of their own powers and responsibilities and before the officials and employees a statement of their duties and mutual interrelations.” The adoption of a good charter, says the League, “is an affirmation by the citizens that they mean to have good government and is the legal framework within which such government can be won and the more easily maintained.”

A municipal charter must originate within the community and must be formally approved by a majority of the registered voters of the community. The charter is, in a sense, a compact among the residents of the community regarding the extent and form of government which they desire.

B. CONTENTS OF A CHARTER

A charter should contain details which are of such importance that they should not be subject to change simply by ordinance, without a public referendum. By including certain provisions in the city charter, the citizens ensure that their provisions cannot be changed hastily and without popular consent. On the other hand, subjects of less importance should not be in the charter because it should be easier to make necessary changes affecting them. In short, a happy medium should be found between including “enough” and including “too much” in the charter.

1. Recommended Subjects

What subjects should be included in a charter? The National Civic League has recommended a charter article for each of the following subjects:

1. Powers of the City
2. City Council
3. City Manager (or other chief administrator)
4. Administrative Departments
5. Financial Procedures
6. Planning
7. Nominations and Elections
8. Initiative and Referendum
9. General Provisions
10. Transitional Provisions

2. Models and Samples

The National Civic League has prepared a model charter, which may serve as a guide in the preparation or revision of a charter. See the following:

- *Model City Charter*, National Civic League, 1445 Market Street, #300, Denver, CO, 80202-1728, (303) 571-4343, www.ncl.org. Revised each decade: 8th edition in 2003.

Copies of current Florida city charters may be obtained from the cities themselves and are often posted on-line at city websites. Consult the FLC Municipal Directory for email addresses, and if inquiring for a copy, ask the city clerk's office for assistance. The Florida League of Cities can lend copies of the charters of several Florida cities.

3. The Charter and Home Rule

With the advent of municipal Home Rule in 1969, a municipal government is not restricted to those powers which are listed in its charter. A city may exercise any power for municipal purposes which is not explicitly prohibited by law. That being the case, the charter need not contain an exhaustive list of municipal powers.

Despite the general grant of home-rule authority, a city may not exercise powers which are prohibited to municipalities by the constitution or general law; consequently, it is useless to put such provisions into a charter, as any such provisions found in a charter are null and void.

With certain exceptions, limitations of power contained in a municipal charter prior to July 1, 1973, were nullified in 1973 by legislative enactment of Chapter 73-129, Laws.

4. Statutory Requirements

To be accepted by the Legislature, a proposed charter must meet these conditions regarding its content:

1. It must prescribe the form of government and clearly define the responsibility for legislative and executive functions.
2. It must not prohibit the city council from levying any tax authorized by the Constitution or general law.

C. PREPARATION OF A CHARTER

Preparation of a municipal charter must occur as part of the incorporation process. See the next chapter for details.

D. AMENDING A CHARTER

Amendments to a municipal charter may be proposed either by the council (by ordinance) or by registered voters (by means of a petition). Charter amendments must be approved by the city's electors in a referendum.

All parts of a charter may be amended except that part defining the boundaries of the city. Boundary changes may be made only by following the statutory procedures for annexation and contraction, found in Chapter 171, F.S. Once these procedures are followed, boundary changes may be reflected in the language of the charter by action of the council, by ordinance and without referendum.

Two other types of charter provisions may be changed without referendum. First, a municipal department which is provided for in the charter may be abolished by unanimous vote of the council. Second, charter language which has been judicially construed to be contrary to the federal or state constitution may be removed, again by unanimous vote only. In addition, in charter counties the provisions of the county charter supersede the provisions of the city ordinances. For more information

regarding charter adoption and dissolution, see the section on “Incorporation, Merger and Dissolution” in this manual.

REFERENCES

Florida Statutes: Chapters 165, 166 and 171.

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Section 2-3

Incorporation, Merger and Dissolution

The formation and dissolution of municipalities is governed by Chapter 165, Florida Statutes, except in those counties operating under a county home-rule charter which provides for an exclusive method.

A. INCORPORATION PROCEDURES

A municipality is a municipal corporation. Like all other corporations, a municipal corporation is created by act of the state government and in accordance with applicable state laws (Art. 8, Sec. 2(a), Const.). As a corporation, a municipality is established through incorporation procedures.

1. Legislative Adoption of Special Act

For a city government to be established, the Legislature must adopt a special act which contains the exact language of a charter for the city. Legislators who represent the affected area ("local legislative delegation") play a decisive role, in that they must file the special-act bill and must endorse its adoption if it is to receive approval by other legislators.

2. Preparation of Proposed Charter

For such legislative action to occur, a proposed city charter must be prepared in some manner. An acceptable charter is a precondition to legislative approval of an incorporation proposal. In fact, without a charter, there is nothing for the Legislature to approve.) In short, someone must prepare a proposed city charter in order for the incorporation process to occur.

Chapter 165 provides that a proposed charter may be prepared either:

1. by the county commission or
2. by a group of petitioning citizens.

This statute would appear to preclude the preparation of a charter by any means other than these two; however, this interpretation would be misleading. The truth is that a legislative special act may contain a proposed charter from any source whatsoever and prepared by any method whatsoever, so long as it is acceptable to the legislators who vote on it. Thus, the apparent restrictiveness of s. 165.041(5), F.S., is illusory.

It appears, also, that one of the two methods of charter preparation specified in Chapter 165 – namely, preparation by the county commission – has rarely, if ever, been utilized. It is even questionable whether the Legislature intended to place this function in county commission hands; it may be that s. 165.041(5), F.S., was incorrectly drafted and does not reflect actual legislative intent.

The second method by which a proposed charter might be prepared and approved, as specified in s. 165.041(5), F.S., is by means of a petition generated by qualified voters in the affected area. If signed by a number of qualified voters equal to 10 percent or more of the qualified voters in the area at the time of the last general election, the petition may be filed with the clerk of the county commission, whereupon the commission "shall immediately undertake a study of the feasibility of the formation proposal and shall, within six months, either adopt an ordinance...or reject the petition, specifically stating the facts upon which the rejection is based" (s. 165.041(4)(b), F.S. – this language does not imply that the county must pay for the study). If the commission accepts the petition, it then will petition the local legislative delegation to pursue the necessary special act. If the commission acts unfavorably or refuses to act, the petitioning citizens may go directly to the local legislative delegation with their petition.

3. Adoption of a Charter

Having been proposed by one of the methods described above, a charter must be adopted by the Florida Legislature, through enactment of a special act. This special act creates the municipality as a “municipal corporation,” specifies its official name (e.g., “City of Daytona Beach”), and recognizes the proposed charter as, in fact, the charter of the municipal government created by the act. If a local referendum has not previously taken place on the incorporation question, the Legislature normally will also include in the special act a requirement that a referendum be held, with incorporation occurring thereafter only if approved by a majority vote in the referendum.

The legislators who represent the affected area usually play a decisive role in the Legislature’s response to a request for incorporation. If the local legislators approve the proposal for incorporation, all other legislators will usually vote for it; if they oppose it, all other legislators will usually oppose it. Thus, municipal incorporation usually occurs only when incorporation is supported by local legislators.

Approval by the Legislature is not required in the case of the merger of two or more existing cities or the merger of one or more cities with one or more special districts. When two or more existing cities merge, a charter for the resulting city “may also be adopted by passage of a concurrent ordinance by the governing bodies of each municipality affected, approved by a vote of the qualified voters in each area affected.” Adjacent unincorporated areas may be included in such a merger, subject to the additional requirement of approval by referendum in each area. When a merger involves both municipalities and special districts, the proposed charter may be adopted by approval of an ordinance by the city or cities involved and passage of a resolution by the governing body of each special district.

B. CRITERIA FOR INCORPORATION

To be eligible for incorporation, an area must meet the following requirements:

1. it must be compact, contiguous, and amenable to separate municipal government;
2. in a county of less than 75,000 population, it must have a population of at least 1,500 people; in more populous counties, it must have a population of at least 5,000 people;
3. it must have population density of at least 1.5 persons per acre, ordinarily;
4. its nearest point must be at least two miles from the boundary of any existing municipality in the county; or an extraordinary natural boundary must exist which requires a separate municipal government; and
5. it must have a proposed charter which meets these conditions:
 - a. “prescribes the form of government and clearly defines the responsibility for legislative and executive functions,” and
 - b. does not restrict the taxing authority granted the city council by the state constitution or general law.

These criteria are considered to be general guidelines only. A failure to meet all of these guidelines does not necessarily preclude the adoption of a special-act charter for incorporation. A community may request a waiver of one or more criteria.

C. MERGER

Initiation of procedures for municipal incorporation by merger may be done either by adoption of a resolution by the governing body of an area to be affected or by a petition of 10 percent of the qualified voters in the area. Refer to Florida Statutes, Chapter 165 for conditions.

D. DISSOLUTION

A municipal charter may be revoked and a municipality dissolved either by a special act of the Legislature or by an ordinance approved by the city council and by the qualified voters in a referendum. Restrictions on the dissolution of municipalities are listed in Chapter 165, F.S.

Historically, the secretary of state has also recommended inactive cities for dissolution, but not since the 1980s.

E. JUDICIAL REVIEW

Ordinances and special laws enacted in the creation or dissolution of municipalities are reviewable by certiorari, but no appeal may be brought after the effective date of an incorporation or dissolution.

REFERENCES

Florida Constitution: Article 8, Section 2. Florida Statutes: Chapter 165.

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Section 2-4

Annexation

The Municipal Annexation or Contraction Act of 1974, which, with amendments, is codified as Chapter 171, Florida Statutes, governs municipal annexation and contraction (except in Miami-Dade County, where home-rule charter provisions apply). An annexation proceeding may take place only within the boundaries of a single county.

A. ANNEXATION BY PETITION

Property owners may petition a municipality for annexation. The property to be considered for annexation must meet statutory requirements, and all owners of property in the area proposed for annexation must have signed the petition. If satisfied that these criteria have been met, the council may, at a regular meeting, adopt a non-emergency ordinance to annex said property and to redefine the boundary lines of the municipality to include said property. This ordinance may be passed only after notice of it has been published or posted for four consecutive weeks. The notice shall contain, among other items, a brief general description of the area proposed to be annexed and a map clearly showing the area. Voluntary annexation methods other than that specified above may be enacted by special law, and the method specified here is superseded by county charter provisions for an exclusive method.

B. ANNEXATION BY REFERENDUM

In the absence of 100-percent support by the affected property owners, annexation may still occur through “dual referendums.” A non-emergency ordinance proposing to annex the area shall be adopted by the council. Each such ordinance shall address annexation of one reasonably compact area only. The ordinance shall then be submitted to separate votes of the electors of the municipality and of the area proposed to be annexed. The city shall conduct this dual referendum and shall bear the cost of it. The referendum shall be held at the next regularly scheduled election or at a special election, but not sooner than 30 days after council approval of the ordinance. Notice of the referendum shall be published in a general-circulation newspaper at least once a week for the two consecutive weeks immediately preceding the referendum. The notice shall contain, among other items, the time and places for the referendum, a brief general description of the affected area, and a map which clearly shows the area. In most cases, passage of the annexation ordinance requires separate majority votes in favor of annexation in the affected area and within the municipality, commonly referred to as the “dual-majority” requirement.

A dual vote is not always required for annexation. If the area to be annexed is a very small area or territory, no municipal vote is involved. The Legislature has recognized that enclaves can create significant problems in planning, growth management and service delivery; therefore, state statutes provide that a municipality may annex:

1. an enclave of 10 acres or less by interlocal agreement with the county having jurisdiction, or
2. an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the voters residing in the enclave.

If more than 70 percent of the land in the affected area is owned by non-electors of said area, the area shall be annexed only if the owners of more than 50 percent of the land consent to annexation, this consent to be obtained prior to a referendum.

Under certain conditions an annexation referendum may be conducted by mail. Other details of the annexation procedure include the requirement of an urban-services report detailing how the municipality will provide services to the area.

C. CRITERIA FOR ANNEXATION

A municipality may annex an area only if it satisfies the following criteria (standards for these criteria are provided):

1. the area must be contiguous to the municipality's boundaries;
2. the area must be reasonably compact;
3. the area must be wholly unincorporated; and
4. the area must be developed for urban purposes, at least in part, or must be so situated that it constitutes a necessary land connection between urbanized areas.

D. EFFECTS OF ANNEXATION

Annexation of an area has the following effects:

1. The annexed area shall immediately be subject to the debts and taxes of the municipality, except that it shall not be subject to city property taxes for the current year if levied prior to the effective date of the annexation.
2. The annexed area shall be subject to all laws, ordinances, and regulations in force in the city, and shall also be entitled to all privileges and benefits.
3. In the annexed area, the county land-use plan and zoning or subdivision regulations shall remain in force until the area is included in city planning and zoning provisions.
4. If a solid-waste collection service was previously serving an annexed area and complies with certain conditions, it may continue to provide the service for five years or the remainder of the franchise term, whichever is shorter. If the franchisee does not agree to comply with said conditions within 90 days of annexation, the city may terminate the franchise.

E. INCORPORATION OR ANNEXATION OF A DISTRICT

After achieving the population standards for incorporation, a community-development district wholly contained within the unincorporated area of a county may hold a referendum on the question of incorporation. All standards and procedures for incorporation included in Chapter 165, F.S., apply, including the requirement of a charter adopted by special act of the Legislature.

Any community-development district contiguous to the boundary of a municipality may be annexed to such municipality pursuant to Chapter 171, Florida Statutes.

F. CONTRACTION PROCEDURES

Procedures for contraction of municipal boundaries are provided in s. 171.051, F.S.

REFERENCES

Florida Statutes: Chapter 171, Sections 101.6102(5) and 190.047. For background and options to current Florida law, see Robert Bradley and Edward Montanaro, "Annexation in Florida: Issues and Options," *Florida Municipal Record*, parts I-III, vol. 57, nos. 5-7, and "Florida Legislative Council on Intergovernmental Relations Recommendations on Annexation," *Florida Municipal Record*, vol. 57, no. 8.

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Section 2-5

Elections

A. FLORIDA ELECTION CODE

The Florida Election Code is found in Chapters 97-106, Florida Statutes. Copies in pamphlet form may be obtained from the supervisor of elections or from the Division of Elections, Florida Department of State.

B. VOTER REGISTRATION

Voter registration is governed by Chapters 97 and 98 of the Florida Statutes. Voter registration and maintenance of voter-registration records are responsibilities solely of the county supervisor of elections or deputy supervisor. A permanent single registration system for the registration of electors shall be put to use by all municipalities in lieu of any other system of municipal registration. The county supervisor of elections shall furnish lists of city electors (registered voters) and other statistical information to the city, at the expense of the city. The county supervisor of elections must maintain a location for the registration of voters at the county seat and each city of over 25,000 population when such municipality is not the county seat.

The qualifications of electors is a matter controlled in a preemptive fashion by state law. As specified in the Florida Statutes, those qualifications are as follows:

1. at least 18 years old,
2. citizen of the United States,
3. legal resident of Florida,
4. legal resident of the county, and
5. registers pursuant to the Florida Election Code.

Any person who is a duly registered elector and resides within the boundaries of the municipality may participate in all municipal elections.

C. ELECTION DISTRICTS

In the absence of a court order or court-enforced agreement requiring one particular arrangement, a municipality may conduct elections on an at-large (city-wide) basis; within districts (either single-member or multi-member) or through a combination of at-large and district positions. Electoral districts may be defined in the city charter or by ordinance.

Populations of election districts must be approximately equal, and districts may not be gerrymandered for purposes of discrimination against African-Americans or other protected classes of voters. Since 1980, many cities have drawn voting-district lines so as to ensure the election of African-American, Hispanic, or other minority-group candidates. In 1995, the U.S. Supreme Court ruled against the drawing of Congressional-district lines solely for that purpose, if the result is an odd-shaped district which violates traditional standards of compactness and contiguity.

Currently, as federal law stands, a city and its elected officials may find themselves the object of a civil-rights lawsuit due to any of the following:

1. unequal populations of election districts,
2. use of at-large elections rather than district elections,
3. drawing of district lines so as to minimize the election of minority-group candidates,

4. failure to draw district lines so as to ensure the election of minority-group candidates, or
5. drawing of district lines so as to ensure the election of minority-group candidates, if done solely for that purpose and if the result is an odd-shaped district which violates traditional standards of compactness and contiguity.

D. ELECTION DATES

The dates of city elections may be set by charter or by ordinance. Selected dates vary widely from one city to the next. The most popular months are November and December of odd-numbered years and March of even-numbered years. In the event of an emergency, the governor may suspend or delay an election by executive order, and a new date shall be set by the governor.

E. PRECINCTS

Election precincts within a municipality are designed by the board of county commissioners, on recommendation by and approval of the county supervisor of elections. The supervisor shall designate a polling place within each precinct.

F. ELECTION ADMINISTRATION

City elections may be administered either by city officials or by the county supervisor of elections. A city may choose to administer its elections through a city elections board or other appropriate municipal officials; e.g., the manager or clerk might be designated as the election supervisor. In such cases, the county supervisor of elections is responsible to deliver the necessary records and equipment to the appropriate city officials prior to the election and to collect them after the election. On the other hand, a city may seek an arrangement with the county supervisor of elections whereby the supervisor will administer municipal elections. In either event, "the municipality shall reimburse the county for the actual costs incurred" including, specifically, the costs of printing and delivery of municipal ballots. The municipality shall see to it (and bear the expense) that a U.S. flag, to be provided by the supervisor of elections, is flown at each polling place.

As noted above, the county supervisor of elections is authorized to designate a polling place within each precinct. Public, tax-supported buildings shall be made available for use as polling places when requested by the supervisor of elections. In addition, each polling place must be accessible to and usable by elderly and physically handicapped persons. School boards and city governments shall cooperate in the implementation of this provision.

G. RECALL ELECTIONS

"Any member of the governing body of a municipality" may be removed from office through a process of petition and referendum. Grounds for removal are stated as the following: malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, and conviction of a felony involving moral turpitude. Procedural requirements are given in the Florida Statutes. (Refer to Chapter 8 on "Standards of Conduct" in this manual for more information.)

H. CAMPAIGN SIGNS

Municipal candidates are not directly affected by a state law which requires candidates for other offices to remove campaign signs within 30 days after candidacy is ended. However, a city may regulate this matter by ordinance. If a candidate's campaign signs are not removed within a specified period of time, a city may remove the signs and charge the candidate the cost of removal.

I. BOND REFERENDA

The city council may, by resolution, call a bond referendum to decide whether a majority of the electors participating is in favor of the issuance of bonds. A referendum may be held on the day of an election or may be held separately. Thirty days' notice must be given:

1. by publication in a newspaper of general circulation at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is to be held, or
2. if there is no newspaper of general circulation in the municipality, by posting in no less than five places within the municipality.

This holding of bond referenda is governed by local law, by state laws concerning bond referenda, and by state laws governing the holding of general elections.

Any taxpayer may test the legality of a bond referendum and the declaration of the result thereof by an action in circuit court, brought against the city council. Any such suit must be instituted within 60 days after the declaration of the results of the referendum.

J. "STRAW-BALLOT" REFERENDA

Municipal officers may hold a "straw-ballot" referendum in order to obtain a non-binding expression of public opinion regarding a public issue. Such referenda may be governed by the municipal charter or by ordinances.

K. REFERENDUM VOTING BY FREEHOLDERS ONLY

A city may, by charter provision or ordinance, restrict participation in municipal referenda to freeholders, that is, to electors who meet property-owning requirements set by the municipality. Federal court rulings have greatly limited this practice, however.

REFERENCES

Florida Statutes: Chapters 97-101, Sections 106.1435 and 256.011.

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Section 2-6

Key Officials and Their Roles

Key city offices include those of mayor, council member, manager/administrator, clerk and attorney. Commissions, boards and advisory committees also often play key roles.

A. MAYOR

The roles of mayor and council member vary widely in scope and power throughout the United States. This variety is linked primarily to the specific form of government which a city has adopted, although additional legal restrictions in some states, as well as individual personality, may also be significant factors.

1. Qualifications

Formal qualifications for the office of mayor may be specified in the city charter. Typically, the sole stated qualification is that one be a qualified elector of the city. In some cities, a higher minimum age is required (e.g., 21 or 25); otherwise, the only age requirement is that which is implicit in the qualified-electror requirement. Other qualifications required by some cities include a requirement that one have been a resident of the municipality for some minimum period (e.g., one year, three years) and a property-ownership requirement (i.e., that one be a “freeholder”).

2. Selection Method

The method of selection of the mayor is specified in the city charter. It is either by popular election or by appointment by the council. In some cities, the mayor is elected by popular vote for a two-year or four-year term; in others, the council elects one of its members as mayor, usually on an annual, rotating basis.

3. Powers

The office of mayor has all the powers designated to it by the city charter, or delegated to it by the council, provided that these designated or delegated powers are not inconsistent with the charter or state and federal constitutions and laws. The mayor must look to the charter and to specific delegations of authority by the council for most of his formal powers; in addition, some powers and duties are assigned to mayors by state and federal law. In general, the mayor should claim and should attempt to exercise only those powers for which explicit authorization is found in one or another of these sources. The role of the mayor varies widely from one community to another. At one extreme, the mayor may be solely a ceremonial figure, there to play certain ceremonial roles but playing no part at all in policy-making and administration. At the other extreme, the office of mayor may be designed (by charter provisions) as the chief-executive position of the municipality, analogous to the president’s role in the national government; in this event, the mayor enjoys significant powers in both the legislative process and the administrative functions of the municipal government.

In general, the role of the mayor is determined by the basic form of municipal government which is utilized by the community. These basic forms are discussed elsewhere in this manual, in “Basic Forms of Municipal Government,” where additional information concerning mayoral powers and duties is discussed.

At the same time, it should be emphasized that the formal role of the mayor in a given city is primarily determined by charter provisions and ordinances of that particular city, not by any common pattern or “model” arrangement. All existing charter provisions and ordinances should be adhered to; if change is needed in the role of the mayor, the relevant charter provisions or ordinances should be changed. All Florida cities do not have a “mayor,” some have chosen to use “council chairperson” as the title for the municipality’s ceremonial leader.

B. COUNCIL MEMBERS

The elected municipal governing body is responsible for the policy-making function of city government. Municipal governing bodies in Florida are titled council, commission, board of aldermen, or councilor. The choice of title for the legislative body has no legal significance; whether “council,” “commission,” “aldermen,” or “councilor,” the body’s functions and powers are the same. (Throughout this manual, “municipal governing body” and “city council” are used interchangeably.)

Members may be elected at-large or from districts. The number of council members varies from three to 19, with five being the most common number. In many Florida communities, the mayor is recognized as the presiding officer of the council, whether as a voting or a non-voting member; in others, a council member is elected by the council as its “president” and presiding officer. In most cities, the council sets the qualifications for its members; they are quite similar to those for mayor. Terms of office for council members are either two or four years. In some cities, all council seats are elected simultaneously; in others, council elections occur on a “staggered” basis. The staggered-term system serves to eliminate the possibility of an entirely new and inexperienced council being elected at one time.

The mayor and each council member may receive salary and/or reimbursement of expenses, as provided by charter or ordinance.

A vacant council position may be filled either by appointment or by special election. Rules concerning the filling of vacancies are usually contained in the city charter.

C. MANAGER/ADMINISTRATOR

The council-manager form of municipal government provides for a separation of legislative and executive powers. Legislative authority is vested in the council, while a manager, appointed by the council, serves as chief administrator. Depending on local preference, the administrator position may be titled “manager” or “administrator.” If the position is not provided in the charter, it has been found in a few cities as an ordinance. For questions on these distinctions and job descriptions, please contact the Florida City and County Management Association (see reference page).

D. CLERK (AND TREASURER)

The city charter should delineate the central duties and responsibilities of the municipal clerk, which generally include mandatory attendance at council meetings, taking and transcribing the minutes of the council meetings, and being responsible for all or most official records. Additional duties may be assigned by ordinance or by the clerk’s supervisor (mayor or manager). These additional duties could include those of treasurer, purchasing officer, clerk to the city board of elections and the issuance of licenses and permits, as well as other administrative functions.

In a handful of Florida communities, the office of clerk is an elective office; in most, the clerk is appointed by the council or by the manager/administrator. In some communities, one person is designated as both city manager and city clerk.

As with the city clerk, the position of treasurer is generally established by charter. The treasurer serves as chief fiscal officer of the municipality. Specific duties of the treasurer include the collection, receipt, and custody of payment of both municipal employees and all vendors providing goods and services. In addition, the treasurer could be responsible for all municipal monies; the keeping and monitoring of all financial records; the investment of idle funds; and the assigned specific duties in the preparation of the annual budget. The treasurer also reports periodically (monthly, quarterly and/or annually) to the council on the financial condition of the municipality.

Municipal finance officers have a statewide association; see reference page for details.

In many small Florida communities, the city (or town) clerk functions as a general municipal administrator. In such a municipality, with a part-time mayor and no manager, the clerk is the chief administrative officer. In addition to the previously mentioned duties, therefore, the clerk will administer the personnel ordinance, prepare the municipal budget, interview and recommend candidates for employment, process citizens' complaints, and make recommendations to the council on various matters affecting the municipality. For this reason, the position of city clerk is of great importance in those Florida cities which have neither a strong mayor nor a city manager. City clerks have a statewide association; see the reference page for information.

E. ATTORNEY

In most cities in Florida, the council appoints a city attorney for legal counsel. A city attorney may be a full-time employee, a part-time employee, or may be hired on a case-by-case basis. One attorney may represent more than one municipality. A city attorney should be a member of the state and national bar. The council will determine the city attorney's compensation. The city attorney is a legal advisor, primarily. At the request of the governing body or designated staff members, the attorney renders opinions on legal issues affecting the city. The attorney gives legal counsel on the drafting and implementation of ordinances and should keep the council and staff informed of new laws and judicial opinions that could affect the city. The attorney may also represent the city in court, although cities often employ other (additional) counsel to handle court cases.

The city attorney serves at the pleasure of the council and handles whatever responsibilities are designated to his office. In some cities, the council is quick to involve the attorney in varied aspects of city policy-making and administration; in other cities, the attorney's services are resorted to only when a legal issue absolutely requires it.

City attorneys have a statewide association; see reference page for details.

F. COMMISSIONS, BOARDS AND ADVISORY COMMITTEES

In Florida, a municipality's authority to establish commissions, boards and advisory committees to carry out particular municipal functions may be inferred from Section 166.021, F.S., which describes the general and express powers of a municipal corporation. The general power of a municipality to create commissions, boards, and advisory committees should be stated in the municipal charter. The powers, duties, and composition of permanent bodies should also be included in the municipal charter.

Temporary bodies may be created and abolished by resolution or administrative order. Their duties and powers, composition, and any compensation should be determined by the council, if not specified by charter or state law. Commissions and boards sometimes are assigned significant powers of policy-making or administration.

Advisory committees serve an important function in providing expertise in certain areas of municipal concern. Usually established at the request of the council, they may be made up of both citizens and council members and may deal with issues and problems which the council deems worthy of special consideration and advisement. The advisory committee adds another degree of municipal responsiveness to the public interest. It provides an excellent opportunity for citizens to actively participate in their local government. The advisory committee is not of the same significance as a commission or board, lacking the power to make or administer policy on its own. Nevertheless, the advisory committee may play an important role by taking up matters that deserve extra attention and consideration that a group of interested, concerned citizens can provide.

It should be noted that commissions, boards and advisory committees and the individual members thereof are subject to open-meetings ("Sunshine Law") and public-record laws; individual members may be required to comply with financial-disclosure laws, also. For more information on these laws, see Chapter 3, "Standards of Conduct," in this manual. Advisory board training is encouraged for all citizens who serve on them.

REFERENCES

Elected Officials Handbooks, International City/County Management Association, 1120 G Street N.W., Washington, DC 20005.

Chapter 3

Standards of Conduct

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Section 3-1

Overview

Municipal officials are governed by both formal and informal standards of conduct. **Informal** standards of conduct exist as social norms of the nation, the community, particular community and professional groups, and the particular municipal body or agency of which an individual is a part. **Formal** standards of conduct exist as constitutional provisions, laws, municipal ordinances and resolutions, and – for employees – administrative rules and regulations.

In Florida, many formal standards of conduct for municipal officials are embodied in the Constitution and in state law. These various standards are scattered in the Constitution and Florida Statutes; they are not all to be found in one place. Thus, the oft-mentioned “Sunshine Amendment” (art. 2, sec. 8, Florida Constitution) contains only a small part of the complete set of formal standards. The Code of Ethics for Public Officers and Employees (ch. 112, part III, F.S.), while more extensive than the Sunshine Amendment, also contains only part of the entire set of standards of conduct (ss.112.311-112.326, F.S.).

In this part of the manual, separate attention is given, first, to constitutional provisions pertaining to standards of conduct of public officials and then, in succeeding chapters, to statutory requirements.

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Section 3-2

Constitutional Provisions

The Florida Constitution contains little that pertains to the conduct of municipal officers. Such as there is can be found in two sections of the Constitution, Articles II and IV.

A. THE SUNSHINE AMENDMENT (ART. II)

Article II, Section 8 was added to the Florida Constitution in 1976 by means of the initiative process; it is commonly identified as the “Sunshine Amendment” (which is not the same thing as the “Sunshine Law”). Municipal officials are unaffected by some of its provisions, including its “full and public disclosure of financial interests” provision (art. II, s. 8(a)). Those provisions which do apply to municipal government are as follows:

1. Article II, Section 8(b)

“All elected public officers and candidates...shall file full and public disclosure of their campaign finances.” This provision is implemented by s. 106.07, F.S.

2. Article II, Section 8(c)

“Any public officer or employee who breaches the public trust for private gain...shall be liable to the state for all financial benefits obtained by such actions.” Enforcement of this provision is provided by s. 112.316, F.S.

3. Article II, Section 8(d)

“Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan...” This provision is implemented by s. 112.3173, F.S.

These sections are supplemented by state law in Chapter 112, and are frequently updated by the Legislature. Officials are encouraged to check with their attorney for regular updates on changes to the law.

B. POWERS OF THE GOVERNOR (ART. IV)

The state governor is granted several powers in order that he might oversee the conduct of municipal affairs and the personal conduct of individual municipal officers.

1. Article IV, Section 1(a)

The governor “may require information in writing from all executive or administrative...municipal officers upon any subject relating to the duties of their respective offices.”

2. Article IV, Section 1(b)

“The governor may initiate judicial proceedings...against any executive or administrative...municipal officer to enforce compliance with any duty or restrain any unauthorized act.”

3. Article IV, Section 1(d)

The governor may call out the militia to preserve peace and to enforce the laws of the state within a community.

4. Article IV, Section 7(c)

“By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension...unless these powers are vested elsewhere by law or the municipal charter.”

REFERENCES

Florida Constitution: Article II, Sec. 8; Article IV, Secs. 1 and 7(c). Florida Law: Chs. 112, 386, 199, 106
“Government In The Sunshine” Manual – published by the First Amendment Foundation – Phone 1-(800) 337-3518.

Section 3-3

The Code of Ethics

An important part of the formal standards of conduct for municipal officials in Florida is the “Code of Ethics for Public Officers and Employees,” which was enacted in 1967 as Chapter 67-469, Laws, and, as subsequently amended, codified as Chapter 112, Florida Statutes. This code applies to elected municipal officers, municipal employees, and persons appointed to municipal positions, including members of advisory bodies. Some specific standards also apply to candidates for elective positions.

A. PREAMBLE

The Code of Ethics contains noble language in its opening section:

- (1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain...The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.
- (5) It is hereby declared to be the policy of the state that no officer or employee...shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees...in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.
- (6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics...regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

B. STANDARDS

Certain standards of conduct are enumerated in Chapter 112, Florida Statutes; some of these are summarized below.

1. Prohibition of Solicitation or Acceptance of Gifts

No public officer, employee..., or candidate...shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any

understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

2. Prohibition of Doing Business With One's Agency

An officer or employee, when acting in official capacity, shall not, either directly or indirectly, purchase, rent, or lease any realty, goods, or services from any business entity of which the officer or employee, spouse, or child is officer, partner, director, or proprietor or in which he or she, spouse, or child has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the municipality or any agency thereof.

3. Prohibition of Accepting Compensation Given to Influence a Vote

No public officer, employee of an agency, or local government attorney or spouse or minor child shall accept any compensation, payment, or thing of value when the person knows, or, with reasonable care, should know that it was given to influence a vote or other action.

4. Prohibition of Misuse of Public Position

A public officer, employee, or local government attorney shall not corruptly use or attempt to use one's official position or any property or resource which may be within one's trust, or perform official duties, to secure a special privilege, benefit, or exemption.

5. Prohibition of Conflicting Employment or Contractual Relationships

No public officer or employee shall hold any employment or contractual relationship with any business entity or agency which is subject to the regulation of the agency of which one is an officer or employee or which does business with said agency; nor shall an officer or employee have any employment or contractual relationship that will create a continuing or frequently recurring conflict between one's private interests and the performance of public duties or that would impede the full and faithful discharge of public duties. Reference Florida Statutes for exceptions to this standard.

6. Prohibition of Misuse of Privileged Information

No public officer, employee of an agency, or local government attorney shall disclose or use information not available to members of the general public and gained by reason of one's official position for one's own personal gain or benefit or for the personal gain or benefit of any other person or business entity.

7. Post-Employment Restrictions

A person who has been elected to any municipal office may not personally represent another person or entity for compensation before the governing body of which he was an officer for a period of two years after he vacates that office. The governing body of any municipality may adopt an ordinance providing that an appointed municipal officer or employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of two years following vacation of office or termination of employment, except for the purpose of collective bargaining.

8. Prohibition of Employees Holding Office

No person may be, at one time, both a municipal employee and a member of the city council.

9. Prohibition of Nepotism

Nepotism is the practice of showing favoritism to relatives, especially in the awarding of jobs. A municipal officer or employee vested with the power to appoint, employ, promote, or advance individuals or to make recommendations concerning such, shall not appoint, employ, promote, or advance, or advocate for such benefit, to a position over which he or she exercises jurisdiction, any relative. "Relative" includes parents; uncles, aunts, and first cousins; siblings, their spouses, and their children; spouses and their parents; children and their spouses; stepparents, stepsiblings, and stepchildren; and half-siblings.

An individual may not be appointed, employed, promoted, or advanced if such action has been advocated by a public official, who is a relative, serving in or exercising control over an agency. Cities with populations less than 35,000 have exemptions in this; the city attorney can advise on these.

10. Requirements to Abstain From Voting

A municipal officer shall not vote in official capacity upon any measure which would affect his or her special private gain or loss, or which he or she knows would affect the special gain or any principal by whom the officer is retained. When abstaining, the officer shall state, prior to the vote being taken, the nature of his or her interest in the matter. Within 15 days, the officer shall disclose the nature of his or her interest as a public record in a memorandum. If a municipal officer should violate these rules by casting a vote on a matter in which he or she should have abstained, he or she shall, within 15 days, disclose the nature of the interest as a public record in a memorandum.

Notice should be made here of a related prohibition of voting. If a person is both a city council member and an "officer, director, or employee of a financial institution which is interested in purchasing or serving as trustee or co-trustee for a proposed or outstanding bond issue," the person shall not vote on "any matter related to such bond issue" after the bank's interest in the bond issue becomes known to him or her.

11. Requirement of Disclosure of Personal Interests

An appointed municipal officer shall not "participate" in any matter which would affect the officer's special private gain or loss, the special gain or loss of any principal, parent organization or subsidiary by whom the officer is retained, or the special gain or loss of a relative or business associate, without first disclosing the nature of the interest in the matter. "Participate" means "any attempt to influence the decision by oral or written communication whether made by the officer or at his or her discretion." The disclosure should be made in a written memorandum prior to the meeting at which the matter is discussed, in which case the memorandum shall be read publicly at the meeting prior to the consideration of this matter. If this is not done, the disclosure is to be made orally at the meeting, with a written memorandum to be filed within 15 days.

12. Requirement of Disclosure of Financial Interests

The following persons must file a statement of financial interests no later than July 1 of each year: persons occupying an elective municipal office; appointed members of city boards, commissions, and authorities, other than those which are only advisory in function, but including bodies which exercise “planning, zoning, or natural resources responsibilities,” whether advisory or not; and designated city employees. In addition, candidates for elective office must file a statement of financial interests at the time of filing qualifying papers, and any appointed officer must file a statement of financial interests within 30 days from the appointment.

The statement of financial interests must be filed even if the reporting person holds no financial interests requiring disclosure, in which case the statement shall be marked “not applicable.” Otherwise, the statement shall include identification of the reporting person’s (a) sources of income (personal and business), and (b) properties owned. Campaign contributions otherwise reported need not be included in this statement. Also to be included are certain liabilities, namely, “every liability which in sum equals more than the reporting person’s net worth.” By June 1 of each year, the county supervisor of elections is required to file a statement of financial interests. Statements should be filed by July 31 of each year.

13. Requirement of Disclosure of Clients Represented

Each local officer shall file a quarterly report with the county supervisor of elections giving the names of clients represented by the officer or any partner or professional associate for a fee or commission, except for ministerial matters, before local- government agencies. Certain exclusions from this requirement are included in state law. The supervisor of elections is required to send a copy of a prescribed form for this disclosure to each person required to file it. Statements should be filed no later than 15 days after the last day of the quarter.

14. Disclosure of Contributions

An elected municipal official must file an annual statement listing all contributions received, other than campaign contributions, and the disposition made of such contributions. The names and addresses of contributors and of receivers of funds must be given, and the dates of transactions. Check the statute with your city attorney for the latest requirements.

15. Solicitation and Disclosure of Honoraria

Honorarium is payment of money or anything of value, directly or indirectly, to a municipal officer or to any other person on his or her behalf as consideration for a speech, address, oration, or other oral presentation by the reporting individual regardless of how presented, or a writing by the reporting individual, other than a book which is not intended to be published. Honorarium does not include payment for services related to employment held outside the municipal officer’s public position or the payment or provision of actual and reasonable transportation, lodging, food, and beverage expenses related to the honorarium event for a municipal officer and spouse.

A municipal officer may not solicit honorarium which is related to his or her public office duties, nor may the officer accept honorarium from a political committee, a lobbyist of his or her agency or an employer, principal, partner, or firm of such a lobbyist.

A municipal officer who receives payment or provision of expenses related to any honorarium event from a person prohibited from paying honorarium, shall publicly disclose on an annual statement the name, address, and affiliation of the person paying or providing the expenses, the amount, the date of the event and a connection with the event. This annual statement shall be filed with the financial disclosure statement; the form for this statement is available through the supervisor of elections.

C. ENFORCEMENT AND PENALTIES

Violation of any standard or requirement of the Code of Ethics by a public officer (elected official, certain employees, and certain appointees to commissions, boards, and advisory committees) shall constitute malfeasance, misfeasance, or neglect of duty within the meaning of Article IV, Section 7, Florida Constitution and may be subject to appropriate criminal penalties under state law. Elected and appointed officials should review all statutory penalties, each year, to be familiar with changes in the law.

1. Suspension and Removal

Alleged violations of the Code of Ethics are investigated by the Florida Commission on Ethics, which has no punitive powers other than the publicizing of its findings. However, the commission may recommend punitive actions to the attorney general, who shall bring civil action to recover any civil penalty or restitution penalty recommended by the commission, or to the governor. The governor may suspend a city officer, and the Senate may remove from office or reinstate a suspended official. (See "Suspension and Removal of Public Officials" in this manual.)

2. Forfeiture of Retirement Benefits

A municipal officer or employee shall forfeit all retirement benefits to which otherwise entitled by virtue of municipal service (except for the return of his or her contributions) if convicted of a specified offense committed prior to retirement or if office or employment is terminated because of a specified offense.

D. COMPLAINTS ("WHISTLE-BLOWERS")

1. Confidentiality of Information

When an internal auditor or inspector general receives an ethics complaint from an individual, the name or identity of the individual shall not be disclosed to anyone other than the internal auditor or inspector general without written consent of the individual, unless the internal auditor or inspector general finds the disclosure unavoidable during the course of the audit.

2. Investigative Procedures

The procedure for investigating information given by an employee or former employee of a governmental agency (including a municipal entity) to the Office of the Chief Inspector General or to the agency inspector general as provided by law. This section only applies to the disclosure of information which includes:

1. a violation of any federal, state, or local law, rule or regulation which creates and presents a danger to the public's health, safety or welfare;
2. any act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

3. Statute of Limitations

All sworn complaints alleging a violation of Chapter 112 or any other breach of public trust under its jurisdiction shall be filed with the commission within five years of the alleged violation. The complaint and all related material shall remain confidential.

4. Frivolous Complaints

If the commission should find that a complaint was filed "with a malicious intent to injure the reputation of such officer or employee by filing...with knowledge that the complaint contains...false

allegations...,” the complainant shall be liable for costs plus reasonable attorney’s fees. A person filing such a complaint may also be punished for perjury or for improper public disclosure of a complaint.

E. ADDITIONAL REQUIREMENTS

“Nothing in this act shall prohibit the governing body of any political subdivision...from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part...”

REFERENCES

Florida Statutes: Chapter 112.

Section 3-4

The Commission on Ethics

The Florida Commission on Ethics was created by a statute in 1974, codified as Chapter 112, Part III, Florida Statutes. As stated, the commission's role is "to serve as guardian of the standards of conduct" for state and local government officers and employees. In 1976, by citizen initiative, the commission's existence was made a constitutional requirement, with its primary responsibility being "to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees..."

A. COMPOSITION

The Commission on Ethics consists of nine persons. Of these, five are appointed by the governor with no more than three from the same political party, subject to confirmation by the Senate (one shall be a former city or county official); two each are appointed by the Speaker of the House and the President of the Senate, respectively. Neither the President nor the Speaker may appoint more than one member from the same political party. Terms of appointment are two years. Members serve without salary. The members elect a chairman, and the commission shall employ an executive director and staff.

B. COMMISSION'S INVESTIGATORY FUNCTION

The mission of the commission is stated in broad terms in the Florida Constitution – to investigate **ALL** complaints concerning breach of trust (emphasis added). The Legislature has not implemented its expansive treatment of the commission's purpose, however. The only statutory statement of the commission's role is that which was contained in the 1974 statute: the "duty" of the commission is as stated as that of investigating alleged violations of "the code of ethics as established in this part" (part IV, ch. 112, F.S.), and of any other breach of public trust, as established in Article II, Section 8, Const.

C. OTHER COMMISSION FUNCTIONS

Other functions of the Commission on Ethics, as stated in a commission publication, are as follows:

1. renders advisory opinions to public officials;
2. prescribes forms for financial disclosure;
3. prepares mailing lists of public officials subject to disclosure laws for use by county supervisors of elections and the secretary of state in distributing forms and notifying delinquent filers;
4. makes recommendations to disciplinary officials, when appropriate, for violations; and
5. may file suit to void contracts entered in violation of the code.

D. FORMS

Forms provided by the Commission on Ethics for use by municipal officers and employees include the following:

- Statement of Financial Interests
- Quarterly Client Disclosure
- Disclosure of Specified Business Interests
- Memorandum of Voting Conflict
- Gift Disclosure for Elected Officers

Any person in need of these forms may request them from the county supervisor of elections or from the Florida secretary of state. There also is a specific form which must be used in the filing of a formal complaint.

E. ADVISORY OPINIONS

An advisory opinion concerning interpretation of the Code of Ethics may be obtained from the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709 or 3600 Maclay Boulevard, South, Suite 201, Tallahassee, FL 32312, (850) 488-7864, www.ethics.state.fl.us. Advisory opinions “on any question of law relating to the official duties of the requesting officer” may be obtained from the Office of the Attorney General, State of Florida, The Capitol, Tallahassee, FL 32399-1050, (850) 487-1963, <http://legal.firn.edu/opinions/index.html>.

REFERENCES

Florida Constitution: Chapter 112. Laws of Florida: Chapter 74-176. Also see *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, www.ethics.state.fl.us.

Section 3-5

Bribery

A. OFFENSES

It is unlawful for a municipal officer, agent or employee or any candidate for such an office or position, including anyone “who seeks or intends to occupy any such office,” to accept or to seek a bribe or other benefit not authorized by law in return for an action or non-action or the promise of such.

“Bribery” occurs when a benefit is offered for the purpose of **influencing** the public servant’s action. A “benefit not authorized by law” is involved when the benefit is offered as a **reward** for an action or non-action, but without an intent of actually influencing such. The difference between the two types of offenses is a fine one, and of little importance, since both are defined as third-degree felonies.

It is also illegal for a public servant to accept or seek a benefit not authorized by law for any exertion of influence upon or with any other public servant.

B. PENALTIES

Each of the offenses identified in Chapter 838 is defined as a third-degree felony, punishable by a term of imprisonment not exceeding five years and a fine not exceeding \$10,000.

REFERENCES

Florida Statutes.

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Section 3-6

Campaign Finances and Conduct

Candidates for elective municipal office must comply with laws governing campaign financing, disclosure of interests and behavior as a candidate.

Your city attorney should brief you annually on changes to campaign finance laws, and provide copies of necessary reporting forms and deadlines. This information should also be included in new official's orientation.

REFERENCES

Florida Statutes: Chapters 102, 106, 112 and 838.

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Section 3-7

Suspension and Removal

A. SUSPENSION AND REMOVAL OF MUNICIPAL OFFICIALS

The governor may suspend from office any **elected or appointed** municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence or permanent inability to perform his or her official duties. A municipal official may be suspended by the governor if arrested for a felony or misdemeanor related to duties of office or who is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.

A temporary vacancy in office created by such suspension shall be filled by a temporary appointment to the office for the period of the suspension. If no provision is provided by law for this appointment, the governor may make the appointment.

Suspended municipal officials shall not perform any official acts, duties or functions or receive pay or allowance or be entitled to any emoluments or privileges of the office during the suspension.

If an official is convicted of a felony or misdemeanor, the governor shall remove the official from office; any person pleading guilty or no contest shall be deemed to have been convicted. If the suspended municipal official is found not guilty or acquitted of the charge for which he was suspended, the official shall be reinstated and receive full back pay and benefits for the entire period of suspension. If the term of office terminates during the period of suspension, the official shall be compensated only for the portion of the suspension period during the term of office, and will not be reinstated.

B. SUSPENSION AND REMOVAL OF MUNICIPAL BOARD MEMBERS

For the purposes of this section, "board member" is defined as any person who is appointed or confirmed by the governing body of a municipality to be a member of a board, commission, authority, or council created by law or municipal charter.

After giving sufficient reasoning to the board member for his suspension or removal and after reasonable notice to the board member and an opportunity for him or her to be heard, the governing body of the municipality may:

1. suspend or remove from office any board member for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence or permanent inability to perform the official duties; and
2. suspend from office any board member who is arrested for a felony or misdemeanor related to the duties of office, or who is indicted or informed against for the commission of and federal or state felony or misdemeanor.

A municipal governing body may also remove any board member who is convicted of, or pleads guilty or no contest to, a state or federal felony or misdemeanor.

A suspended board member may be reinstated at any time by the governing body.

A temporary vacancy in the office created by suspension shall be filled by a temporary appointment to the office for the period of suspension. If no provision is provided by law, the governing body shall make the appointment.

Suspended board members shall not perform any official acts, duties or functions, or receive pay allowance, or be entitled to any emoluments or privileges of the office during suspension.

If a suspended board member is found not guilty or acquitted of the charge for which expended, the board member shall be reinstated and receive full back pay and benefits for the entire period of suspension. If the term of the office terminated during the suspension period, the board member shall be compensated only for the portion of the suspension period during the term of office, and he or she shall not be reinstated.

REFERENCES

Florida Statutes: Chapter 112.

Section 3-8

Recall

Provision for the recall of a city council member is made in the Florida Statutes. Any municipal council member may be removed from office through the recall procedure by the electors of the city or, if the member is elected by vote within a district, by the electors of the district.

Grounds for removal are:

1. malfeasance
2. misfeasance
3. neglect of duty
4. drunkenness
5. incompetence
6. permanent inability to perform official duties
7. conviction of a felony involving moral turpitude

It is noted that the recall provision applies only to “any member of the governing body” of the city.

The provisions of the recall act “shall apply to cities and charter counties whether or not they have adopted recall provisions.”

REFERENCES

Florida Statutes.

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Chapter 4

The Policy-Making Process

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Section 4-1

Council Meetings

Council meetings, and the procedure and records thereof, are the heart of municipal-government activity. The proper conduct of meetings is of great importance to successful municipal functioning. Formal decisions must be made in an orderly, timely manner, with adequate input from an informed public. To satisfy these requirements is a complex task, which must be conscientiously addressed by council members and staff.

A. TYPES OF MEETINGS

Council meetings are of two general types – legislative and non-legislative.

1. Legislative Meetings

Legislative meetings are those at which formal action may be taken on policy proposals, in the form of adoption or rejection of proposed ordinances and resolutions. Legislative meetings may be either regular meetings or special meetings.

a. Regular Legislative Meetings

Regular legislative meetings are those which occur according to a pre-announced schedule. There is no requirement in Florida law concerning the frequency of such meetings. The municipality itself may determine the frequency of such meetings, which may be prescribed by charter or by ordinance. Many municipal charters throughout the state prescribe regular meetings and require that the meeting schedule be set at an annual or semi-annual organizational meeting of the council.

Since state law prescribes no particular schedule or frequency of regular council meetings, each municipality is free to establish its own schedule. As a general rule, regular council meetings occur more frequently in larger cities and less frequently in smaller towns, but there are many exceptions to this rule; the largest number of cities meet twice a month, with the second largest number meeting monthly.

One important feature of the legislative meeting is the public-forum aspect. This feature assumes a much larger role in some municipalities than it does in others; however, it is always present to some degree because legislative meetings are always open to the public and press. The legislative meeting always allows the public an opportunity to hear the council discussion on each subject. The legislative meeting generally includes at least a period for citizen comment and often incorporates a formal public hearing on one or more subjects.

b. Special Legislative Meetings

An emergency or other special situation may require the convening of a special legislative meeting, that is, one which does not occur according to the pre-announced schedule. The procedures for calling special meetings should be provided in the municipal charter or by ordinance. While the occasional need for such meetings is inevitable, a council should not abuse the practice of having unscheduled meetings on short notice. Special meetings should be well advertised so as to not violate the state open-meetings law.

2. Non-Legislative Meetings

Non-legislative meetings are meetings at which formal action on ordinances and resolutions may not occur. Non-legislative meetings include workshops, public hearings, and organizational meetings.

a. Workshops

Workshops are essentially “shirtsleeve” meetings where the council discusses topics informally in order to achieve a better understanding of them. Occasionally, work sessions are held in a room away from the formal council chamber, with a “round table” meeting arrangement, in order to promote informal discussion.

These sessions may take many forms and may address virtually any subject matter. A typical workshop may consist of background discussion about numerous items scheduled for official action at the next regular legislative meeting; for example, a council may discuss possible designs for a new playground, hear status reports, discuss an ordinance that has been introduced and awaits enactment, and consider ideas for new programs. Some subjects, such as the annual budget, may be the sole topic of one or several entire workshops.

Workshops are not formal legislative meetings; therefore, no official action can be taken. In order to allow some understanding of the status of discussion of items, unofficial “straw votes” may be taken to determine the sense of the council concerning each item. These votes are not binding on the council members at a subsequent legislative meeting when formal votes are taken, but they do serve as a reasonable indicator of council sentiment for council members, staff, press, and the public.

Workshops must be open to the public in compliance with the open-meeting law. The format, however, may be an open-ended, informal, discussion; it is intended to allow council members the ability to discuss agenda subjects in a give-and-take fashion without the formality of hearings, formal motions, and written reports. The number of council members and staff participating in these discussions, combined with the tentative nature of many of the subjects, leads most councils to prohibit citizen participation during work sessions. Citizens (and press) are welcome as observers, but may not participate in discussions unless called on as resource persons.

If a city council has a sizable workload, it may be a good idea to schedule regular dates and times for work sessions throughout the year, allowing the council and staff to plan workloads, schedule other events, and provide notice to the public of such meetings.

b. Public Hearings

Public hearings are held when the council is considering a subject having unusually high community impact and when the council is considering items for which local, state, or federal regulations require such hearings. An issue on which a public hearing is held may be the subject of several workshops and may generate more citizen participation than can be accommodated at a regular legislative meeting, with its other normal business items. An additional meeting for a public hearing can be valuable by providing the public an opportunity to learn the current status of a project and by giving the council clear indications of public sentiment before making a decision. Additional work sessions and council action at a subsequent legislative meeting generally follow the public hearing.

c. Organizational Meetings

In most municipalities, an organizational meeting is held soon after each election. Local practices vary somewhat, but the usual practice at such meetings is to establish dates, times, and locations of regular council meetings, to adopt rules for the conduct of business (*Robert's Rules*, Code of Conduct, etc.), and to elect officers and/or assign roles (e.g., mayor pro-tem, committee assignments). In most cities the council adopts and publishes a schedule of meeting dates for the year.

B. CONDUCT OF MEETINGS

Several aspects of the conduct of council meetings will be reviewed briefly here. Some of these are reviewed in greater detail in other chapters of this manual.

1. Open-Meeting Requirement

Since 1967, the Florida Legislature has required that most government business be conducted “in the sunshine,” – that is, in an open and public manner. A key element of that policy is found in the Florida Statutes, commonly known as the “Government-in-the-Sunshine-Law,” which requires that the meetings of any agency or authority of a city government shall be open to the public. This open-meeting requirement extends not only to the council but also to council committees, citizen advisory committees, and municipal boards and commissions. “[N]o resolution, rule, or formal action shall be considered binding except as taken or made at such meeting,” that is, at a meeting which satisfies the requirements of the Florida Statutes. Any citizen may obtain a circuit-court injunction to enforce the purposes of the open-meeting requirement. Any public officer who **knowingly** violates any provision of the open-meeting requirement is guilty of a second-degree misdemeanor. (The provisions of the Florida Statutes, are discussed in more detail in “Public Meetings” in this manual.)

Although citizens must be allowed to attend all meetings of the public body, there is no requirement that citizens be allowed to **participate** in these meetings. However, in practice, citizen participation is routinely permitted, particularly at the public hearings and legislative meetings.

2. Advance Notice Requirement

Reasonable advance notice is required of every meeting. There are several acceptable methods to provide notice of council meetings. The most commonly-used methods are the printing of notices in local newspapers and the posting of notices at convenient locations. The front door of city hall and a bulletin board in the lobby of city hall are common places for such notices. The notices must include the date, time, and place of the meeting.

In some cases, municipal officials must comply with additional federal, state, or local regulations regarding “reasonable advance notice.” These regulations may govern the content of the notice, the number of newspapers in which the notice must be published, the number of times that the notice must appear, the length of time between the last publication and a public hearing, and/or the portion of the newspaper in which the notice may be placed. (Some regulations require placement in the legal section, while others specify that notices be published in a non-legal section of the newspaper.) Examples of items subject to additional regulations pertaining to “reasonable advance notice” are:

1. decisions governing the allocation of federal grants and other federal funds;
2. rezoning and zoning-text amendments;
3. charter amendments; and
4. annexation.

3. Agenda

There is no legally prescribed format for agendas of council meetings. The agenda for a regular meeting is often organized so that subjects involving persons in the audience and requiring public comment will be heard at the earliest possible time. This will allow visitors to complete their business with the council at an early hour and allow for public comment to be fully heard. Similarly, reports of council committees and citizen advisory committees should be provided in the early part of the meeting in order to assure full council consideration of the committee recommendations.

Many municipal councils provide a section of their meeting for a “consent agenda.” These are items which are considered routine business and which rarely need discussion time in the council meeting. Examples of these items include approval of the minutes, payment of bills, renewal of leases, and certain minor proclamations and resolutions. Items listed on the consent agenda may be adopted by one comprehensive motion which moves the approval of this portion of the agenda. Customarily, council procedures do not allow discussion of consent-agenda items. If discussion is needed, the item is typically removed from the consent agenda prior to voting on the comprehensive motion. The item would then be placed on the regular agenda of the meeting under either “New Business” or “Old Business.”

Most items included on the agenda for council action are classified either as “New Business” or “Old Business.” Agendas usually list “old” business prior to “new” business in order to allow completion of matters already under discussion before opening new subjects for consideration.

It is important that agenda items be clearly identified in the printed agenda. If the listing of an item on the agenda clearly describes the subject and the action being taken, everyone present will have a clear understanding of the proceedings, and debate on the subject will be shortened. Clarity of agenda items is especially important with respect to the consent agenda, since no discussion or additional information is provided to council members or the public.

It is helpful to members of the council and the public to indicate the time of day at which discussion of each item is anticipated. These indications provide general guidance to participants and observers and can be a useful courtesy to persons having business before the council.

4. Minutes and Other Records

The State of Florida sets minimal requirements concerning minutes and records of council meetings. Written minutes are required simply to be recorded and made open to public inspection and reflect the items considered, actions taken, and final votes taken. Minutes should provide a reasonable summary of the activities which occurred at the meeting, but they are not to be word-for-word transcriptions of the proceedings. A common practice which simplifies minute-taking is the attachment of relevant documents to the minutes. Examples of these attachments include reports, written testimony, correspondence, and ordinances and resolutions. Every ordinance or resolution shall be recorded in a book kept for that purpose and shall be signed by the presiding officer and the council clerk.

All municipal records shall be open for a personal inspection by any person. For more on this subject, see “Public Records” in this chapter of the manual.

5. Parliamentary Procedures

Many guides are available which can be used as procedural guidelines for council meetings. One of the most common of these is *Robert's Rules of Order*. Some larger public bodies, such as the U.S. Congress, have written and adopted their own rules of procedure. It is recommended that every legislative body adopt procedures for itself, as this gives standing to the public meeting process, and gives the council a starting place when the subject of reform is raised. There is no statutory requirement that municipal councils draft their own procedures, use *Robert's* or another procedural manual, or adopt official procedures at all. For more on this subject, see the following section of this manual, "Parliamentary Procedure."

6. Requirement to Vote

Except when abstaining from voting, each member of a municipal board, commission, or agency who is present at a meeting must vote on each decision, ruling, or other official act, and a vote shall be recorded for each member present.

For requirements to abstain from voting in certain situations, see Chapter 3, Section 3-3 of this manual, "The Code of Ethics."

REFERENCES

Florida Statutes: Chapters 112 and 286

Robert's Rules of Order

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Section 4-2

Parliamentary Procedure

A working knowledge of parliamentary procedures is helpful for all council members and is essential for the presiding officer of a council, if council meetings are to be fairly and efficiently conducted. Elected officials – and, for that matter, staff members who work directly with the council, committees, or boards – are urged to acquaint themselves with basic parliamentary procedure.

A. AN OVERVIEW OF BASIC RULES

The following article is based upon an article prepared for the Alabama League of Municipalities by John F. Watkins, Perry C. Roquemore, Jr., and Drayton N. Hamilton. Updated information has been added to make the article more current; minor editorial changes have been made so that the article will better conform to the editorial style of this manual.

Parliamentary law is defined by Black as the general body of enacted rules and recognized usages which govern the procedure of legislative assemblies and other deliberative bodies. Sturgis defines parliamentary law as the code of rules and ethics for working together in groups.

1. History

Parliamentary law has evolved through the centuries out of the experience of individuals working together for a common purpose. The name, of course, is derived from the mother of parliaments, the forum of the House of Commons of Great Britain. Parliament is noted for its zealous regard for the right of free and fair debate, the right of the majority to decide, and the right of the minority to protest and be protected.

Parliamentary procedure became uniform in 1876 when Henry M. Robert published his manual on parliamentary law. Today, there are several excellent books on parliamentary procedure, including *Robert's Rules of Order Newly Revised* latest edition and *Mason's Manual of Legislative Procedure*.

2. Significance

"Procedure is more than formality. Procedure is, indeed, the great mainstay of substantive rights...Without procedural safeguards, liberty would rest on precarious grounds, and substantive rights would be imperiled." Justice William O. Douglas.

In the case of **McNabb v. U.S.** (318 U.S. 332), the court states, "The history of liberty has largely been the history of observance of procedural safeguards." Any great principle or right is only as strong as the procedures that support and enforce it. To vote by secret ballot is a fundamental right, but it is meaningless unless supported by procedures that ensure equal opportunity to vote, freedom of choice, absolute secrecy, and honesty in tabulation. Unless parliamentary procedure is observed, the rights of free speech, free assembly, and freedom to unite in organizations are useless and hollow rights; parliamentary procedure gives reality to these democratic concepts.

3. Rules

The rules of parliamentary procedure are found both in the common law and in statutory law. Common law has given us the principles, rules and usages which have been developed from court decisions on parliamentary questions and is based on reason and long observance. These rules apply in all situations except where a statutory law governs. The statutory law of procedures consists of statutes relating to procedures that have been enacted by federal, state, or local legislative bodies. These rules apply only to the particular organizations covered by the law.

Parliamentary procedure is essentially common sense, is simple to understand, and is easy to use. It works magic in meetings and enables members and organizations to present, consider, and carry out their ideas and to transact business with efficiency and harmony. The rules can be used to destroy as well as to construct, but only when a majority of the members are ignorant of their parliamentary rights.

4. Sources of Rules

There are three basic sources of rules and, arranged in order of rank, they are:

1. **Law** – Statutes enacted by federal, state, or local governments are the highest source.
2. **Charter** – The charter granted by government to an organization ranks second.
3. **By-Laws** – The by-laws and other adopted rules of procedure on procedural questions not covered by other sources, is last in precedence.

Clearly, rules of one source may not conflict with the rules of a higher rank; in the event of conflict, the higher source must be observed.

5. Principles of Parliamentary Procedure

The primary principle of procedure is to facilitate the transaction of business and promote cooperation and harmony. Such procedure should not be used to entangle and confound the uninformed but rather to expedite business, avoid confusion and unfair advantage, and protect the rights of members.

Several basic procedural rules have been developed to assure that the simplest and most direct procedure for accomplishing a purpose is observed:

1. Motions have a fixed order or precedence, and only one motion may be considered at a time.
2. All members have equal rights, privileges, and obligations. The presiding officer must be impartial and should use his or her authority to protect and preserve the equal rights of every member to propose motions, speak, ask questions, vote, etc.
3. The ultimate authority in an organization is vested in the majority, and a primary purpose of procedure is to determine the will of the majority and carry it out. Once a question has been voted on, the decision becomes that of the organization and each member should accept and abide by the result.
4. Members of the minority are entitled to the same consideration and respect as members who are in the majority. The protection of the rights of all, both majority and minority, must be the concern of every member.
5. Each member is entitled to full and free discussion, and each has the right to express his or her opinion fully and freely without interruption and interference, within the framework of the rules.

6. Each member is entitled to know the meaning and effect of each question presented, and the presiding officer should keep the pending motion clearly before the assembly at all times. Upon request, the presiding officer should explain any procedural motion and its effect so that every member may understand the proceedings.
7. Lastly, but not necessarily the least important principle, all meetings must be characterized by fairness and good faith. Trickery, dilatory tactics, dealing in personalities and railroading are, or should be, taboo. Fraud, unfairness, or absence of good faith may be grounds for a court to invalidate action taken.

6. Classes of Motions

A motion is the formal statement of a proposal or question to an assembly for consideration and action. Motions are classified into four groups, namely, main motions, subsidiary motions, privileged motions, and incidental motions.

a. Main Motions

A main motion is the foundation of the conduct of business. There are three subsets to main motions that have specific names and are governed by somewhat different rules; they are referred to as "specific main motions" to distinguish them from the main motion. They are:

1. "Reconsider,"
2. "Rescind," and
3. "Consideration" (take from the table).

b. Subsidiary Motions

Subsidiary motions are alternative aids for changing, considering, or disposing of the main motion and are therefore subsidiary to it. The most frequently used are:

1. "Postpone temporarily" (lay on table),
2. "Vote immediately" (previous question),
3. "Postpone definitely,"
4. "Limit debate,"
5. "Refer to a committee,"
6. "Amend," and
7. "Postpone indefinitely."

c. Privileged Motions

Privileged motions have no connection with the main motion before the assembly. They are emergency motions and of such urgency that they are entitled to immediate consideration and are acted on ahead of other motions. These motions are:

1. "Adjourn,"
2. "Recess," and
3. "Question of Privilege."

d. Incidental Motions

Incidental motions are merely incidental to the business of the assembly and usually relate to the conduct of the meeting and not to the main motion. They are offered at any time when needed. The most frequently used of this class of motion are:

1. "Appeal,"
2. "Suspend the rules,"
3. "Point of order,"
4. "Parliamentary inquiry," and
5. "Division of the question."

Classification of motions is usually based on the relation of that motion to the main motion. The main motion is the foundation that determines the classification of other motions, and the presiding officer must be alert to the effect and purpose of a motion so as to properly classify it and rule accordingly.

7. Presentation of Motions

The presentation of a motion is made by addressing the chair, gaining recognition, proposing the motion, and having it seconded, followed by the presiding officer stating the motion to the assembly. When the chair recognizes the speaker he or she is said to "have the floor," and other members should permit him or her to present the motion or to speak. The motion is stated, "I move that..." and is the only correct way; it gives notice to the chairman or presiding officer and to the membership that the speaker is submitting a proposal for decision. Terms as "I move you," or "I so move," are not as proper, but are sometimes used. Lengthy motions should be written and a copy handed to the clerk or secretary and the presiding officer.

Once the motion is made, most rules require a second. This is done by saying "I second the motion" or simply "Second the motion." No recognition is required to second except that the minutes should show who made the motion. If no one seconds the motion, the chair announces, "The motion is lost for want of a second." The presiding officer has the duty to state all properly presented motions to the body and must do so correctly and clearly.

Usage has established proper phraseology for stated motions, and this language should be learned and utilized. Subsidiary motions are generally stated as follows:

1. Motion to limit debate: "I move that debate on the proposed assessment be limited to one hour."
2. Motion to postpone definitely: "I move that all reports of special committees be postponed until the next regular meeting."
3. Motion to refer to committee: "I move that we create a sub-committee to consider the motion and report at the next meeting."
4. Motion to amend: "I move that the motion be amended by adding the words..."

Privileged and incidental motions are stated simply:

1. "I move we adjourn," or "I move we adjourn promptly at 9:00."
2. "I move that we recess for five minutes," or "I move we recess until 8:00."
3. On a question of privilege – "I move that the city engineer be asked to report his or her findings on the seashore drainage project."

8. Basic Rules of Motions

Rules governing motions are definite and logical. If a member understands the purpose of a motion he or she can usually reason out the rules governing it. You should ask yourself the following questions about each motion:

1. What is its precedence?
2. Can the motion interrupt the speaker?
3. Is a second required?

4. Is it a debatable motion?
5. Can it be amended?
6. What are the requirements of votes for this particular motion?
7. To what other (usually previous or pending) motion does this motion apply?
8. What other motions (which could be proposed) can be applied to the motion?

a. Precedence

To avoid confusion, each motion is assigned a definite rank. Each assembly may – and many do – establish a permanent and definite series of rules of precedence or rank to all types of motions. The customary ranks are as follows:

1. Adjourn,
2. Recess,
3. Question of privilege,
4. Postpone temporarily,
5. Vote immediately,
6. Limit debate,
7. Postpone definitely,
8. Refer to committee,
9. Amend,
10. Postpone indefinitely, and
11. Main motions.

It should be noted that the first three types in the above list are privileged, types four to 10 are subsidiary, and type 11 treats the main motion. In the latter case, there is a group of motions known as specific main motions which include “Reconsider,” “Rescind,” and “Resume consideration.”

There are two basic rules of precedence:

1. When a particular motion is being considered, any motion of higher precedence may be proposed but no motion of lower precedence may be proposed. For example, when a main motion is pending, a member may move to refer to committee and another may move to recess.
2. Motions are considered and voted upon in reverse order to their proposal. The motion last proposed is considered and disposed of first. For example, if motions are proposed as above they are considered in reverse order, i.e., to recess, to refer to committee, and then the main motion.

b. Interruption of Speaker

Two types of motions, because of their urgency, permit the speaker to be interrupted.

The first type are those which must be decided within a specific time limit: reconsider, object to consideration, appeal, and division of the assembly. Reconsider must be made during the same meeting at which the vote which is to be reconsidered was taken. (Special rules of a continuing assembly may slightly alter this procedure.) An objection to consideration must be made before progress in considering the main motion and before any other motion has been applied to it. An appeal and a call for division of the assembly must be made before other business intervenes.

The second type relates to immediate rights and privileges of a member of the body. These include: question (or point of) privilege, point of order, and parliamentary inquiry. To justify interrupting a speaker, a parliamentary inquiry must relate to the speaker, his or her speech, or some other matter that cannot be delayed until the completion of the speech. A point of privilege to justify interruption must involve the immediate comfort, convenience, or rights of the assembly, and points of order must relate to mistakes, errors, or a failure to comply with the rules or, if it relates to the speaker or his or her speech, to some error that cannot wait for completion of the speech for its determination.

9. Debates

Some motions are open to full debate, others to restricted debate, and some are undebatable. Main motions and motions relating thereto (such as amendments, reconsideration, postponement, and appeal) are fully debatable. These motions require the consideration and decision and explanation by the membership.

Three motions are open to restricted debate: "Recess," "Postpone definitely," and "Refer to a committee." Such debates must deal with specific points, i.e., on a motion to recess, a discussion of the desirability and duration of the recess; on a motion of postponement, as to the advisability and the time of postponement; and on a motion to refer to a committee, as to the advisability, selection, duty and instructions to the committee.

All other motions are undebatable; for example, motion to adjourn, postpone temporarily, vote immediately and certain incidental motions, such as suspension of rules and requests to the chair. It is noted that these motions deal with simple procedural issues.

The presiding officer must enforce the rules of debating since to deny or curtail debate on debatable motions tends to deprive the members of their rights and could well result in unsound decisions. Permission to debate undebatable issues is likewise unfair and discriminating and could well bog down a meeting.

10. Amendments

Oftentimes, it becomes apparent that a motion approaches the consensus of thinking of an assembly but lacks the "finishing touch" to make it entirely acceptable to a majority of the members. An amendment may add just what is required to enable the members to vote approval of the idea or proposal.

A simple test determines whether a motion can be amended. If it can be stated in different words, it can be amended. The motion, "I move we recess for 10 minutes," could as well be stated, "I move we recess for 15 minutes." Clearly, the latter is a valid amendment and may actually express the will of the majority, whereas 10 minutes might be considered a sheer waste of time.

A motion that cannot be stated in different words cannot be amended. The motion to postpone indefinitely, for example, can be stated in only one way and, therefore, cannot be amended.

Some motions can be amended freely, some can be amended with restrictions, and some cannot be amended as cited above. Main motions and amendments can be amended freely. The motions to recess, limit debate, and postpone definitely can only be amended as to time. A motion to refer to committee can be amended only as to details of the referral to committee, i.e., selection, duties, instructions, etc.

11. Votes

All motions require at least a majority vote to pass. Four motions modify the rights of members to propose, discuss, and decide proposals and therefore require a two-thirds vote. These are motions to vote immediately, to limit debate, to suspend rules and to object to consideration.

Municipal governing bodies operate under statutory requirements in passing certain types of legislation and such statutes must be followed to validate the action taken.

12. Applications

When a motion is being considered, it is important to know what other motions can be applied to it.

1. Every motion can have the motion "to withdraw" applied to it. Such a motion is often used to save the embarrassment of defeat or actually to "save face"; you can interrupt the speaker to propose it, no second is required, and it is not amendable or debatable.
2. All debatable motions can have the motions "to vote immediately" and "limit debate" applied.
3. All motions that may be worded or stated in more than one way can have the motion to amend applied to them.
4. The main motion can have all the subsidiary and specific main motions applied to it, as well as "object to consideration." Specific main motions can have no other motions applied to them except that "reconsider" and "rescind" may have "vote immediately" and "limit debate" applied to them.
5. Privileged and incidental motions can have no other motion applied to them, except that "recess" may be amended and an "appeal" may have "vote immediately" and "limit debate" applied to it.

To renew a motion means to propose again the same or substantially the same motion that has been voted on and lost. When a "main" motion has been voted on and lost, the same or substantially the same motion, though worded somewhat differently, cannot be renewed at the same meeting. It can, however, be reconsidered at the same meeting or proposed as a new main motion at a later meeting. All other motions may be renewed whenever, in the judgment of the presiding officer, the members might reasonably be expected to act or vote differently on the subject matter or issue. The problem is for the presiding officer to make a reasonable judgment. He or she is aided in arriving at this decision by action taken on intervening business, progress in debate, or change in the parliamentary situation. It would be futile to permit renewal unless there is reason to believe that a different result will be obtained on the second consideration. In any event, his or her decision can be appealed, and thus the members will have the opportunity to express themselves a second time.

13. Reconsideration

Usually, when an assembly decides a main motion by taking a vote on it, the decision is final. An assembly, like an individual, may change its mind and, therefore, motions have been developed to permit the change. Such motions are "reconsider," "rescind," and "amend" by a new main motion.

The motion to reconsider the vote on a main motion that either carried or lost can be proposed during the same meeting at which the main motion was voted on. Action to renew a main motion that was "lost" cannot be taken at the same meeting but may be taken by a new main motion, and a motion to repeal may be applied to motions that have carried.

Before new motions are proposed, the minutes should be checked to ascertain whether the new motion conflicts with previous action of the assembly, since the effect of the new motion may conflict with prior actions and positions.

B. CONCLUSION

We conclude, as we began, by recommending that every member of an assembly, regardless of its function or purpose, study and master the rules of parliamentary procedure; the assembly will operate more smoothly and every member will be aware of his or her own rights as well as the rights of other members. The rights and privileges of every member will be better protected and promoted. Essentially, the rules are based on logic which everyone can learn and apply with a little bit of homework. The effort will be most rewarding to the individual, as well as to his or her associates.

REFERENCES

Robert's Rules of Order. Mason's Manual of Legislative Procedure (National Council of State Legislators: December 2000). Out-of-print but available: *Demeter's Manual of Parliamentary Law and Procedure*, George Demeter, (Boston, MA: Little, Brown and Company, 1969). *Essentials of Committee Management*, John E. Tropman, et al, (Chicago: Nelson-Hall, 1979). *Making Meetings Work: A Guide for Leaders and Group Members*, Leland P. Bradford, (LaJolla, CA: University Associates, 1976). *Meeting Management: A Professional Approach*, James E. Jones, (Stamford, CN: Bayard Publications, 1984). Updated information was provided by the Florida Institute of Government, University of Central Florida.

Section 4-3

Ordinances and Resolutions

A principal activity of municipal councils is the adoption of ordinances and resolutions.

A. ACTION TYPES: ORDINANCES AND RESOLUTIONS

Most of the action taken by municipal councils is accomplished by simple motion. A motion may be stated orally ("Mr. Chairman, I move that we approve...") and need not be put in writing beforehand. To be adopted, usually a motion must be approved by a simple majority of a quorum present; provision may be made in the municipal charter or code for a requirement of approval by an extraordinary majority for specified classes of action by the council, e.g., for rezoning actions.

Actions taken by a council range from those which are very simple to those which involve weighty considerations of great importance. Examples of the former include matters of council procedure ("I move that we observe a minute of silence in honor of...," "I move that we recognize the accomplishments of Seabreeze High School Band, which..."); and simple legal formalities ("I move that we accept the report," "I move that we approve the contract, as recommended by staff").

Council actions often involve voting on ordinances and resolutions. The authority to enact municipal legislation is implicit in the constitutional grant of authority to municipalities to exercise "the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services" (Art. 8, sec. 2(b), Florida Const.).

Statutes recognize two types of formal actions by municipal councils – ordinances and resolutions.

1. Ordinances

An ordinance is an official legislative action which establishes "a regulation of a general and permanent nature and enforceable as a local law" (F.S.).

2. Resolutions

A resolution is a less substantial action and may be "an expression...concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body" (F.S.). Actions of a law-making nature must be accomplished in the form of an ordinance, not a resolution.

B. SCOPE OF AUTHORITY

The policy-making authority of city governments is defined by a broad general grant of powers – "home rule" – and by two specific limitations.

1. Home Rule Powers

The municipal governments of Florida enjoy “**home rule**” powers granted through Article VIII, Section 2, Florida Constitution, and the Municipal Home Rule Powers Act, which is located in Chapter 166, Florida Statutes. The law stipulates that a municipality “may exercise any power for municipal purposes, except when expressly prohibited by law” (s. 166.021(1), F.S.); that the grant of powers to municipal government shall be construed liberally; and that it is the legislative intent “to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited” (s. 166.021(4), F.S.).

2. Restrictions

Thus, the municipal authority to act is quite broad, and is subject to only two restrictions:

1. Any municipal action must be for a “municipal purpose.” Municipal purpose is defined as “any activity or power which may be exercised by the state or its political subdivisions.” Because of the breadth of this definition, the “municipal purpose” requirement seldom is restrictive.
2. A municipality may not do anything that is expressly prohibited by law. In broadest terms, this may be taken to mean that municipal action may not conflict with the U.S. Constitution or laws, with the Florida Constitution or laws, or with the municipality’s own charter. Examples include:
 - a. A municipality may not violate the U.S. Constitution by denying someone the “equal protection of the laws” or “due process” (14th Amendment).
 - b. A municipality may not violate U.S. law, such as the Fair Labor Standards Act, civil rights laws or environmental protection laws.
 - c. A municipality may not exercise powers which are expressly prohibited by the Florida Constitution, such as unilateral annexation, merger or exercise of extra-territorial powers (Art. VIII, sec. 2(c), Florida Const.).
 - d. A municipality may not exercise powers expressly prohibited or preempted by state law, such as imposition of price or rent controls (with specified exceptions), regulation of possession and sale of ammunition, and imposition of taxes, other than ad valorem taxes, without general law authorization do so.

Note that reference is made, above, to preemption as well as prohibition. A municipality may not exercise a power which has been expressly preempted either by state constitution or by state statute. Preemption is not always complete, however; partial preemption restricts the area of municipal action but does not completely preclude it.

To summarize, the general principle concerning municipal authority is that any subject not expressly prohibited or preempted may be legislated on by a city council. In general, the Florida Supreme Court has given a broad interpretation to this statement of municipal legislative power.

C. PROCEDURAL REQUIREMENTS

Procedures for the adoption of ordinances and resolutions are prescribed in the Florida Statutes. While a city council may specify additional procedural requirements, it may neither lessen nor reduce the requirements of the statute, or other requirements as provided by general law.

1. General Requirements

Certain requirements apply to all formal policy-making by city councils. These requirements, as specified in the Florida Statutes, are as follows:

1. Each ordinance or resolution shall be introduced in writing.
2. Each ordinance or resolution shall embrace but one subject and matters properly connected therewith.
3. The subject of each ordinance or resolution shall be clearly stated in the title.
4. No ordinance shall be revised or amended by reference to its title only.
5. An ordinance to revise or amend shall set out in full the revised or amended part.
6. A proposed ordinance must be read, either by title or in full, on at least two separate days.
7. At least 10 days prior to adoption, a proposed ordinance must be noticed once in a newspaper of general circulation in the city; this notice shall state the date, time, and place of the meeting at which the ordinance may be adopted, title of the proposed ordinance, and places where the proposed ordinance may be inspected. The notice shall also advise that interested parties may be heard at the meeting. By a two-thirds vote, the council may enact an **emergency ordinance** without complying with these notice requirements; however, neither changes to land uses or zoning nor amendment of a land-use plan may be done by emergency ordinance.
8. A majority of the council's members shall constitute a quorum; any ordinance or resolution must be approved by an affirmative vote of a majority of a quorum present, except that two-thirds of all members is required for enactment of an emergency ordinance.
9. Votes on final passage shall be entered on the official record of the meeting.
10. All ordinances and resolutions become effective as provided therein or, otherwise, 10 days after passage.
11. Every approved ordinance or resolution shall be recorded in a book kept for that purpose and shall be signed by the presiding officer and the clerk of the governing body.

2. Special Requirements for Zoning or Land Use Changes

Special procedural requirements exist for an ordinance which would rezone specific parcels of real property or which would substantially change permitted uses within zoning categories. These requirements are as follows:

1. If the proposed rezoning or change involves land of less than 10 contiguous acres, the council's clerk shall notify by mail each property owner whose property will be affected by the proposed change. The notice shall state the substance of the proposed ordinance and shall set a time and place for one or more public hearings. The notice of meeting shall be given at least 30 days in advance, and a copy of the notice shall be kept available for public inspection at the council clerk's office. The council shall hold a public hearing, as announced, and may adopt the ordinance at that time.
2. If the proposed rezoning or change involves land of 10 contiguous acres or more, two public hearings must be held, with at least one after 5:00 p.m. on a weekday; the first hearing shall occur at least seven days after the advertisement and the second hearing shall occur at least 10 days later.

NOTE: Section 166.041(3)(c), F.S., allows a municipal governing body, by a majority plus one vote, to conduct public hearings on ordinances that rezone real property or which effect the use of land at other times than after 5:00 p.m. on weekdays.

Advertisements of the hearings must appear “in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter”; where possible, notice must be in a paper published at least 5 days a week. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified ads appear, and it must meet specified size requirements. The advertisement shall be in the following form:

NOTICE OF (TYPE OF) CHANGE

The...(name of local government unit)...proposes to adopt the following ordinance: (title of ordinance).

A public hearing on the ordinance will be held on...(date and time)...at...(meeting place)...

The advertisement shall also contain a geographic location map indicating the area covered by the ordinance, and the map shall include major street names.

In lieu of publishing this advertisement, the municipality may mail a notice to each property owner within the affected area. Such notice shall clearly explain the proposed ordinance and shall identify the time, place, and location of any public hearing on the proposed ordinance.

C. ABSTENTION FROM VOTING

Under certain circumstances, a council member is required by law to abstain from voting. For discussion, see “The Code of Ethics” section in this manual.

D. FORM AND CONTENT OF ORDINANCES

Florida law does not prescribe a form for ordinances. Most Florida municipalities, however, follow a few general rules which determine the form of their ordinances. Under these rules, each ordinance contains three principal parts:

1. the preamble, which contains the number, title and enacting clause of the ordinance;
2. the body, which contains the exact text of the ordinance; and
3. the trailer, which contains the effective date and any posting and publication information.

1. Preamble

In the preamble, the number of the ordinance or resolution usually relates to the date of enactment. Most municipalities use a numbering system that identifies the year and the order of enactment in that year (e.g., 2001-1, 2001-2, and so forth). Other municipalities simply number ordinances consecutively (e.g., 1,2,...), without reference to the year of enactment. There is no legal requirement for an ordinance number at all, but numbering is a custom followed by municipalities, as a matter of convenience.

The title of the ordinance should be brief and descriptive. It should clearly identify the subject of the ordinance; for example, "An ordinance creating a civil service board of the City of Plymouth." The title also should include a statement of the effect of the ordinance. If a section of the municipal code is being amended or repealed, this should be noted in the title. An example of an ordinance title is: "An ordinance to repeal and reenact, with amendments, Section 4-106, 'Curbing of Pets,' of the Town Code requiring that all dogs are kept on a leash when off the property of the pet owner."

Some municipalities include in a title a mention of each section of the ordinance, producing a title consisting of a long string of such references, separated by semi-colons.

The enacting clause contains formal language which introduces the legislative language which follows; for example, "Be it ordained by the Council of the City of ...," "Be it enacted by the City of ...," or "Be it enacted by the People of the Town of ...". The enacting clause may also contain "Whereas" statements, a statement of purpose, a statement of objectives, or other introductory material which is not part of the essential legislative content of the ordinance.

2. Body

The body of the ordinance contains the exact text which is to be added to the municipal code. If the ordinance relates to a section of the municipal code, the number and title of that section must be clearly identified. The body is the only portion of the ordinance which will be incorporated into the municipal code; therefore, all essential content of the ordinance must be contained in the body of the ordinance.

3. Trailer

The trailer contains the effective date of the ordinance, if required. State law provides that all ordinances or resolutions "shall become effective 10 days after passage or as otherwise provided therein;" therefore, an effective date should be provided in the ordinance only if it is to be different from this automatic date. Publication of ordinances and resolutions after final passage is not required by state law, nor is it required by all municipal charters. If the charter does require publication, the trailer should include notice of where a copy of the enactment will be posted, the newspapers in which and the number of times it will be advertised, and the other governmental offices which will receive a copy of the document.

E. MAINTAINING A RECORD

Each municipality must keep records of all ordinances and of all resolutions which may have a long-range effect, such as a resolution appointing a municipal official.

1. The Municipal Code

The city must keep a copy of every ordinance enacted, every amendment to that ordinance, any official listing of the ordinance in local newspapers, and any information pertaining to its repeal. Copies of all ordinances must be made available for inspection by any person.

The complete set of ordinances is commonly referred to as the "municipal code." As individual ordinances are adopted, each may be integrated into the body of existing ordinances, producing a body of laws not unlike the state statutes, albeit of much less volume. The process of integrating new ordinances into the existing body of municipal law in a systematic fashion is called "codification." Most cities have their ordinances re-codified on a regular schedule; the frequency is dependent upon the volume of ordinances.

2. The Municipal Log

Many municipalities also keep a log or journal of all ordinances, reflecting certain key information. Ideally, log entries for each ordinance will reflect:

1. the date of enactment, the vote by which it was enacted, and its effective date;
2. its location in the municipal code;
3. all amendments to it;
4. full reference to any related court cases; and
5. any relation to other earlier or later ordinances.

A log is not a legal record, but it can serve as an excellent administrative tool which will enable the municipality to record the entire life of an ordinance.

REFERENCES

Florida Constitution: Article VIII, Sec. 2. Florida Statutes: Chapter 166.

Section 4-4

Public Meetings

A. OPEN MEETING REQUIREMENT

Florida Statutes require “All meetings of any board or commission of...any agency or authority of any county, municipal corporation or political subdivision...at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”

B. APPLICATIONS OF THE “SUNSHINE LAW”

The above-quoted passage is the essence of Florida’s Government-in-the-Sunshine Law of 1967. This law is also known as the “Open Meetings/Open Records Law” and the “Sunshine Law.” By any name, it has required much interpretation by the state judiciary and the Office of the Attorney General. Through both judicial decisions and attorney general advisory opinions, the Sunshine Law has been given a broad application. Several aspects of its application are noted here, without elaboration.

The Sunshine Law...

- ...applies equally to appointed and elected bodies.
- ...applies to members-elect as well as to members.
- ...applies to meetings between a mayor and a council member if the mayor is a member of the council or has a voice in decisions.
- ...applies to the mayor if the mayor has or may have a voice in decisions of the council.
- ...does not apply to discussion between mayor and council member of a subject which falls within the administrative functions of the mayor and which will not come before the council for action.
- ...applies to “evasive devices” by which officials might seek to evade the law; e.g., “serial” meetings between individual council members and a staff member, which constitute a de facto meeting of the council, e.g., circulation, among council members, of memoranda stating members’ views on a subject which is to be acted on by the council.
- ...may apply to a meeting of a single city official and private citizens if the official is appointed by the council as its representative, especially if the official has been delegated decision-making authority.
- ...does not apply to an appointed chief executive officer in his regular administrative routines; however, it does apply to the chief executive officer if he should act as liaison for council members or attempt to act in place of council members at their direction.
- ...applies to an ad hoc advisory board whose powers are limited to making recommendations; however, an appointed body may not be subject to the Sunshine Law if limited to data collection and fact-finding, without an advisory role.
- ...applies to committees made up solely of staff members if the committee performs a policy-making or decision-making role.

- ...applies to discussions and deliberations as well as to formal action; therefore, the law is applicable to any gathering where the members deal with some matter on which foreseeable action will be taken by the council.
- ...applies to personnel matters; contrary to widespread assumption, personnel matters enjoy no exemption from the Sunshine Law.
- ...does not apply to meetings between council members and the city attorney for discussion of pending litigation, under specific circumstances (see "Exceptions" below).
- ...applies to discussion of the sale or purchase of real property, including condemnation proceedings.
- ...requires, implicitly, that reasonable notice of public meetings be given to the public, that the notice must reasonably convey all the information required, and that it must afford a reasonable time for interested persons to make an appearance.
- ...does not apply, ordinarily, to meetings of staff; e.g., does not apply to staff actions to review bids and to negotiate proposed contracts with bidders.
- ...requires that a city council "meet" solely within the territorial jurisdiction of the city; council members may gather at other locations but should not have a "meeting" there, i.e., should not conduct business or have discussions of subjects which might be acted on by the council at a later date.
- ...does not apply to a gathering of two or more members of a council if the gathering is entirely for social purposes and no public business is discussed.
- ...applies to telephone conversations between members of a council if public business is discussed.

The source of these applications of the Sunshine Law is the *Government-in-the-Sunshine Manual: Florida's Government in the Sunshine and Public Records Law Manual*, revised annually, prepared by the Office of the Attorney General, State of Florida, and the First Amendment Foundation. Copies of the latest edition may be obtained from the First Amendment Foundation, 336 E. College Avenue, Suite 101, Tallahassee, FL 32301, (850) 222-3518 or 1-(800) 337-3518, www.floridafaf.org.

C. EXCEPTIONS

1. Collective Bargaining

Discussions between the city council and the city's chief executive officer concerning collective bargaining are exempt from the Open Meetings Law.

2. Pending Litigation

Notwithstanding the provisions of s. 286.011(1), F.S., a municipal governing board or an agency or authority of the municipality may meet in private with its attorney to discuss pending litigation to which the municipality is currently a party before a court or administrative agency, provided that:

1. the attorney has advised the municipality at a public meeting that he or she desires advice concerning the litigation;
2. the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures;
3. the session is recorded by a certified court reporter, who records the time of the session, all discussion and proceedings, the names of all persons present, and the names of all persons speaking; no portion shall be off the record; the notes shall be transcribed and recorded at the clerk's office within a reasonable time after the meeting;

4. the entity gives reasonable public notice of the time and date of the attorney-client session and the names of the persons attending the session; and
5. the transcript shall become part of the public record upon conclusion of the litigation.

D. PENALTIES

There are serious and substantive penalties for violating the Sunshine Law. Your city attorney should review these with you.

E. LOCATION OF MEETINGS

Meetings of municipal boards and commissions may not be held “at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public-access.” Persons subject to the open-meetings requirement are also subject to this requirement, and the same penalties apply.

Meetings should be accessible to physically handicapped persons (s. 286.26, F.S.). If a physically handicapped person submits a written request to attend a meeting and this request is received at least 48 hours prior to the scheduled time of the meeting, the person responsible for the meeting must provide reasonable access to the person. “Human physical assistance” may not be used to provide access if objected to by the affected person in his written request.

F. APPEAL OF DECISION

If a person wishes to appeal a decision of a city board, commission, or agency, that person will need a record of the proceedings at which the decision was made; therefore, he or she is responsible for obtaining a verbatim record. Each municipal body is required to include advice to this effect in any legally required notice of a meeting or hearing.

G. REQUIREMENT TO VOTE

A member of a municipal board, commission, or agency, who is present at a meeting at which “an official decision, ruling, or other official act is to be taken or adopted” must vote on the decision, ruling, or act, and a vote shall be recorded for each member present, except when possible conflict of interest requires abstaining.

REFERENCES

Florida Statutes: Chapter 286; s. 447.605. Also, *Government-in-the-Sunshine Manual: Florida’s Government in the Sunshine and Public Records Law Manual*, revised annually, prepared by the Office of the Attorney General, State of Florida, and the First Amendment Foundation, available from the First Amendment Foundation, 336 E. College Avenue, Suite 101, Tallahassee, FL 32301, (850) 222-3518 or 1-(800) 337-3518, www.floridafaf.org.

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Section 4-5

Public Records

A. PUBLIC RECORDS LAW

It is the policy of the State of Florida that all state, county, and municipal records shall at all times be open for personal inspection and copying by any person. To that end, the Legislature has enacted the Public Records Law (ch. 119, F.S.), which contains requirements that public records be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs.

In 1995, the Florida Legislature determined that agencies should strive to provide access to public records by “remote electronic means” to the extent feasible, and that this access should be provided by the most cost-effective and efficient means available. The law also authorizes (does not require) the custodian to charge a fee for such service.

The custodian of public records is assigned various responsibilities pertaining to the requirements of the public records law. A “custodian” is the municipal officer, elected or appointed, who is charged with the responsibility of maintaining the office having public records, or his or her designee. Most official custodians will be appointed administrators rather than elected officials; however, elected officials are responsible to see to it that this law, like others, is adhered to by employees.

B. MAINTENANCE OF RECORDS

“Insofar as practicable,” custodians of vital, permanent, or archival public records shall keep them in fireproof and waterproof locations. Records are to be kept in locations “easily accessible for convenient use.” All public records should be kept in the buildings in which they are ordinarily used. If worn, mutilated, damaged, or difficult to read, they should be copied or repaired. The council must approve the removal of records from their normal location in order to be repaired or reproduced. Statute requires the “official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book.”

C. DESTRUCTION OF RECORDS

Destruction of obsolete records is to be done in accordance with Chapter 257, Florida Statutes, and with the consent of the Division of Library and Information Services of the Department of State.

D. TRANSFER OF RECORDS

On leaving office, an official shall deliver to his or her successor all public records kept or received in the transaction of official business.

E. PUBLIC ACCESS TO RECORDS

1. Public Access Requirements

Every custodian of public records shall “permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.” A copy or certified copy of any public record shall be furnished by its custodian on request, with payment of a prescribed fee, if any, or of the actual cost of material and supplies. The statutes provide a list of set fees. A special service charge may be levied if the nature or volume of public records requested to be inspected, examined, or copied “is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance...”

2. Exemptions from Access Requirements

Each year, the Attorney General updates the exemptions from access; you can obtain this list in the “Government In the Sunshine Manual,” or your municipal attorney.

It should be noted that exemption of records from the Public Records Law does not ensure secrecy if the subject matter is also the subject of discussions and/or actions by a public body which is subject to the Open Meetings Law. For more information on the Open Meetings Law (also called the Sunshine Law), see the section on “Public Meetings” in this chapter of the manual.

G. APPLICATIONS

The Public Records Law has been the subject of many court decisions and attorney general’s opinions. These are summarized in the *Government-in-the-Sunshine Manual*, prepared by the Office of the Attorney General, State of Florida, and the First Amendment Foundation. Some of these applications of the law are listed below:

The Public Records Law...

- ...applies to “public records,” i.e., “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” Not counted as public records are materials prepared as drafts which are “mere precursors of governmental ‘records’ and are not, in themselves intended as final evidence of the knowledge to be recorded.” However, if a document’s purpose is to “perpetuate, communicate, or formalize knowledge,” it may be considered as a public record even if it is not in final form or the ultimate product of the agency.
- ...applies to inter-office and intra-office (person-to-person) memoranda communicating information from one employee to another or merely prepared for filing. The attorney general has opined that “any document, however prepared, if circulated for review, comment or information, is a public record regardless of whether it is a final product or marked ‘preliminary’ or ‘working draft’ or other such label.”
- ...applies to land appraisal reports, inspection reports, job applications, budget work sheets, travel itineraries, investigation reports, developers’ detailed engineering plans, accident reports, health-inspection reports, architect’s drawings, and tape recordings of incoming calls.
- ...applies to work products of a city attorney, in the absence of a specific statute providing exemption; and may apply to attorney-client communications.
- ...applies to a private agency, person, or other entity if it is “acting on behalf of” a public agency; thus, records of private bodies, agents, or contractors are subject to the law when performing a governmental function or participating in the decision-making process.

- ...applies to personnel records if not statutorily exempted.
- ...applies, with respect to inspection and copying of records, to request by anyone ("by any person"), regardless of purpose, interest, or intended use.
- ...does not apply to particular records if a federal statute requires that they be closed and if the state is clearly subject to said statute. For records to be exempt from the Public Records Law due to a counter-vailing federal law, there must be an "absolute conflict" between the state law and a specific federal law.
- ...applies to all public records, including electronic records, except these types that have been specifically and explicitly exempted by a specific statutory provision.

H. PENALTIES

Any public officer who violates any provision of Chapter 119, Florida Statutes, commits a noncriminal infraction, punishable by fine not exceeding \$500. Any person **willfully and knowingly** violating any provision of Chapter 119 commits a first-degree misdemeanor, subject to a definite term of imprisonment not exceeding one year and a \$1,000 fine. In addition, a public officer who knowingly violates the provisions of the law that provide for reasonable access to public records, is subject to suspension and removal or impeachment and commits a first-degree misdemeanor, subject to a definite term of imprisonment not exceeding one year and a \$1,000 fine.

It is to be noted that Chapter 119 penalties do not apply only to official custodians of public records, but to any "public officer" who participates in violation of a provision of the chapter.

I. STATE ASSISTANCE

The Division of Library and Information Services of the Department of State is to give advice and assistance to municipal officials concerning records maintenance and the provision of public access to records. Municipal officials are required to prepare "an inclusive inventory of categories of public records in their custody," and the division "shall establish a time period for the retention or disposal of each series of records." The division may assist local governments by providing storage or filing space for records and by providing other assistance, including the microfilming of records.

REFERENCES

Florida Statutes: Chapter 119. *Government-in-the-Sunshine Manual: Florida's Government-in-the-Sunshine and Public Records Law Manual* - revised annually, Office of the Attorney General, State of Florida, and the First Amendment Foundation (copies available from the First Amendment Foundation, 336 E. College Avenue, Suite 101, Tallahassee, FL 32301, (850) 222-3518 or 1-(800) 337-3518, www.floridafaf.org). *Brechner Report*, published by The Brechner Center for Freedom of Information, P.O. Box 118400, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273, www.jou.ufl.edu/brechner/index.htm.

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Chapter 5

Public Safety

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Section 5-1

Law Enforcement

A municipality may employ a municipal police force consisting of one or more law enforcement officers, or it may permit law enforcement to rest with the county sheriff. All relatively large municipalities do establish their own police departments, but many small towns depend on the county sheriff for minimum law enforcement within the municipal boundaries. Enhanced services usually require an interlocal agreement with the county, setting forth the terms and conditions of services.

A municipality may also enter into an interlocal agreement with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the other adjoining municipality or municipalities.

A. AUTHORITY

Law enforcement is a traditional function of municipal governments and, as such, is authorized to Florida municipalities by the grants of general-government powers found in Article 8, Section 2, Florida Constitution.

A city council may enact ordinances which are enforceable by city police as municipal laws, so long as said ordinances are not in conflict with any provision of the U.S. Constitution, federal law, state constitution or law, or a preemptive county ordinance.

Municipal law enforcement officers are responsible for the enforcement, not only of municipal ordinances, but of all laws – national, state, and local – within the boundaries of the municipality. In effect, municipal police officers are the principal enforcers of state laws, along with county sheriffs and the Florida Highway Patrol.

In the event of a declared emergency, local law-enforcement authorities are obligated and empowered to enforce all orders, rules, and regulations issued pursuant to the state Emergency Management Act (ch. 252, F.S.).

B. POLICE OFFICERS: QUALIFICATIONS

Any person employed or appointed as a law-enforcement officer or correctional officer in Florida must possess minimum qualifications as provided in state law. If your city has police officers, these standards and others will be in your administrative policies.

A few municipal police chiefs in Florida are elected. An elected municipal law-enforcement officer is exempt from these requirements and from programs and benefits specified in state law under ss. 943.085-943.25, F.S.; however, an elected officer may participate in the programs and benefits if he or she complies with qualifications listed in the statute.

C. POLICE OFFICERS BILL OF RIGHTS

Florida statutes provide that all law enforcement officers and correctional officers shall have certain rights and privileges. These include:

1. certain procedural rights of an officer while under investigation,
2. establishment of a complaint review board,
3. right of an officer to bring civil suit,

4. requirement of a notice of disciplinary action before any personnel action can be taken, and
5. no retaliation for exercising the rights granted in this section.

D. POLICE OFFICERS' PENSION FUND

Each municipality with a police department may operate a "Municipal Police Officers' Retirement Trust Fund." Provisions for funding of such funds and the operation thereof are detailed in Chapter 185, Florida Statutes.

Municipal police officers' pension plans are overseen and regulated at the state level by the Division of Retirement in the Florida Department of Management Services.

Each municipality's pension fund for police officers is to be managed by a board of trustees usually made up of five members. The board of trustees must consist of two residents selected by the city council, police officers elected by participating police officers, and one member selected by the others. The board of trustees has sole authority over administration of the fund (s. 185.05(1), F.S.).

The statutory provisions for police officers' pension funds are identical, in most details, to the provisions for the firefighters' pension funds. Refer to the discussion of firefighters' pension funds in this chapter of the manual and to the discussion concerning the insurance premium tax in Chapter 7, "Municipal Finance," for more information.

E. USE OF FORCE

A law enforcement officer or any person summoned or directed to assist an officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance.

In order for these to constitute a defense in a civil action for damages brought for the wrongful use of deadly force, the use of deadly force must have been necessary to prevent the arrest from being defeated by flight and some warning must have been given, if feasible.

A correctional officer or other law enforcement officer is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person from custody. Some cities have adopted practices above this level through their home rule powers.

F. CITY-COUNTY RELATIONS

When a municipality establishes a municipal police department, its powers are supplemental to the powers of the county sheriff, rather than substitutive for them; the sheriff continues to have formal authority and responsibility to enforce state and county laws within the boundaries of the municipality. Formally, then, when a municipality establishes a police department, law enforcement within municipal boundaries is a responsibility of both the county sheriff and the municipal police department. In practice, however, when a municipality establishes a police department, the county sheriff suspends most routine law-enforcement activities within municipal boundaries. The sheriff and municipal officials will usually negotiate an agreement concerning what the sheriff will do and will not do within city limits. At a minimum, the county sheriff will provide back-up assistance to the municipal police department on an "as needed" basis.

G. MUTUAL-AID AGREEMENTS

State statutes provide for formal mutual-aid agreements between two or more law- enforcement agencies. Three types of agreements are specified:

1. a voluntary-cooperation agreement, which permits voluntary cooperation and assistance of routine law enforcement nature across jurisdictional lines;
2. a requested-operational-assistance agreement, which permits cooperation in an emergency; or
3. a combination of (1) and (2).

All such agreements must be put in writing. Municipal officials should pursue such agreements in order to have them in place when needed.

H. STATE ASSISTANCE

The principal state agency in the law-enforcement field is the Florida Department of Law Enforcement. For more information on the department's structure and programs, consult their Web site www.fdle.state.fl.us.

REFERENCES

Florida Constitution: Article 8, Section 2; Florida Statutes: Chapters 23, 112 (Part 6), 185.252, 776, and 943.

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Section 5-2

Fire Protection

A. SERVICE-PROVISION OPTIONS

Municipal governments enjoy a wide range of options with regard to the matters of whether and how to provide fire-protection services to the residents and property owners of their communities. For a given community, this range of options may be restricted by practical considerations, but several options exist in theory, at least.

In the first place, a municipality is free to decide whether to be involved in fire-protection services at all. Under the home-rule principle and other existing Florida law, a municipality is not required by law to provide fire-protection services; on the other hand, it may do so if it wishes. Some small municipalities have chosen to assume no responsibility for such services, instead leaving the responsibility completely with the county commission, a volunteer fire department, or a special district.

In far greater numbers, municipalities have chosen to assume some responsibility for provision of fire-protection services. Even so, options will exist with respect to the extent and form of municipal-government involvement. These options include the following:

1. limited assumption of responsibility, with the government making only a modest contribution to an other-party provider of the service, such as volunteer fire department;
2. full assumption of responsibility, but with the service function totally contracted-out to another party (county department, volunteer department, fire-protection district, or private firm);
3. full assumption of responsibility, with service provided by a municipal department (which may be staffed by paid employees, by unpaid volunteers, or by a combination of the two); or
4. full assumption of responsibility and with the function performed directly by the municipal government, but with the utilization of a private management firm to provide management and manpower.

A combination of the above arrangements is possible, also, with one approach utilized in part of the municipality's area and another approach utilized in another part, such as an outlying area which might be better or more economically served by a fire department located outside the city but adjacent to the outlying area.

Of the four alternatives listed above, the most common among Florida's municipalities is the third option – full assumption of responsibility, with service provided by a municipal department. According to the *2008 Membership Directory* published by the Florida League of Cities, roughly 60 percent of the cities and towns list a position of "fire chief" (or comparable title), thereby indicating the existence of a municipal fire department. Of the remaining municipalities, most employ one or another form of the second alternative, including contracting with a county fire department, with an adjacent municipality, with a fire-protection district, or with a nearby private entity which has a private fire-protection capacity (e.g., Walt Disney World).

The fourth alternative listed above – employment of a private management firm to manage and staff the municipality's performance of the function – is an approach which is being employed by some communities.

One arrangement for fire protection is explicitly provided for by state law – participation in a county-administered Municipal Service Taxing Unit (MSTU). To provide funds for fire control and rescue services, a county commission may establish an MSTU or a Municipal Service Benefit Unit (MSBU) for part

or all of the county's unincorporated area and part or all of any municipality within the county. A tax not to exceed 10 mills may be imposed therein for one or more MSTUs, as may be service charges and special assessments. Inclusion of all or part of a municipality in an MSTU must be approved by municipal ordinance, and withdrawal may be accomplished by municipal ordinance.

B. ASPECTS OF FIRE-PROTECTION SERVICES

Today fire-protection services have two principal aspects:

1. The better-known aspect is fire-fighting or, to use a more formal term, fire suppression; the actual fighting of fires was the original activity of fire departments and continues to be the ultimate reason for their existence.
2. Today, however, other aspects of defense against fire – namely, fire prevention and damage mitigation – constitute a second major dimension of fire-protection activities.

Fire-prevention and damage-mitigation efforts are not necessarily restricted to fire departments; other municipal agencies may be assigned major roles, such as the planning and zoning department, the building inspections department, and the code-enforcement board. County agencies may also play roles in fire-protection and damage-mitigation efforts. Therefore, the municipal official should not automatically think only of the fire department when considering fire-protection services. It is true, nevertheless, that the fire department should be involved in systematic efforts to prevent fires and to minimize both risks to life and damage to property. Elected officials should see to it that the fire department and other agencies with responsibilities in fire-prevention and damage-mitigation are properly attentive to these responsibilities.

Fire-prevention and damage-reduction measures include activities which eliminate or lessen the possibility of a fire, which reduce the potential magnitude and/or complexity of a fire, and which reduce the likelihood of injury to people in the event of a fire. These measures boil down to three procedures, essentially:

1. development and enforcement of a fire-prevention code,
2. inspection for fire hazards, and
3. public education.

These procedures are discussed in more detail on the following pages. Some Florida cities have combined “public safety departments” providing fire, EMS and law enforcement services. Employees, in some cases, carry certification for all three services.

C. FIRE-PREVENTION CODES

Each community should have a set of fire-prevention codes, governing such matters as building materials, electrical wiring, heat sources, hazardous materials, construction requirements, and regulation of public assembly.

To be effective, any code must be vigorously enforced. This is the task, primarily, of a fire-safety inspector, or fire marshal. Each municipality “that has fire safety enforcement responsibilities shall employ or contract with a fire-safety inspector.” Qualifications required for the position are listed in the Florida Statutes. All fire-safety inspections required by state or local law must be conducted by a state-certified inspector. Inspections also may be conducted by a firefighter under the supervision of a certified inspector; hence, other firefighters may work under the fire marshal as code inspectors.

Other municipal departments with their own regulatory responsibilities can also play major roles in enforcement of fire-prevention standards by requiring compliance with such standards before issuing licenses and permits. Fire-department personnel must work systematically to keep other municipal departments apprised of fire-prevention standards and to maintain their cooperation in enforcement. Three basic fire-prevention codes are discussed below:

1. minimum fire-safety standards,
2. a building code, and
3. an electrical code.

1. Minimum Fire-Safety Standards

Each municipality with fire-safety responsibilities must adopt minimum fire-safety standards to govern all buildings and structures not regulated by uniform state standards. Each municipality with fire-safety responsibility must adopt the National Fire Protection Association (NFPA) 101, Life Safety Code. More stringent standards subject to certain requirements may be adopted if a city chooses to do so. Certain national codes are identified which shall constitute the minimum standards of any municipality which fails to adopt other standards. Municipal officials are encouraged to be reasonable in the application of standards to buildings which existed prior to January 1, 1988.

2. Building Code

In addition to explicit fire-safety standards, other municipal codes – especially building codes and electrical codes – also address fire-safety. A municipality is required by statute to adopt the Florida Building Code, which shall contain or incorporate all laws and rules that pertain to the design, construction, erection, alteration, modification, repair and demolition of public and private buildings. Municipalities may adopt amendments, pursuant to limitations, to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of the municipality and that provide for more stringent requirements than those specified in the Florida Building Code. Responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in the municipality. All entities authorized to enforce the Florida Building Code shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections. An enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code and found them to be in compliance with the Florida Building Code. Municipalities and non-charter counties may combine to create multi-jurisdiction enforcement districts. The Florida Building Code is overseen by the Florida Building Commission.

3. Electrical Code

With respect to the regulation of electrical work, the Legislature has established minimum standards in the form of the State Electrical Code, which consists of several separate codes, most of them promulgated by the National Fire Protection Association. This code applies throughout the state. It is the responsibility of the governing body of each municipality to provide for the enforcement of the code in the areas of its jurisdiction; this may also be accomplished through establishment of a multi-jurisdiction enforcement district. The municipality may adopt and enforce additional or more stringent standards.

D. FIRE INSPECTIONS

Inspections of homes, public buildings and commercial buildings serve not only to enforce a fire-prevention code but also to spot particular fire hazards which might not be governed by the code. Inspections also serve to educate citizens concerning fire hazards. Inspection can be a regular activity of firemen during hours when they are not involved in fighting fires.

E. PUBLIC EDUCATION

Educational programs teach people how to recognize and eliminate fire hazards and how to react appropriately in case of fire. Appearances by firemen at schools can be very instructive, as can fire-safety poster contests. Home inspection programs are valuable, and speeches to civic clubs may be helpful, also. Going beyond mere education, some municipalities provide smoke detectors to citizens for free or at a reduced price.

F. FIRE SUPPRESSION

Several factors are involved in being adequately prepared for fire-fighting efforts: number of fire-fighters, their physical condition, and their training; the proximity of fire-fighting crews and equipment to the locations of fires (i.e., number and location of fire stations); adequacy of equipment; and adequacy of water supply (water pressure, size of water lines, and proximity of hydrants to fire sites).

G. STATE RESPONSIBILITIES

The state insurance commissioner also wears the hat of state fire marshal. As such, he or she is responsible for promoting fire prevention through the enforcement of laws and rules affecting fire safety and through the making of rules affecting fire-safety. While the state fire marshal's rule-making powers are extensive, the department may not adopt minimum fire-safety standards of a general application; however, the Department of Insurance is empowered to establish uniform fire-safety standards for certain types of buildings and facilities, such as health facilities and hospitals. A city may neither add to nor take from such standards, except for sprinkler systems in certain buildings for which the construction contract is let after January 1, 1994.

The state fire marshal's powers are very broad in that he or she "shall make and promulgate all rules necessary to implement the provisions" of Chapter 633, Florida Statutes, including the promulgation of rules for "prevention of fires." This extremely general grant of authority permits the state fire marshal much latitude in determining the scope of his or her rule-making authority. Chapter 633 and all regulations prescribed by the state fire marshal under it "have the same force and effect in each municipality..."

1. Inspections and Investigations

To assist the state fire marshal in the enforcement of state laws and regulations, agents are employed by the state. These agents maintain a schedule of inspections and of fire investigations. Inspections are primarily for the examination of fire-protection systems (e.g., sprinkler systems), including water mains, standpipes, and hose connections. State agents give first priority to the inspection of buildings of "high-hazard occupancy," i.e., school buildings, group residential facilities, medical-care facilities, correctional facilities, motels, migrant labor camps, child-care facilities, and buildings containing hazardous materials or having hazardous conditions (e.g., gas stations). State agents will assist local governments in local inspections and investigations on an as-available basis.

Inspections are a major function of the state fire marshal. The marshal and agents are required by Chapter 633, Florida Statutes, to inspect all state-owned or state-leased buildings on a recurring basis, as established by rule, and to inspect all such buildings which involve high-hazard occupancy on an annual basis. In addition, the marshal has expansive authority to inspect “any and all” premises and any fire-control system, during or after construction, to ensure that state standards are satisfied.

2. Regulation of Fire-Protection Industry

A major function of the state fire marshal is the regulation of the fire-protection industry. The marshal licenses annually those in the business of installing and servicing fire extinguishers and fire-protection systems, and issues annual permits to individuals actually performing such work. The marshal also enforces continuing-education requirements for annual renewal of permits. All fire-protection systems must be installed and maintained by licensed/certified contractors; equipment must be listed by a nationally recognized testing laboratory; equipment must be installed in accordance with standards of the National Fire Protection Association; and equipment must be installed, inspected, serviced, and maintained in accordance with manufacturer’s specifications. All portable fire extinguishers must meet industry standards and carry a serial number. The sale of certain types of fire extinguishers is prohibited.

3. Certification of Inspectors

“Each...municipality...that has fire safety enforcement responsibilities shall employ or contract with a fire safety inspector,” who must conduct all fire-safety inspections required by law. Recertification of inspectors is required every three years.

4. Other State Agencies

Other elements of the state’s role in fire protection include the Firefighters Standards and Training Council, the Florida State Fire College, and the Florida Fire Safety Board.

H. FIREFIGHTERS QUALIFICATIONS

Any person employed or appointed as a firefighter in Florida must possess minimum qualifications as provided in state law. If your city has firefighters, these standards and others will be in your administrative policies.

I. MUNICIPAL POWERS REGARDING CONTRACTORS

Despite the sizable role of the state in licensing and regulating fire-protection contractors, municipal governments are free to require municipal approval of plans and work specifications for work to be performed by a licensed contractor and “to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections” in order to ensure compliance with local construction codes and/or other local laws.

J. FIREFIGHTERS' PENSION FUND

The 1939 Legislature created, under Chapter 175, Florida Statutes, a municipal "Firefighters' Pension Trust Fund" in each municipality having "a constituted fire department or an authorized volunteer fire department" and not having an otherwise- established pension program providing retirement benefits for firefighters.

1. Design of Programs

This retirement program for firefighters may be set up by the city in complete compliance with Chapter 175, or it may be of the municipality's own design.

a. Chapter 175 Programs

If set up in compliance with Chapter 175, the program must conform to its prescriptions regarding benefit levels, investment policies, and the composition of the board of trustees of the municipal program.

b. Programs of Municipal Design

To qualify for participation in state-administered funding, program plans of a municipality's own design must satisfy certain criteria, including statutory minimum- benefit levels. (Actually, most of these programs provide higher-than-minimum benefit levels.) State-distributed funds must be used in such a program to provide additional or supplemental benefits; such funds may not be merged into a pension fund for firefighters and other employees in such a manner that they are not reserved for the exclusive benefit of firefighters.

2. Board of Trustees

Each municipality's pension fund for firefighters must be managed by a board of trustees with a minimum of five members. The board of trustees must consist of two residents selected by the municipal council, two firefighters selected by participating firefighters, and one member selected by the other four. The board of trustees has exclusive administration of the fund, but it may only modify the provisions of a retirement plan with the approval of the municipality.

3. Sources of Funding

There are two principal sources of revenue for a firefighters' pension fund: state collected local excise taxes and payroll deductions.

a. State Collected Local Excise Tax

Municipalities are authorized to levy an excise tax of 1.85 percent of the gross receipts of premiums collected by insurance companies from insurance on real or personal property located within the corporate limits of each municipality. This does not really cost the insurance companies, for amounts paid by the companies are credited against the amount payable by each company to the state for a comparable state excise tax. This excise tax shall be payable annually on March 1 of each year after the passage of an ordinance assessing and imposing the tax authorized by this section. Installments of taxes shall be paid according to the provision of the Florida Statutes.

b. Payroll Deductions

Payroll deductions of 5 percent of firefighters' salaries can be collected. Certain exceptions are listed in the Florida Statutes. Employee contributions are retained as payroll withholdings by the municipality, which must deposit the receipts thereof with the board of trustees of the pension fund at least monthly. Other forms of possible revenue are recognized in the "Municipal Finance" chapter of this manual for more information concerning funding.

4. "Firefighters' Presumption"

The requirements of eligibility for normal retirement, early retirement and the requirements of eligibility for disability retirement are stated in the Florida Statutes. A prominent statutory provision affecting disability retirement is the so-called "firefighters' presumption." This provision stipulates that certain conditions "resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence..." In other words, in certain cases of disability or death due to medical condition, it shall be presumed that this condition is job-related, unless the city is able to prove otherwise.

Prior to 1995, this presumption that death or disability is job-related applied to "any condition or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease..." In 1995, after a tough legislative struggle, this list was expanded to include conditions caused by hepatitis, meningococcal meningitis, and tuberculosis. The inclusion of HIV/AIDS was sought by the firefighters association, but was narrowly defeated (Chapter 95-285, Laws of Florida).

It should be noted that rarely, if ever, has a city won a case involving a firefighter's claim for disability-retirement benefits under this statute. Removal or weakening of the firefighters' presumption is a major legislative goal of the Florida League of Cities at this time.

In any judicial or administrative proceeding brought under the provisions of Chapter 175, F.S., the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney's fees.

5. State Role

Municipal firefighters' pension funds are overseen and regulated at the state level by the Division of Retirement in the Department of Management Services. The department sets the rules which regulate municipal operation of these funds. It is also the duty of the Division of Retirement to ensure that public pension systems are actuarially sound.

6. The Florida Municipal Pension Trust Fund

The Florida League of Cities operates the Florida Municipal Pension Trust Fund. Boards of trustees may obtain professional management and investment services for all pension funds through participation in this common program. For information, contact staff of the Florida League of Cities.

K. FIREFIGHTERS' BILL OF RIGHTS

The 1986 Florida Legislature approved as law the "Firefighters' Bill of Rights." This legislation affords certain procedural rights to a firefighter who is subjected to interrogation about suspected misconduct.

REFERENCES

Florida Statutes: Chapters 112, 125, 175, 394, 396. 553 and 633. Laws of Florida: Chapter 95-285. Florida Administrative Code: Chapters 4-54. *Florida Municipal Record*:

"FLC Responds to Governor's Committee for the Study of the Construction Industry Recommendations," 56, 8 (1983); Robert Lewis, "A Review of the Firefighters and Police Officers Pension and Retirement Trust Funds," Parts I-III, 56, 7-9 (1983); "Performance Audit of the Municipal Police Officers' and Firefighters' Retirement Trust Funds Programs of the Department of Insurance," Office of the Auditor General of the State of Florida, 58,5 (1984); "Firefighter's Presumption," 57,1 (1983). *Membership Directory*, Florida League of Cities.

Section 5-3

Animal Control and Protection

A. ANIMAL CONTROL

Under its general home-rule powers and specifically under Chapter 828, Florida Statutes, a municipality is authorized to enact city ordinances to require animal control, including “the regulation of the possession, ownership, care, and custody of animals.” Such ordinances, if enacted, must include the procedures, provisions and penalties as defined by state law.

A municipality may perform animal-control activities itself through a municipal department, or it may permit a private organization, such as a humane society, to perform this function. However, cities are not required either to provide animal-control services or to regulate private organizations which engage in such activities.

The appointment of an agent by a county, society, or association to investigate cruelty to animals within a municipality must be approved by the mayor of the city.

Animals running loose are health hazards and public nuisances; consequently, many communities have adopted leash laws which make it a misdemeanor offense for an owner to permit an animal (usually a dog) to run at large. In addition, some animals should simply be excluded from the city. This is particularly true of large carnivorous animals, which are too dangerous; smaller rabies-prone animals, such as raccoons, foxes and skunks; poisonous snakes; and aggressive breeds of dogs, such as pit bulldogs. A city should have procedures in place whereby officials may require that a particular animal be impounded, removed from the community or euthanized.

B. TRAINING

Municipal animal-control officers may complete a minimum standards training course. The training course is mandatory for county-employed officers, but optional for city officers.

The city council may levy and collect a surcharge of up to \$5 upon each fine imposed for violation of an ordinance relating to animal control or cruelty. Proceeds shall be used to pay the costs of training for animal-control officers.

REFERENCES

Florida Statutes: Chapters 166, 534, 585, 767 and 828. *Florida Municipal Record*: Weverka, J., “Dealing with Animal Problems Before They Become People Problems,” Vol. 59.

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Section 5-4

Code Enforcement

The Legislature has provided municipalities with three specific general methods for the enforcement of codes and ordinances:

1. a code-enforcement-board method,
2. a citation method, and
3. a notice to appear method.

Any of these methods may be employed by a municipality to enforce specified codes and ordinances, in addition to other enforcement methods.

A. CODE ENFORCEMENT BOARD

One method of code enforcement is the use of one or more code enforcement boards. Such boards, assisted by code inspectors, may impose fines and other noncriminal penalties to enforce a code or ordinance. Code enforcement boards may be created and abolished by ordinance.

1. Membership

Florida Statutes note the city council shall appoint the members of such code enforcement boards, which must consist of seven members each in cities with population of 5,000 or greater, and of either five or seven members in cities with population of less than 5,000. Members of municipal boards must be residents of the municipality. Appointments shall be made “on the basis of experience or interest in the subject matter jurisdiction” of the board. “Whenever possible,” the membership of each board shall include an architect, a businessperson, an engineer, a general contractor, a realtor, and a sub-contractor. Initial appointments shall be for a mix of one-, two-, and three-year terms, depending on the membership size of the board; thereafter, appointments shall be for three-year terms. A member may be reappointed. Members shall serve without pay, but may be reimbursed for expenses.

2. Counsel

The city council may appoint legal counsel for the board. The city attorney either may serve as counsel to the board or may represent the city by presenting cases before the board, but he or she may not perform in both capacities.

3. Procedures

It is the duty of the code inspector to initiate enforcement proceedings of the various codes. No member of the board shall have the power to initiate proceedings. In the usual case, the code inspector must notify the code violator and give the violator a reasonable time to correct the violation. If the violation is not corrected in the prescribed time, the code inspector shall notify the enforcement board and request a hearing. If the violation is irreparable or irreversible or if the code inspector believes that a violation poses a “serious threat” to the public welfare, the inspector shall make a reasonable effort to notify the violator of such and may immediately notify the enforcement board. If a repeat violation is found, the code inspector is not required to give the violator a reasonable amount of time to correct the violation; he shall notify the violator, notify the board and request a hearing.

Each enforcement board shall have the power to adopt rules, issue subpoena, take testimony under oath and issue orders having force of law. The city shall provide personnel as may be reasonably required by the board. All proceedings shall be open to the public. Formal rules of evidence shall not apply, but fundamental due process shall be observed.

4. Penalties

Additional information on penalties should be obtained from your city's ordinances. If your city does not provide code enforcement, contact your county's program (if applicable).

B. SPECIAL MASTERS

Rather than use a code enforcement board, a municipality may appoint one or more "special masters" and empower them to hold hearings and assess fines.

C. CITATION METHODS

An alternative to the board method for the enforcement of codes and ordinances was provided by the Legislature in 1989 as a simpler and faster alternative. In this approach, there is no code enforcement board; rather, the enforcement process is carried out by code enforcement officers, the county court clerk's office, and, when necessary, the county court. (Note that "code enforcement officer" is a different statutory designation from that of "code inspector.") Actually, this so-called citation method consists of two separate approaches which can be found in a city's procedures.

D. CONSTRUCTION REGULATION BOARD

The statutes authorizing local code enforcement boards do not prohibit a city council from enforcing its codes by other means. One such means is the local construction regulation board, as authorized by Chapter 489, Florida Statutes.

Certification of contractors is performed by the Construction Industry Licensing Board of the Department of Business and Professional Regulation. Ordinarily, a licensed (or certified) contractor may practice in any part of the state by exhibiting his or her current certification and paying appropriate local fees. Within this framework, however, a city council may create a "local construction regulation board," to which it may appoint not fewer than three persons, all residents of the municipality, "to maintain the proper standard of construction" of the municipality. This board may deny a building permit to a certified contractor if the board finds, through the public-hearing process, that the contractor is guilty of fraud or a willful building-code violation within the municipality or within another municipality within the past 12 months.

REFERENCES

Florida Statutes: Chapters 162, 166 and 489. Florida Association of Code Enforcement, University of South Florida, Florida Institute of Government, www.face-online.org.

Section 5-5

Alcoholic Beverages

The Florida Constitution assigns to counties the option of permitting the sale of intoxicating liquor, wines, and beers. The decision is to be made by a countywide referendum, and any subsequent change thereto must also be by countywide vote. Municipal residents and governments therefore enjoy no power of self-determination on the “wet-or-dry” issue. A municipality, however, may regulate the hours, location and sanitary practices of alcoholic beverage license holders, and it may regulate the type of entertainment and conduct permitted in an establishment licensed to sell alcoholic beverages for consumption on the premises.

A. TAX REBATE

If a county does not permit the sale of alcoholic beverages, all incorporated municipalities within that county may receive rebated portions of the state alcoholic beverage tax collected on the manufacture, distribution, and sale of alcoholic beverages within the county. Thirty-eight percent of the alcoholic beverages license taxes collected by the state from licensees located within an incorporated municipality is returned to the municipality. License taxes are collected by the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Regulation and returned to the municipal government on a quarterly schedule. No tax or license regarding alcoholic beverages may be levied by the municipal government. (See the “Municipal Finance” chapter in this manual for more information concerning alcoholic beverage taxes.)

B. REGULATION

The state Division of Alcoholic Beverages and Tobacco plays the main role in the regulation of sales of alcoholic beverages. Within the broader framework of state regulation, a city government may regulate the location, business hours, and sanitary conditions of a licensee within the city. On receiving a state alcoholic beverage license, the licensee must then receive city approval of the proposed location. The city may deny approval of a location on the basis of any numerous considerations, such as:

1. proximity to a church or school,
2. safety-code defects,
3. incompatibility with land-use plans,
4. adverse impact on traffic flow,
5. inadequate parking space, or
6. proximity to another licensee.

However, all reasonable standards and conditions placed upon the granting of an alcoholic beverage license must be contained in an ordinance, and a municipality may not deny an alcoholic license arbitrarily.

C. PUBLIC DRUNKENNESS

Municipal peace officers may take into custody or send intoxicated persons home or to a health facility, and the law enforcement officer may take reasonable measures to ascertain the commercial transportation used for such purposes is paid for by the person in advance.

REFERENCES

Florida Statutes: Chapters 561, 562, 567 and 396; Section 856.01. *ABC Liquors, Inc. v. City of Ocala*, 366 So.2d 146 (Fla. 1st District Court of Appeals, 1979).

Section 5-6

Emergency Management

A. LEGAL STANDING OF CITY PROGRAMS

Emergency management is governed by Chapter 252, Florida Statutes, cited as the “State Emergency Management Act.” This chapter creates a Division of Emergency Management under the Governor’s Office, and requires the creation of emergency- management programs at the county level (except as otherwise provided). Municipalities are “authorized and encouraged to create municipal emergency-management programs”; in that event, the activities of the municipal program must be coordinated with those of the county program.

The Florida attorney general has opined that “only counties are authorized to establish local disaster preparedness agencies pursuant to s. 252.38, F.S.” The actual standing of municipalities to establish emergency-management programs, therefore, is unclear. (See AG opinion no. 078-167.) Some cities have chosen some procedural policies for emergency declaration response, recovery and coordination.

Florida disaster response programs both manmade and natural, are considered national models. Florida’s cities have a rich history of assistance and cooperation in these programs.

B. STATE ROLE

The governor has broad powers and responsibilities in times of emergency. In the event of an emergency beyond local control, the governor may assume direct operational control over local emergency-management functions. Executive orders, proclamations, and rules issued by the governor have the effect of law. The governor “shall delegate” emergency responsibilities to the officers and agencies of the state and of counties and municipalities prior to an emergency and shall utilize the services and facilitates as required.

The Governor’s Division of Emergency Management has significant powers of control, coordination and assistance vis-à-vis local emergency-management programs. Municipal programs are subject to the powers of the division. The division may delegate authority to municipalities and counties.

The law enforcement officials of counties and municipalities with emergency- management programs shall enforce orders, rules and regulations pertaining to emergency situations.

REFERENCES

Florida Statutes: Chapter 252. Attorney General’s Opinion no. 078-167.

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Section 5-7

Occupational, Business and Professional Regulation

A. REGULATORY POWERS

As expressed in Article 8, Section 2, Florida Constitution, and the Florida Statutes, Florida's municipal Home Rule principle gives municipalities a broad regulatory power. This power includes the right to regulate through licensing and permitting.

1. State Preemption

The state has completely preempted the licensing of some professions, occupational groups, and types of businesses. For example, the operator of a bottled-water plant must secure an annual operating permit from the Florida Department of Health on payment of a fee to the department, and "no other fees shall be charged by other governmental agencies for these purposes." Also, the operation of airports is licensed and regulated by the state, and "no county or municipality...shall license airports or control their locations except by zoning requirements." Other activities preemptively regulated by the state include telecommunications companies, saltwater fishing, the management of underground petroleum storage tanks, and pest-control services.

The state Legislature has provided, in an implicitly preemptive manner, for state regulation of many occupations by establishing state regulatory boards. ("Regulation of Professions and Occupations" and "Regulation of Trade, Commerce, Investments and Solicitations.")

State-level regulation of occupations, businesses, and professions involves many state departments and agencies, including the Departments of State, Insurance, Agriculture and Consumer Services, Commerce, Business and Professional Regulation, and others. Of these, the Department of Business and Professional Regulation is most involved in matters affecting municipal licensing of occupations.

1. Shared Authority in Some Areas

In some instances, municipal governments share regulatory authority with a state agency. For example, in the regulation of contractors, the state issues licenses to contractors who pass a state-administered examination, but a local construction regulation board or code enforcement board may deny a local building permit to a state-certified contractor if the local board has found the contractor to be guilty of fraud or of willful building-code violation. In general, municipalities are free to:

1. regulate the quality of work of contractors through a system of fees, permits, and inspections;
2. enforce other laws for protection of public health and safety;
3. adopt any system or permits requiring municipal approval of plans and specifications for work to be performed, before commencement of the work; and
4. collect inspection fees and occupational license taxes.

Another example of shared regulatory authority is the regulation of land surveying. The state regulates this occupation through the licensing of the land surveyors and the adoption of rules governing the practice of the occupation; however, local governments may enact building codes, zoning laws or ordinances that are more restrictive than the state statute and rules.

A third example of shared regulatory authority is provided by the regulation of the practice of massage. In addition to required licensing by a state board, “a county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter.”

B. REGULATORY FEES

In exercising its regulatory power, a municipality may levy regulatory fees.

A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Municipal regulatory fees must be “reasonable” and “commensurate with the cost of the regulatory activity, including consumer protection.” Thus, a regulatory fee is meant to cover only the expense of the regulatory function, however broadly that might be defined; it is not intended by the Legislature to be source of “profit” for municipalities.

C. LOCAL BUSINESS LICENSE TAX

A municipality “may levy by appropriate resolution or ordinance, an business license tax...” In contrast to regulatory fees, local occupational license taxes are a form of general taxation. Local business license taxes are not to be considered as regulatory fees; this is stated clearly in the Florida Statutes.

REFERENCES

Florida Constitution: Article 8, Section 2. Florida Statutes: Chapters 166, 205 and 489; Sections 20.165, 205.022(1), 330.36, 364.01, 370.102, 376.317, 381.294, 472.037, 480.052, 482.242, 492.325 and 500.457.

Chapter 6

Public Services

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Section 6-1

Streets and Highways

A. TRAFFIC CONTROL POWERS

The authority to regulate traffic and other activities on streets and highways is implicit in the general grant of government powers in Article 8, Section 2(b), Florida Constitution, and Chapter 166, Florida Statutes. This implicit grant is confirmed and clarified in Chapter 316, Florida Statutes, where municipalities are explicitly granted “original jurisdiction over all streets and highways located within their boundaries, except state roads...” It is also stated that enactment of the State Uniform Traffic Control Law in 1971 does not restrict local authorities in reasonably exercising their police powers with respect to streets and highways under their jurisdiction. A long list of appropriate exercises of said powers is given in the Florida Statutes.

Local traffic control and parking laws are supplemental to the State Uniform Traffic Control Law and must not be in conflict with it. The State Uniform Traffic Control Law applies in all municipalities and is to be enforced by all municipal law-enforcement officers.

B. FUNCTIONAL CLASSIFICATION OF ROADS

Roads in Florida are functionally classified, meaning that the assignment of roads into systems is made according to the character of service they provide in relation to the total road network. Basic functional categories include arterial roads, collector roads, and local roads which may be subdivided into principal, major or minor levels. Those levels may be additionally divided into rural and urban categories.

Since classification is by function (“arterial,” “collector” and “local”) rather than by location, many roads located within municipal boundaries are classified as state or county roads.

The Florida Department of Transportation (DOT) is responsible for all elements of the state highway system, including interstate highways, rural arterial roads, urban extensions of rural arterials, and urban principal arterials. The county commission is responsible for all elements of the county road system, including all urban extensions of rural collector roads and all urban minor arterials. Municipal governments are responsible for all municipally owned streets and highways located within their boundaries.

Title to the rights of way of all roads in the state highway system and in the county road system shall be in the state and the county, respectively. Likewise, the city shall have title to all rights of way of city streets. Liability for torts shall be in the governmental entity having operation and maintenance responsibility.

Except as otherwise provided by the law, a municipality has, on state and county roads within the city’s boundaries, the same traffic-control powers that it has on streets that are property of the city.

C. FUNDING

The construction and maintenance of streets in the city street system may be financed through the city’s general revenues, through a state-levied one-cent tax on motor fuels, and through certain local-option gas taxes.

1. State-Levied Gas Tax

The state levies a one-cent-per-gallon tax on motor fuel, the proceeds of which go into the Revenue Sharing Trust Fund for Municipalities, for ultimate distribution to municipal governments. Funds received from this source are to be used only for transportation facilities and road construction. This state tax, which is allocated for municipal uses, was once referred to as “the eighth cent” of gas tax, and now is officially labeled “the municipal gas tax.” (See the “Municipal Finance” chapter of this manual for more information.)

2. Local-Option Gas Taxes

In addition to the state-levied gas tax, certain local-option revenue possibilities exist. They include:

1. One to six cents gas tax,
2. Additional one to five cents gas tax, and
3. Ninth cent gas tax.

These local-option gas taxes are explained in the “Municipal Finance” chapter of this manual.

D. ACQUISITION OF PROPERTY

Cities are authorized to exercise the power of eminent domain for the purpose of obtaining property for public use as “streets, lanes, alleys and ways” (s. 166.411, F.S.).

When a road constructed by a municipality has been maintained continuously for four years by the municipality, it shall be deemed to be dedicated to the public, “whether or not the road has been formally established as a public highway” (s. 95.361, F.S.).

E. SPECIAL ASSESSMENTS

A municipality may make street improvements, including improvements to related storm-drainage facilities, and recover the costs thereof by levying special assessments on the owners of the benefited property. This normally is done only with the prior approval of a majority of the affected property owners, but the city is not required by state law to have the consent of owners.

Special assessments usually are levied only on the owners of property immediately adjacent to the improved street area, but may be levied on “other specially benefited property.” Assessments usually are levied on a “foot frontage” basis, but they may be levied by another method so long as assessments are “in proportion to the benefits to be derived therefrom.”

The expense of a street-improvement project may be recovered through special assessments either in whole or in part. Some municipalities may undertake the initial paving of a street only when the owners of affected property agree to cover 100 percent of the cost; other municipalities will apply public funds to a portion of the expense. For example, some municipalities employ a “1/3-1/3-1/3” formula for regular street footage – that is, one-third each is paid by the city, the owner of the abutting property on one side of the street and the owner of the abutting property on the other side of the street; in addition, the city bears all expense of paving the areas within street intersections.

A municipal government should have an established policy in place regarding payment for initial street improvements and should consistently adhere to that policy. To have no such announced policy or to make exceptions to an announced policy is to open the door to accusations of favoritism or unequal treatment.

Procedures for declaring a special assessment are detailed in Chapter 170, Florida Statutes. They include the preparation and publication of an assessment roll, the holding of a public hearing, the hearing of complaints by the council (sitting as an equalizing board), and the adjustment of assessments on a basis of justice and right. When finally approved by resolution or ordinance, the assessments stand as first liens on the assessed property until paid; payment periods usually are for several years, e.g., 10 years. The municipality may issue bonds for the total amount of the assessed liens, with revenue from the assessments going into a separate fund in order to pay off the bonds. Such bonds are not a charge on the general revenues of the municipality; they must be paid off solely out of the revenues of the special assessment. (Refer to the “Municipal Finance” chapter of this manual for more information.)

F. TRANSPORTATION CORRIDORS

A transportation corridor is an area of land designated by the state, a county, or a municipality which is between two geographic points and is suitable for use for the movement of people and goods by one or more modes of transportation. Transportation corridors must include existing publicly owned rights of way and all property necessary for future transportation facilities for the purpose of securing and utilizing future transportation rights of way.

Local governments may designate a transportation corridor by including the corridor in its local comprehensive plan by adoption of a local ordinance. DOT may designate a corridor by establishing the corridor in conjunction with local government comprehensive plans. Local governments, DOT and state and local natural resource and environmental agencies shall cooperate in the review of corridors prior to the designation of the corridor. (See the “Growth Management” chapter of this manual for more information concerning local comprehensive plans.)

G. STATE ROLE

1. State Comprehensive Plan

The state Legislature adopted the “State Comprehensive Plan (SCP)” to provide “long-range policy guidance for the orderly social, economic, and physical growth of the state.” Regarding transportation, the SCP provides for a “state transportation system that integrates highway, air, mass transit, and other transportation improvements with state, local, and regional plans. (Refer to the “Growth Management” chapter of this manual for discussion of local comprehensive plans.)

2. Florida Transportation Plan

The Department of Transportation (DOT) is responsible for the development and update of a state-wide transportation plan, consistent with the State Comprehensive Plan. This transportation plan is commonly known as the “Florida Transportation Plan.” This plan shall establish long-term goals and short-range objectives and policies. Statutes provide a detailed listing of what should be considered in developing the SCP.

Municipalities may request DOT to, under its direction, develop and design transportation corridors, arterial and collector streets, vehicular parking areas, and other support facilities consistent with the plans of DOT. In planning for an intrastate highway system, the department shall to the highest extent feasible, ensure that proposed projects are consistent with local government comprehensive plans.

3. Toll Facilities Revolving Trust Fund

A Toll Facilities Revolving Trust Fund has been created to encourage the development and enhance the financial feasibility of revenue-producing road projects undertaken by local governments in a county or contiguous counties. DOT is authorized to advance funds for preliminary engineering, traffic and revenue studies, environmental impact studies, financial advisory services, engineering design, right-of-way map preparation, other appropriate project-related professional services, and advanced right-of-way acquisition to expressway authorities, counties, or other local governmental entities that desire to undertake revenue-producing road projects.

REFERENCES

Florida Constitution: Article 8, Section 2. Florida Statutes: Chapters 163, 166, 170, and 316; Sections 95.361, 166.411, 187.201(19), 206.605, 206.61, 335.04, 335.20, 336.021, 336.025, 337.29, 339.175. Laws of Florida: Chapters 85-180, 86-243. *Florida Municipal Record*: M. Sittig, "Functional Classification of Roads and Transfer of Responsibility," Volume 56, No. 1.

Section 6-2

Public Transit

A. MUNICIPAL AUTHORITY

In the provision of public transit, a municipality may:

1. operate a municipal public-transit system;
2. grant one or more franchises to private operators;
3. provide, by interlocal agreement, for service within the city by another governmental unit (e.g., the county or special authority); or
4. do nothing.

If the county levies a local-option gas tax, each city receives a share of the proceeds to expend on transportation facilities and services, which may include public-transit programs. Cities may also finance public-transit systems through special assessments on specially benefited property. (Refer to the “Municipal Finance” chapter in this manual for additional information.)

B. REGIONAL TRANSPORTATION AUTHORITIES

The Legislature has encouraged a multi-jurisdictional approach to the provision of public transportation by providing for “regional transportation authorities” (RTA). An RTA may be established by two or more contiguous counties, municipalities or other political subdivisions, with “municipality” defined as “any city with a population of over 50,000” within the RTA. Methods for establishing an RTA are outlined in the Florida Statutes. Municipalities of less than 50,000 population may be admitted to an existing RTA by approval of three-fourths of the RTA’s board of directors. An RTA may operate public- transportation facilities or may contract with other providers of public transportation.

An RTA is a special tax district and may levy an ad valorem tax, not to exceed 3 mills, on taxable real property. Such tax, however, must be approved by the governing bodies of the participating political subdivision and, in a referendum, by a majority of the electors in each affected political subdivision.

C. METROPOLITAN PLANNING ORGANIZATIONS (MPO)

A metropolitan planning organization (MPO) shall be designated for each urbanized area of the state. An MPO is designated by an agreement between the governor and units of local government. An MPO shall consist of five to 19 voting members representing local governments, as appointed by the governor and approved by the local governments. “The authority and responsibility of an MPO is to manage a continuing, cooperative, and comprehensive transportation planning process that results in the development of plans and programs which are consistent, to the maximum extent feasible, with the approved local comprehensive plans of the units of local government” within the MPO. An MPO is responsible for the development of a transportation improvement program within its area. The powers, privileges, and authority of an MPO are specified in the Florida Statutes.

D. STATE ROLE

1. Department of Transportation (DOT)

DOT's "Florida Transportation Plan" must include the development of public-transit facilities. Program objectives of DOT include the promotion of all forms of public transit. DOT is to cooperate with and assist local governments in the development of transportation programs, and the public-transit element of the state transportation plan "shall be consistent" with local plans. (See the "Streets and Highways" section in this chapter for additional information on the Florida Transportation Plan.) DOT has specific responsibilities in regard to public-transit programs. Chapter 341, Florida Statutes, states that DOT:

1. develop a statewide plan for public transit needs at least five years in advance; this plan will incorporate plans adopted by local planning agencies which are consistent to the maximum extent possible with adopted strategic comprehensive plans and approved local comprehensive plans;
2. provide technical and financial assistance to municipalities, based on the analysis of public transit problems and needs;
3. may assist public agencies that provide public transit with department-owned vehicles and equipment available for lease to agencies with needs of a limited duration;
4. shall also assist municipalities in the planning and development of public transportation programs and procedures and in the identification of alternatives for achieving the most effective use of available transportation resources and increasing revenue sources as needed;
5. may, under certain conditions, advance the municipality, on a matching funds basis, state funds for capital improvements to transit properties;
6. shall assist municipalities in achieving a condition wherein transit systems are operated at a service level that is responsive to identified transit needs.

2. Public Transit Block Grant

Municipalities are authorized to receive federal grants or apportionments for public- transit and commuter assistance projects. A public-transit block grant has been created at the state level to be administered by DOT. These funds may be expended for costs of public:

1. bus transit service development;
2. local fixed guideway capital projects,
3. transit service development and transit corridor projects, and
4. bus transit operations.

REFERENCES

Florida Statutes: Sections 163.01, 166.021, 170.01, 212.055, 334.044, 334.046, 336.025, 336.026, 339.155, 339.175, and 241.051.

Section 6-3

Airports

A. MUNICIPAL POWERS

The Legislature has been unusually explicit in specifying certain municipal powers regarding the provision of airport facilities, including the following:

1. Property needed for an airport or related purposes may be acquired by a municipality through any unusual means, including that of condemnation; this power extends outside the territorial limits of the municipality.
2. A municipal council may levy taxation, as necessary, in order to meet the community's needs for airport facilities.
3. Bonds may be issued to pay for airport facilities.
4. Airport property or facilities may be leased, but not for more than 30 years.
5. Federal funds may be used.
6. Two or more municipalities may cooperate in the operation of an airport facility.

B. AIRPORT ZONING

1. Zoning Regulations

A municipality may regulate land use in areas adjacent to an airport, guided by the provisions of Chapter 333, Florida Statutes.

Public-use airports are eligible for approach zone protection. In the interest of public health, safety, and general welfare, the establishment of hazard areas is essential. An airport hazard area is defined as "any area of land or water upon which an airport hazard might be established if not prevented." Federal obstruction standards for airports are set out in Part 77, Code of Federal Regulations.

In order to prevent the creation or establishment of airport hazards, every municipality having an airport hazard area within its jurisdiction is required to adopt, administer, and enforce airport zoning regulations. If an airport hazard zone extends into the jurisdiction of another municipality, the two jurisdictions shall either:

1. through interlocal agreement, establish and enforce airport zoning regulations; or
2. by ordinance or resolution, create a joint airport zoning board.

In the event of a conflict between any airport zoning regulations and any other regulations, the more stringent limitation requirement shall prevail. Procedures for the adoption or amendment of airport zoning regulations are detailed in s. 333.05, F.S., including the requirement of a public hearing.

Zoning regulations may require that a permit be obtained from the municipality prior to new construction or renovation of property within the airport hazard zone. No permit will be granted which would allow the creation of a new hazard or the worsening of an old one. If a regulation would cause "practical difficulty or unnecessary hardship," an individual may appeal to a board of adjustment for a variance. If a variance is granted, the owner of the nonconforming structure or tree may be required to install and maintain markers necessary to indicate the presence of an airport hazard. Violation of any state or local airport-zoning law, regulation, order, or ruling constitutes a second-degree misdemeanor, punishable by a term of imprisonment not to exceed 60 days and a \$500 fine. A municipality may seek a court injunction in order to abate a violation of airport zoning regulations.

2. Airport Zoning Commission

Prior to the initial zoning of any hazard area, an airport zoning commission must be established. The responsibilities of the commission are to recommend boundaries of the various zones and to promulgate regulations for the zones. A city planning board or comprehensive planning commission may be appointed as the airport zoning commission. All airport zoning regulations shall be “reasonable,” and all requirements and restrictions must be “reasonably necessary.” Regulations should reflect the character of the flying operation expected to be conducted at the airport, the nature of the terrain within the hazard area, the character of the adjacent neighborhood, and the uses to which the property to be zoned is put. Regulations shall not require the removal, lowering, or alteration of any pre-existing structure or tree; however, if the nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down, destroyed, or deteriorated, the owner may be compelled to remove it within 10 days of notice.

3. Board of Adjustment

“All airport zoning regulations...shall provide for a board of adjustment...” This board of adjustment is empowered to hear appeals of airport regulations and may grant variances to the zoning regulations. A zoning board of appeals or adjustments that already exists may be appointed to the capacity of airport board of adjustment, or a new board may be created by the municipal council. Any person affected by a decision of the board of adjustment may present his case to the circuit court.

4. State Role

The Florida Department of Transportation (DOT) is responsible for assisting the development of a viable aviation system in the state. It shall develop a statewide aviation system plan, which shall consist primarily of the master plans of local airports and which may include plans adopted by local and regional planning agencies. Upon request, it shall provide financial and technical assistance to cities which operate public-use airports.

DOT administers a program of matching grants in support of the planning, design, and construction of proposed airport projects, with special emphasis on projects for runways, taxiways, lighting, and other air side activities. DOT may fund up to 50 percent of the non-federal share of the costs of many eligible projects. For land acquisition, DOT may lend funds for 75 percent of total costs, to be repaid when federal funds are received or within 10 years.

DOT is also authorized to approve airport sites, license airports, and renew licenses annually. Airports owned or operated by a municipality are required to be licensed, but pay no site-approval or licensing fee. An airport is exempt from the site-approval and licensing requirements if it is under the jurisdiction of a municipal aviation or port authority. It should be noted that DOT has no authority over municipal aviation or port authorities or over any airport under the control of such an authority.

REFERENCES

Florida Statutes: Chapters 330, 332, and 333.

Section 6-4

Water Service and Sanitation

It is often said that a city's greatest expenses are the pipes beneath the roads and the road itself – this is true for those Florida cities which choose this service.

A. WATER SERVICES

A city government may choose to provide a centralized potable water system for residents and commercial/industrial uses. This choice requires a significant commitment for physical infrastructure, as well as regular updating of the system for federal and state regulatory compliance.

Cities also may choose to take over a private water system, or a neighborhood's package water plant, in order to provide this service as a public service. The city council must establish rates to charge for this service that will sustain its operation and satisfy any related debt. Debt financing is often necessary because of the expense of a centralized system.

In Florida, cities with centralized water systems are governed by Chapters 180, 373 and 403, F.S., and implementing regulations promulgated by the state. When a city operates a water utility, two of the council's chief responsibilities are setting water rates and reviewing city water policies.

Water issues facing Florida's cities include: water capacity and growth management, re-use water and its uses, funding alternative water sources, and regional water issues. For more on these topics, please review the Florida League of Cities' annual legislative priority statement.

B. SANITATION SERVICES

As defined here, if a city chooses to provide sanitary sewer (also called wastewater treatment), municipal responsibility for sanitation includes providing for the collection, treatment and disposal of sanitary sewage (liquid waste).

1. Liquid-Waste Management

Sewage treatment is classified as either primary, secondary, or tertiary (advanced). Primary treatment removes coarse and suspended solids from the raw sewage. Secondary treatment aids oxidation and disinfects sewage which has already been through a primary treatment. Tertiary treatment removes phosphorous and adjusts the acidity level in the sewage. Secondary treatment is required for all liquid waste disposed of through ocean outfalls or disposal wells, and the Department of Environmental Protection (DEP) may order advanced treatment as deemed necessary. Noncompliance may be punished by a fine of \$500 per day.

a. Effluent

"Effluent" is the liquid remaining after treatment. It can be disposed of in a number of ways. It can be directed into a lake, bay, stream, or wetland; it can be used, as for watering a golf course or as water for large cooling systems; or it can be evaporated.

b. Sludge

“Sludge” is the solid material left after treatment. The wet sludge can be decomposed by aerobic or anaerobic digestion, dumped in the sea, or buried; or it can be de-watered, then burned, buried or prepared as compost.

2. Solid-Waste Management

Cities usually choose to provide this service to residents in two ways: under county contract or through the city, either by city contract or by city employees.

Refuse systems have two components: collection and disposal. These are explained below. (Also, refer to “1988 Solid Waste Act” in this section, which describes the responsibilities of a municipality and a county concerning solid-waste management and recycling.)

a. Collection

With respect to collection, municipal practices vary. Some municipalities provide backyard collection; others require trash to be placed at the curbside or in an alley. Backyard collection might involve any of the following:

1. Collectors walk to the back and dump trash into an intermediate container;
2. Collectors take the container to the truck, dump it, and return it to the back; or
3. Collectors take the container to the truck, dump it, and leave the container on the curb. Collections may be made once a week, twice a week, or more than twice a week. Federal collection guidelines specify only that trash containing food waste be collected at least once every seven calendar days.

The type of container used by customers may be specified in either an ordinance or a regulation. These containers might be permanent, immovable, stationary storage bins; open 55-gallon drums; containers designed for mechanized collection; standard lightweight metal or plastic cans with lid; or paper or plastic bags.

Collection equipment varies greatly among cities. Personnel costs, equipment and maintenance costs are some of the issues faced in making these decisions.

b. Disposal

Burial in a sanitary land fill is the most common method of solid waste disposal. In a sanitary land fill, a layer of clay, several inches thick, is put down; the solid waste is dumped onto the layer of clay; and a top layer, or cover, of clay is put on and around the waste periodically, (e.g., at the end of each day). In this manner, the waste is rendered inaccessible to rodents and insects, and contamination of nearby land and water is minimized. The leachate (the liquid which might drain from the landfill) is regularly monitored to provide notice of possible contamination of nearby water supplies.

Technology can recover certain materials (e.g., glass, metal, and paper) from trash for recycling. Other new technology produces “refuse-derived fuel,” which then is used to generate electricity, steam, or hot water. Florida has several waste-to-energy facilities. Solid waste may be burned so that only ash must be buried (along with unburnable waste, of course) in the land fill, thereby reducing possible contamination and greatly extending the life of a land-fill site.

C. SANITATION PROVISION OPTIONS

Authority and responsibility for sanitation functions are located in municipal governments through not only the general home-rule powers of municipalities but also, in specific language, by Chapter 180, Florida Statutes. The sanitation functions may be performed directly by the municipality or may be franchised to a private sanitation firm; also, they may be relinquished to another governmental entity (e.g., the City of Pensacola has relinquished the liquid-waste function to the Escambia County Utilities Authority).

In choosing an administrative arrangement for providing sanitation services, municipal officials should consider the following items:

1. the community's present and estimated future service needs;
2. the changes which might occur in geographical boundaries;
3. the current costs of the facilities and their maintenance, as well as projected future costs;
4. the available methods of raising revenue and their revenue-producing potential;
5. the relative efficiency and effectiveness of the various organizational options;
6. the savings, if any, which might be affected by contracting out or relinquishment;
- and
7. the relative satisfactoriness of service to municipal citizens of the various organizational options.

1. Municipal Operation

A municipality may itself operate a liquid-waste or solid-waste system. Procedures for the initiation of a sanitation utility are detailed in the Florida Statutes. In the financing of a utility, a city is not confined by any statutory limits on municipal indebtedness, as long as the utility-related debt creates a lien only on the utility-related property. Requirements concerning the issuance of revenue certificates for a municipal utility are found in the Florida Statutes.

In creating and operating a sanitation utility, a municipality may exercise all of its usual corporate powers, including the power of eminent domain. The utility may be operated as a regular department or may be placed under a separate board, created by the council. Rates or charges may be set by the council and are to be "just and equitable."

2. Franchising Option

A municipal council may grant to a private firm the privilege, or franchise, of exercising the municipality's corporate powers in order to operate a sanitation utility. A franchise may not be for more than 30 years. Rates or charges of the firm shall be fixed by the city council.

D. STORMWATER SERVICES

Under federal and state laws, cities must provide stormwater management by working with the county and other cities in their region. Stormwater is the left-over water from rain that gathers pollutants as it travels on streets, canals and other pathways. In a tropical state like Florida, stormwater does not stay in any one jurisdiction, so political boundaries are not effective – a regional approach is required. These regulations are found in Ch. 403, F.S.

E. EXTRA-TERRITORIAL POWERS

A city may exercise its corporate powers in unincorporated territory outside its corporate limits for the purpose of operating a liquid-waste or solid-waste sanitation program, as necessary or desirable for the promotion of the public health, safety, and welfare. In doing so, it may create, by ordinance, a zone,

or area and may require all persons or corporations in the area to connect with a sewerage system. Such an area may not exceed for more than five miles from the city's corporate limits.

The city shall charge consumers outside city boundaries rates, fees, and charges determined in one of two ways:

1. The city may charge the same rates, fees, and charges as consumers inside the city. In addition, it may add a surcharge of not more than 25 percent, which may be done without a hearing "except as may be provided for service to consumers inside the municipality."
2. The city may charge rates, fees, and charges that are "just and equitable" and which are based on the same factors used in determining the rates, fees, and charges for consumers in the city limits; in addition, a second 25 percent may be levied. However, the total of all rates, fees and charges shall not be more than 50 percent in excess of the total charged consumers within the city limits. A public hearing is required before the setting of any rates, fees, or charges using this form of determination.

F. STATE ROLE

Cities that operate utility systems are obliged to comply with the rules and regulations of the Florida Department of Environmental Protection (DEP), the United States Environmental Protection Agency (EPA), and other appropriate state and federal agencies. On the state level, sanitation-related responsibilities are carried out by DEP and the Department of Health.

1. Department of Environmental Protection (DEP)

The bulk of state sanitation-related authority is exercised by DEP as set forth in Chapter 403, Florida Statutes, which generally sets out the powers and duties of the department. DEP has broad responsibilities and powers in matters affecting air and water quality. Its powers, in respect to water quality, extend to surface, coastal, and underground waters. DEP is the state permitting agency for any "stationary installation which will reasonably be expected to be a source of air or water pollution;" hence, it exercises permitting authority over municipal sewage-treatment plants and land-fill operations. DEP's authority is found under Chapter 403 of the Florida Statutes:

The department shall issue permits...only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules promulgated by the department..."

DEP is the lead agency in the operation of a groundwater-quality monitoring program designed to detect or predict groundwater contamination. DEP creates rules for the general operation of solid-waste disposal areas, and in general, establishes rules for the processing of solid-waste. Another important function of DEP is the implementation of the state solid-waste management program established by the "1988 Solid Waste Act."

2. Other State Departments

a. Department of Health

The primary responsibilities of the Department of Health are the monitoring of septic-tank effluent and enforcement of regulations concerning septic tanks. The department also certifies laboratories for the testing of water-quality samples.

b. Florida Public Service Commission (PSC)

The PSC has no regulatory authority over sanitation programs owned, operated or controlled by government authorities.

G. FINANCING

Large expenses may be involved in the initiation and/or operation of a sanitation system, whether for liquid or solid wastes. These expenses may be met through operating revenues, impact fees, general taxes, borrowing or state assistance. (Refer to the “Municipal Finance” chapter in this manual for further information concerning financing.)

1. Operating Revenues and Impact Fees

The monthly charge for services (user fee) imposed on the user of a sanitation service may include some amount to pay for capital indebtedness and the cost of capital expansion. Moreover, a user-fee schedule for sewage services may include one-time payments of front-footage fees (a charge levied by the foot to pay for water and sewer lines that run by a person’s property), payments for initial installation of lines to serve the property, and connection fees. An increasingly common approach in recent years has been the use of capital-facilities charges (or impact fees). This requires the property owner to make a lump-sum payment toward the capital costs of treatment facilities, transmission systems, and disposal sites; the amount of the payment should reflect the fiscal “impact” which the property has on the municipality.

2. General Taxes

Some municipalities finance solid-waste collection and disposal through general tax revenues; in other words, no fee is charged to the recipients of this service.

Ad valorem (property) taxes, either assessed as a part of the general revenue sources of the municipality or levied specifically to pay for general-obligation bonds, may be employed to pay for capital costs. For this purpose, ad valorem taxes have some disadvantages. For one, the amount paid by a property owner is not necessarily related to the value conferred on the property by the availability of the service or related to the amount of services used by the property owner. Ad valorem taxation has the advantage, however, of reducing residential property owners’ federal income-tax liability; the charges for services and special assessments do not accomplish this. This is not an advantage for commercial property owners, however, because the utility charges are tax deductible as business expense in any form.

3. Borrowing

Usually, utility operators will borrow money to purchase, construct, and improve utility systems. This is an appropriate way to proceed because a utility operation requires a large capital investment that can be paid off by the revenue which it generates over a long period of time. Ordinarily, the city would sell bonds to obtain money from investors for this purpose. The bonds may be either revenue bonds or general-obligation bonds.

a. Revenue Bonds

“Revenue bond” implies that the source of funds to pay back the money borrowed is the revenue generated by the capital system purchased with the borrowed money. Revenue bonds represent borrowing on the strength of utility service charges to be imposed in the future. Issuing revenue bonds imposes on the utility an obligation to operate, maintain and extend the system and to pay all debts

as they become due. Typically, only revenues of the system are pledged, and bondholders may not force the governing body to use any other source of revenue, such as ad valorem taxes, to pay off the bonds. Cities may pledge the utility property itself, as well as the revenue to be earned, but it is advisable to pledge only the revenues. (Note: to pledge the property without a referendum would most likely violate Article 7, Section 12, Florida Constitution, as construed by the Supreme Court.)

b. General-Obligation Bonds

General-obligation bonds are paid for by ad valorem taxes imposed within the district served. In the case of a city, the entire city would be taxed for this purpose. General-obligation bonds must be approved by a vote of the electors within the affected area before they may be issued. Holders of general-obligation bonds will be able to obtain a court order to have the taxes levied and collected each year if the appropriate governing agency were to default in its obligation. In most instances, the use of general-obligation bonds is not as desirable to finance utility systems as the use of revenue bonds, because it is a less fair way of allocating the costs of the system. In some instances, however, the anticipated revenue from the system might be so poor as to make revenue bonds unmarketable; in such cases, it might be necessary to issue general-obligation bonds.

4. State Financial Assistance a. DEP Assistance

State grants for the construction or reconstruction of sewage treatment or disposal facilities, including collection or transmission lines, are provided through DEP. Details are outlined in Chapter 403 of the Florida Statutes. DEP is also authorized to issue bonds and to make the proceeds thereof available to local governments for the financing or refinancing of water supply and distribution facilities, air and water pollution-control facilities, and solid-waste disposal facilities. Also, DEP is authorized to make loans to local governments to assist them in the planning, designing, and preparation of environmental assessment studies for sewage-treatment facilities. DEP administers a program of grants for solid-waste management, including recycling programs.

b. Small County Sewer Construction Assistance Fund

The “Small County Sewer Construction Assistance Fund” was established to provide funds to assist “financially disadvantaged small communities” with their needs for adequate sewer facilities. An eligible community is defined as a municipality with a population of 7,500 or less and an annual per capita income less than the state per capita income. Any project satisfactorily planned in accordance with the requirements of the Environmental Regulation Commission is eligible for funding, and grants may be provided by DEP for up to 100 percent of the costs of the project.

H. 1988 SOLID WASTE ACT

Major legislation on solid waste management was enacted by the Florida Legislature in 1988. Legislative objectives were to encourage **county-city cooperation** in consolidating solid-waste management efforts and to promote the recycling of solid waste in order to achieve a 30-percent reduction in the amount of solid waste disposed of in land fills and incinerators by the end of 1994.

1. Counties as Lead Agencies

County governments are designated as the lead agencies in establishing and providing solid-waste disposal facilities to meet the needs of both incorporated and unincorporated areas of the county. Counties may charge reasonable fees for use of disposal facilities; however, cities may not be charged fees higher than those assessed to other users. Fees collected by a county on a countywide basis must be used to fund countywide solid-waste disposal and management services.

2. Municipality's Role

A city must provide for collection and transportation of solid waste within its jurisdictional boundaries to county-operated disposal facilities (if it does not operate its own disposal facility). **Cities are generally prohibited from operating disposal facilities**, but may continue to operate facilities permitted on or before October 1, 1998. A city may operate its own disposal facility only if it can demonstrate that use of county facilities places a significantly greater financial burden on city residents than on other residents of the county.

Unless otherwise approved by interlocal agreement or special act, a city may construct and operate a resource-recovery facility, with related on-site disposal facilities, only if the city can demonstrate:

1. that the operation of its facility will not affect financial commitments of the county, and
2. that operation of a city facility will not increase the cost of solid-waste disposal to county residents outside the city limits.

If a city establishes a solid-waste facility and later abandons it, the city will be responsible for the cost of expansion of county disposal facilities as may be necessary to handle the city's solid wastes for the remaining life of the county facility. In addition, in abandoning its facility, the city must comply with applicable landfill-closure requirements.

3. Cost Accounting

Each city is required to determine the full cost of its solid-waste management services and to inform city residents annually of this cost. The city is encouraged, but not required, to levy solid-waste charges for services (user fees) to recoup the full cost of providing the service. Cities may continue programs of grants and loans to low-income families to help them pay for the solid-waste services which they receive.

4. Required Recycling

Each county is required to operate a recycling program. Construction and demolition debris must be separated from the solid-waste stream and segregated in separate locations at the disposal facility. At least a majority of the newspaper, aluminum cans, glass, and plastic bottles must be separated and offered for recycling. Local governments are encouraged to separate all plastics, metals, and all grades of paper for recycling and to recycle yard trash and other wastes into compost available for agriculture and other uses.

Counties and cities are encouraged to form cooperative recycling programs. Counties are encouraged to obtain city participation through interlocal agreements. However, if a city decides to undertake a separate program, the county may require that the city provide information on its program and recycling efforts in order to determine if the waste-reduction goals of the Solid Waste Act are being achieved within the county.

REFERENCES

Florida Statutes: Chapters 180, 403; ss. 367.022(2), 381.0062-381.0067. Also see *QualityCities*, "Summary of the 1988 Solid Waste Act: A Status Report," (1988).

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Section 6-5

Parks and Recreation

A. MUNICIPAL POWERS

More than any other area of functional responsibility, recreation allows the municipality the freedom to choose its own level of service. There are no state or federal enforcement agencies assigned the task of upholding recreational standards. A municipality is free to assess the community's recreational needs and desires and provide services accordingly. However, a municipality is required to include in its local comprehensive plan an element providing for a comprehensive recreation system. (Refer to the "Growth Management" chapter of this manual for more information.)

Municipal authority to establish and operate recreation facilities and programs is found in the general home-rule powers of Chapter 166, Florida Statutes, and in Chapter 418, Florida Statutes, which predates the grant of home-rule authority.

Most of the provisions of Chapter 418 are covered by the home-rule powers. However, one notable provision of Chapter 418 is that which provides for the establishment of a "playground and recreation tax" for a supervised recreation system – a municipality adopting the provisions of Chapter 418 at an election and until revoked at an election by a majority of qualified voters who are freeholders, may levy and collect a playground and recreation tax in like manner as the general tax of the municipality.

B. ESTABLISHING FACILITIES

Municipalities may obtain land for recreational purposes through donation, negotiation, or condemnation. In many cases, volunteer labor and contributions may be obtained from neighborhood residents, civic clubs, or business firms.

Many times municipal officials have found that parks and other recreational areas are under-utilized and/or costly to maintain. (See the "Maintaining Facilities" section for further discussion.) Consequently, officials should carefully consider several points prior to initial investment in a recreational facility. These include:

1. community support of the project – prospects for long-term community support and use of a facility must justify its creation;
2. accessibility of the facility to the user – parks and recreation areas should be accessible to all municipal residents, and the planning process should include accommodations for projected population growth;
3. proximity of similar facilities or programs – care should be taken in not creating an overlap of recreational services which would dilute the effectiveness of the recreational dollar;
4. maintenance costs – serious consideration must be given to the local government's continued ability to provide the required maintenance services;
5. value of the program/facility to the community – a well-conceived parks and recreation program is an asset to the total community and stimulates community pride and citizen involvement; and
6. officials' role in recreation programs – municipal officials are encouraged to participate in recreation programs in order to better evaluate them.

C. MAINTAINING FACILITIES

Maintenance is a key consideration in establishing a parks and recreation program. State and federal programs may assist in the initial acquisition and development of the facilities, but maintenance rests solely with the local government.

The financing of recreation maintenance may be more difficult than anticipated. For one thing, charges for services may be restricted by state or federal rules, if state or federal money was involved in acquisition of the facility. Also, there may be public resistance to charges. In any event, demand for participation in recreational programs and for use of recreational facilities is highly elastic – that is, the higher the charge, the lower the usage; consequently, potential revenue from charges for services is limited.

Community support is important not only in establishing programs, but in sustaining them as well. Civic organizations, businesses, and neighborhood residents can supplement the municipality's maintenance program. For example, the Little League may use a municipal ball field and may, in turn, assist in maintaining that field. One approach that has been successful in some communities is the "adopt-a-park" program, in which individual organizations or businesses assume responsibility for particular parks.

A good maintenance program should always include a regular checklist procedure for replacement of damaged equipment, elimination of hazardous conditions, and correction of all other situations which could involve a liability. Municipal staff charged with maintaining parks should establish a regular maintenance schedule. Listed below are several points to be considered in establishing such a schedule:

1. Lawn care – grass should be cut to two inches or less in height and be mowed again before it is more than four inches in height.
2. Litter control – litter should be removed at least once a week during periods of heavy usage and more often if the park appears littered.
3. Walks, roadways, and parking areas – all "potholes" should receive prompt repair; a continual repair program will be less expensive in the long run.
4. Lights – proper lighting curbs vandalism and other night-time problems.
5. Trash receptacles – regular cleaning and painting will help control odor and insects.
6. Garbage pickup – garbage should be collected weekly; more often during periods of heavy usage.
7. Picnic areas – to encourage use of picnic facilities, tables must be clean and splinter-free, and charcoal pits must be cleaned at regular intervals; litter control and garbage collection are essential in picnic areas.
8. Playground equipment – the condition of such equipment must always be good because poorly maintained equipment leads to injuries.
9. Signs – signs are a prime target of vandalism and theft, so regular sign maintenance is important.
10. Restrooms – restrooms must be cleaned regularly; they should be well supplied and checked daily during periods of heavy usage; graffiti should be removed or painted over promptly in order to discourage its subsequent production.

D. RECREATIONAL DISTRICTS

A municipality may create one or more recreation districts within the municipality's territory. This shall be done by city ordinance and approved by referendum within the proposed district. A recreation district may be chartered as a corporate body which, in addition to other powers, may issue bonds (either general-obligation or revenue) and may levy ad valorem taxes on all real property within the district in order to finance bonds. A special form of recreation district – mobile-home park recreation district – may also be established by a municipality.

E. STATE ROLE

State responsibilities in recreation are performed by the Division of Recreation and Parks of the Department of Environmental Protection (DEP). The division is required to "provide consultation assistance" to local governments concerning the promotion, organization and administration of local recreation areas and facilities.

It is also policy of the state, as expressed in the state comprehensive plan, to expand state and local efforts to provide recreational opportunities to urban areas. The state requires, as a component of the local comprehensive plans, "a recreation and open space element indicating a comprehensive system of public and private sites for recreation." DEP, through the Florida Recreation Department Assistance Program, provides grants to local governments for the purchase of land for public outdoor- recreation purposes.

F. SHERIFF'S POWER

A sheriff is empowered to **temporarily** close any public recreation facility when, in his opinion, a disorderly and/or dangerous situation exists there. The power of the sheriff shall be "full, complete and plenary."

G. USE OF DEDICATED LANDS

Land often is donated to a local government for use as a park. Such land is said to be "dedicated" for park purposes. Any funds received from the sale of dedicated lands, pursuant to the law, shall be used only for park purposes. Stipulations regarding the use and ownership of such dedicated lands are to be found in Chapter 95 of the Florida Statutes.

REFERENCES

Florida Statutes: Chapters 166 and 418; Sections 30.291, 95.36, 163.3177(6), 187.201(10), and 375.075.

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Section 6-6

Libraries

A. MUNICIPAL LIBRARIES

Through its home-rule authority, a municipality may operate a municipal library, if it so chooses. It is not required to do so, nor is it really encouraged to do so by the state.

Provision is made for state funding of certain local libraries which provide free library services.

A political subdivision that has been designated by a county or municipality as the single library administrative unit is eligible to receive from the state an annual operating grant of not more than 25 percent of all local funds expended by that political subdivision during the second preceding fiscal year for the operation and maintenance of a library, under the following conditions:

Eligible political subdivisions include, among others, a municipality that establishes or maintains a library or that gives or receives free library service by contract with a nonprofit library corporation or association within the municipality. **(Note: There is additional information governing eligibility related to these operating grants in s. 217.17, F.S., please reference that statutory language governing specific information on eligibility and uses.)**

B. MULTI-COUNTY LIBRARIES

“Stand-alone” municipal libraries are not eligible for certain other forms of state assistance, because state policy is designed to encourage the creation of **multi-jurisdictional** library agencies. Municipalities are encouraged to participate in such agencies, which usually are designated as “multi-county” libraries.

Multi-county libraries receive multi-county library grants and are eligible for other state grants. A municipality may participate in a multi-county library as the administrative unit thereof.

C. STATE ROLE

In all library matters, the responsible state agent is the Division of Library and Information Services of the Department of State. The Division of Library and Information Services establishes the operating standards under which libraries are eligible to receive state funds. Any library receiving grants under Chapter 257, F.S., must file a financial report on its operations with the division on or before December 1 of each year.

D. CONSTRUCTION GRANTS

The Division of Library and Information Services may accept and administer library construction moneys appropriated to it and shall allocate such appropriation to municipal, county, and regional libraries in the form of library construction grants on a matching basis. The local matching portion shall be no less than the grant amount, on a dollar-for-dollar basis, up to the maximum grant amount, unless the matching requirement is waived by s. 288.06561. The division shall adopt rules for the administration of library construction grants. For the purposes of this section, s. 257.21 does not apply. **(Note: this language is excepted from 257.191 of the Florida Statutes. Please refer to that statute for additional information related to library construction grants.)**

REFERENCES

Florida Statutes: 257.17 Operating Grants and 257.191 Construction Grants

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Section 6-7

Cemeteries

A. OPERATION OF MUNICIPAL CEMETERIES

A municipal government may own and operate a cemetery, as one of its home-rule powers; in fact, many of Florida's cities do operate cemeteries. A city must choose to assume responsibility for the maintenance of a privately owned cemetery upon conveyance to the city of all property and monies of the private operator.

Municipal cemeteries are exempt from state regulation of cemeteries.

B. REGULATION OF PRIVATE CEMETERIES

Municipalities possess limited regulatory powers in relation to private cemeteries:

1. In applying for a state license to establish and operate a cemetery, an applicant must present development plans which have been approved by "the appropriate local government agency regulating zoning in the area of the proposed cemetery."
2. A municipality may maintain an abandoned cemetery and require reimbursement of expenses from its owner.

C. STATE ROLE

Private cemeteries of certain types are licensed and regulated by the Florida Department of Banking and Finance. Municipal cemeteries are exempt from state regulation of cemeteries, with one exception: denial of burial space on the basis of race or color is prohibited.

REFERENCES

Florida Statutes: Chapter 497, "Florida Cemetery Act," particularly, ss. 497.006(6) and 497.253.

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Section 6-8

Ports and Harbors

A municipality may operate port facilities, either through the “1959 Port Facilities Financing Law,” or as authorized through a special act.

A. PORT PERSONNEL

For each port, one or more shipping masters shall be appointed by the mayor of the municipality, with the consent of the council. The mayor and council also may prescribe rules governing performance by shipping masters, may impose fines on them, and may bring complaints in court against them. Each shipping master must execute a bond of \$2,000, payable to the mayor. County governments may appoint shipping masters for ports and harbors under county control.

Ship pilots are licensed by the Board of Pilot Commissioners of the Florida Department of Business and Professional Regulation.

As required by law, harbor masters are to be appointed by the governor. The harbor master ensures that arriving vessels have been cleared by the health authorities of the port and facilitates the loading and unloading of vessels by assigning docking space.

Stevedores may be licensed by a county government to work at harbors in the county.

B. PLANNING AND WATER-QUALITY PROTECTION

In certain cities, local comprehensive plans must contain a coastal-management element which, in turn, must include a comprehensive master plan prepared by the deep water port of that city. The cities affected by this requirement are listed in Chapter 403 of the Florida Statutes.:

1. Jacksonville
2. Tampa
3. Port Everglades
4. Miami
5. Port Canaveral
6. Fort Pierce
7. Palm Beach
8. Port Manatee
9. Port St. Joe
10. Panama City
11. St. Petersburg
12. Pensacola
13. Fernandina
14. Key West

The Florida Legislature has recognized the necessity of maintaining authorized water depth in existing navigation channels, port harbors, turning basins, and harbor berths. The Florida Department of Environmental Protection is instructed to develop a regulatory process which will permit ports to maintain water depths in an environmentally sound, expeditious, and efficient manner.

Expansions to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths or other harbor facilities of the ports listed above are not to be considered as developments of regional impact if such expansions are consistent with comprehensive master plans that are in compliance with the coastal-management element requirements of "growth management." The depositing of materials in tide or salt waters in connection with the construction of wharves, piers, jetties, quays and bulkheads is regulated by Chapter 309, F.S.

REFERENCES

Florida Statutes: Chapters 308, 309, 310, 314, 315; Sections 125.012, 163.3178, 403.02(9), 403.021.

Section 6-9

Cable Television

A. MUNICIPAL POWERS

A municipality may operate a cable-TV system itself or may grant one or more franchises for cable-TV services. Authority for either approach, as well as statutory provisions restricting municipal authority to grant cable-TV franchises, are found in Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act.”

B. FRANCHISING

The more commonly chosen option concerning cable television is for a municipality to grant one or more cable-TV franchises. Regulation specific to cable-TV franchising is found in Chapter 166, Florida Statutes.

1. Public Hearing Requirement

Before granting a cable-TV franchise, a city must hold a duly noticed public hearing. In that hearing, the city council must consider certain matters specified in Chapter 166, Florida Statutes.

2. Terms of Overlapping Franchises

A municipality may grant overlapping franchises if this does not violate the terms of a prior exclusive franchise. In granting an overlapping franchise for service to an area which is actually being served by a prior franchise, the city may not grant terms to the new franchise which are “more favorable or less burdensome” than those granted to the prior franchise. However, this restriction does not apply if the prior franchise is not already providing service to the area for which an overlapping franchise is granted. At the same time, a city may impose such “additional terms and conditions” on a second franchise as it shall, in its sole discretion, deem necessary or appropriate.

C. PUBLIC SERVICE TAXES

In granting a cable-TV franchise, a municipality may levy a tax, which must be paid by the franchise.

A municipality may levy a “public service tax” (or utility tax) on cable-TV service only if such tax was being levied on May 4, 1977, and is necessary in order to pay off bonds or certificates which were issued prior to that date. (Refer to the “Municipal Finance” chapter of this manual for more detailed information on public service taxes.)

REFERENCES

Florida Statutes: Chapter 999; ss. 159.02(18), 166.046, and 166.231(1)(a).

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Chapter 7

Municipal Finance

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Section 7-1

Introduction to Municipal Finance

A. SOURCES OF INFORMATION

This chapter of the manual, “Municipal Finance,” provides descriptions of the majority of revenue sources available to municipalities and a brief discussion of municipal expenditures. The text for this part is substantially drawn from the publication: *Local Government Financial Information Handbook* – September 2011 (available online at <http://edr.state.fl.us/Content/local-government/reports>). This publication was prepared and issued by the Florida Legislative’s Office of Economic and Demographic Research (EDR). Prior to 2010, the *Local Government Financial Handbook* was published and distributed by the former Florida Legislative Committee on Intergovernmental Relations (LCIR). However, the LCIR was not funded in the FY 2010-11 General Appropriations Act and the LCIR ceased operations on June 30, 2010. The EDR is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations. EDR provides objective information to committee staffs and members of the legislature in support of the policy making process. EDR publishes all of the official economic, demographic, revenue, and agency workload forecasts that are developed by Consensus Estimating Conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public..

The *Local Government Financial Information Handbook* is a reference shared with counties and municipalities. In its entirety, the publication provides information that assists municipal officials in budgeting and financial planning. Preparation of the handbook was primarily a joint effort of EDR and the Florida Department of Revenue’s Office of Tax Research. EDR updated the text and accompanying summary tables to reflect relevant changes to general law; the Office of Tax Research prepared the estimated distributions of the various taxes.

This EDR publication is the major resource for municipal financial officers in the State of Florida. Therefore, it was appropriate to base this part of the manual on the *Local Government Financial Information Handbook* in order to maintain a compatibility of financial terms and definitions for the reader. If copies of this report are desired, contact your municipal financial officer or contact: Office of Economic & Demographic Research, 111 West Madison Street, Suite 574, Tallahassee, FL 32399-6588, (850) 487-1402.

B. MUNICIPAL REVENUE SOURCES

Municipalities within the State of Florida are entitled by law to collect and expand revenues for eligible public purposes. Municipalities generate their revenue from a combination of sources including fees and charges, property taxes, state shared revenue and specifically authorized taxes.

Florida cities reported approximately \$27.4 billion in revenues for FY 2009-10. (See Chart 7-1 at the end of this section.) These revenues were reported in the following categories to the Department of Financial Services:

%Total Revenues

1. Service Charges	39.96%
2. Miscellaneous ⁽¹⁾	22.19%
3. Property Tax	14.95%
4. Intergovernmental Revenue ⁽²⁾	9.30%
5. Utility Service Tax	3.39%
6. Franchise Fees	2.55%
7. Permits, Assessments & Impact Fees	2.27%
8. Local Option & Gas Tax	2.12%
9. Communications Service Tax	1.33%
10. Other Governmental Taxes ⁽³⁾	0.89%
11. Judgments, Fines & Forfeitures	0.58%
12. Local Business Tax	0.47%

(1) Includes interest earnings, increase/decrease of investments, sale of fixed assets and proprietary non-operating revenue.

(2) Includes Insurance premium tax for firefighter pension & casualty insurance tax for police retirement

(3) Includes state sharing revenue

The following sections of this manual will present and discuss these municipal revenue sources in a way which we believe will provide the most clarity to a municipal official.

C. LONG-TERM DEBT (BONDS)

In addition to the revenue sources previously identified, municipalities have the option of “financing” or utilizing “borrowed” revenue. Article VII, Section 12, Florida Constitution, authorizes municipalities:

...to issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

- (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
- (b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

General provisions for municipal borrowing are codified in Chapter 166, Part III, Florida Statutes. According to s. 166.101, F.S., there are five basic forms of bonds: general obligation bonds, ad valorem bonds, revenue bonds, improvement bonds, and refunding bonds. The following forms of bonds **require** a referendum:

- 1. Ad valorem bonds – these bonds are payable from the proceeds of ad valorem taxes levied on real and tangible personal property.
- 2. General obligation bonds – these are known as “full faith and credit bonds” because their repayment is unconditional and based on the general credit and taxing powers of the borrowing government. Since the power to levy and collect property taxes provides the basic security to these bonds, they require voter approval to issue them, generally carry the lowest interest rates, and are typically used to finance general-purpose public buildings, roads and public safety facilities. (For most practical purposes, a general obligation bond is an ad valorem bond.)

The following forms of debt do **not** require a referendum:

1. Revenue bonds – these bonds are obligations in which repayment of debt service is entirely from revenues derived from sources other than ad valorem taxes; the most common municipal issues are for water, wastewater, electric, parking garages, civic centers, stadiums and airports.
2. Improvement bonds – these are special obligations of the municipality which are payable solely from the proceeds of special assessments levied for a project.
3. Refunding bonds – these bonds are issued to refinance outstanding bonds of any type and the interest and redemption premium; they should be issued and payable in the same manner as the refinanced bonds but require no electorate approval.

The use of borrowed funds for municipal government needs varies radically among jurisdictions. The selection of the appropriate instrument is dependent upon the financing circumstances of the project and the specific municipality.

Due to the size and sophistication of the financial market, most municipalities use financial advisors and/or other consulting services when dealing with long-term debt instruments. Local governments may also use the services of the Division of Bond Finance of the State Board of Administration to issue bonds.

REFERENCES

EDR Publications.

Florida League of Cities.

Florida Department of Financial Services' Bureau of Local Government.

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Section 7-2

Service Charges

“Service Charges” are defined as “voluntary payments based on direct, measurable consumption of publicly provided goods and services.” This category of revenues is, by far, the single largest category of municipal revenues.

Accounting for almost 40 percent of the average municipal budget, charges for services are derived from charges for water, wastewater, natural gas, electricity, mass transit, garbage collection, recreation, building inspections, public transportation and a variety of other services. The amount of revenue generated by these charges, of course, depends on which services the municipality chooses to provide and the level of such services. (See the “Sanitation” section of this manual for a more detailed discussion of charges for services for sanitation services.)

For some services, fees are charged at rates below actual cost and are partially offset by taxes; this may be necessary for services such as public transportation and recreation so that low-income residents are not excluded due to high prices. On the other hand, some services may be selected and charged rates to achieve a higher profit margin, in order to generate surplus revenue for other uses by the municipality.

Charges for services resulted in total revenues of nearly \$11 billion, or 40 percent of total municipal revenues, in FY 2009-10.

REFERENCES

EDR Publications.

Florida Department of Financial Services’ Bureau of Local Government.

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Section 7-3

Property Taxes

A. AD VALOREM TAXES AS REVENUE SOURCE

Ad valorem tax or “property tax” is a major source of revenue for local governments in Florida. “Ad valorem” is Latin for “the value of.” In FY 2009-10, ad valorem taxes constituted 30 percent of total county revenue (\$9.0 billion), and 15 percent of total municipal revenues (\$4.1 billion). This makes it by far the largest single source of general revenue for general-purpose governments in Florida. In addition, the property tax is the primary revenue source for school districts and “special purpose” local governments, such as special districts and other political subdivisions.

Besides being important for the amount of revenue it generates, the property tax is the only tax **not** preempted to the state by the Florida Constitution. However, the property tax is a limited revenue source. The Florida Constitution caps the millage rate assessed against the value of the property at 10 mills per taxing entity. That is, taxing units are prohibited from levying more than \$10 in taxes per \$1,000 of taxable value on properties they tax, without obtaining voter approval at least every two years.

B. MUNICIPAL DATA

- The statewide **effective millage rate** for municipalities for FY 2010 is 4.6667 mills.
- In 2011, one municipality is at the 10-mill cap and six are approaching the 10-mill limit (more than 9 mills).
- Municipal ad valorem revenues for FY 2009-10 were \$3.3 billion. Municipal taxable value was \$698.4 billion in 2010.
- Twenty-four of 410 municipalities do not levy property taxes. All of these municipalities, except one, have a total population less than 12,000.

C. EXEMPTIONS

1. Exemptions and Differential Assessments

Ad valorem tax **exemptions** are specific dollar amounts that are deducted from the assessed value of property. The homestead exemption and the additional homestead exemption are the largest of ad valorem exemptions in Florida. For 2010 assessed values, the two homestead exemptions represent 9.5 percent of total assessed value statewide. Ad valorem assessments may also be reduced by **differential assessments** resulting from a valuation standard other than fair market value, usually the value of the property. In Florida, significant property tax exemptions and differential assessments include, but are not limited to, the following:

1. Exemptions: homestead, governmental, widows/widowers, disability, institutional, economic development
2. Differentials: agricultural, park and recreational, pollution control devices

2. “Save Our Seniors” Amendment

In 1998, the Florida electorate approved the “Save Our Seniors” amendment to the Florida Constitution, which was placed on the ballot through the legislative joint resolution process. This constitutional amendment, which was amended in 2006, allowed the Legislature to authorize counties and municipalities by general law to provide an additional \$50,000 homestead exemption for permanent homeowners ages 65 and older with household incomes less than \$20,000 (and adjusted each year by CPI).

The implementing law, which passed in 1999 and was amended in 2007, authorizes a county or municipality to provide a homestead exemption up to \$50,000 for homeowners ages 65 and older with a combined household income of less than \$27,030 for 2012. Income is defined as “adjusted gross income” in accordance with the Internal Revenue Service. The law allows each local government to choose the amount of the property tax exemption up to \$50,000, but it requires the household income threshold to be annually adjusted for inflation.

3. “Save Our Homes” (SOH) Amendment

As provided by the Florida Constitution, beginning in 1995 or the year after the property receives homestead exemption, an annual increase in assessment shall not exceed the lower of the following:

- Three percent of the assessed value of the property for the prior year; or
- The percentage change in the Consumer Price Index (CPI) for all urban consumers for the preceding calendar year as initially reported by the U.S. Department of Labor, Bureau of Labor Statistics.

Under SOH, the assessed value of homestead property cannot increase more than 3 percent each year, unless construction or improvement occurs on the property. (The yearly limit varies based on the change in the CPI, but it cannot be more than 3 percent.) For most homesteads, this limitation results in an assessed value that is lower than the market value of the home.

Amendment 1, which was approved by the voters in 2008, allowed for the portability of the SOH differential (which is the difference between the assessed value of a homestead and the market value). This portability allows some or all of the difference between the old homestead’s assessed value and its market value can be applied to the assessment of a new home in the first year it is owned. After which the, “Save Our Homes” limit will apply each year after that. The value of the portable SOH differential depends on how the value of the new home compares to the value of the old home.

If the new home’s market value is the same or greater than the old home’s market value, the entire difference will be applied to the new home, so that the difference between the market and assessed values of the new home will be the same as the difference between the market and assessed values of the old home.

If the new home’s market value is less than the old home’s market value, the entire amount of the difference will not be applied to the new home.

Instead, the new home’s SOH differential will be the same percentage of its market value as the old home’s difference is of the old home’s market value. For example, if the old home’s SOH differential is 40 percent of its market value, the new home’s differential can be determined by multiplying 40 percent times the new home’s market value. Then subtract that amount from the market value to arrive at the assessed value.

Maximum deduction from market value: The amendment sets \$500,000 as the maximum amount that can be subtracted from the market value of a homesteader’s new home to determine the assessed value. The maximum applies no matter what the relationship of the new home’s market value is to the old home’s.

4. Amendment 1

In addition to the portability provision noted above with SOH, Amendment 1 also modified property tax in the following ways:

1. Increases the homestead exemption by exempting the assessed value between \$50,000 and \$75,000. This exemption does not apply to school district taxes.
2. Authorizes an exemption from property taxes of \$25,000 of assessed value of tangible personal property. This provision applies to all taxes.
3. Limits the assessment increases for specified non-homestead real property to 10 percent each year. Property will be assessed at just value following an improvement, as defined by general law, and may be assessed at just value following a change of ownership or control if provided by general law. This limitation does not apply to school district taxes. This limitation is repealed effective January 1, 2019, unless renewed by a vote of the electors in the general election held in 2018.

Further, this revision:

1. Repealed obsolete language on the homestead exemption when it was less than \$25,000 and did not apply uniformly to property taxes levied by all local governments.
2. Provides for homestead exemptions to be repealed if a future constitutional amendment provides for assessment of homesteads “at less than just value” rather than as currently provided “at a specified percentage” of just value.
3. Provides that the changes take effect upon approval by the electors and operates retroactively to January 1, 2008. The limitation on annual assessment increases for specified real property shall first apply to the 2009 tax roll.

a. SB 1588

During the 2008 regular session, the Legislature passed SB 1588 as a “glitch bill” to amend several technical problems associated with Amendment 1. One such amendment was to specify that the supermajority vote requirement necessary to exceed the maximum millage rate is based on the total membership of the governing body rather than the membership present at the meeting.

The bill contained a last-minute amendment to include a provision that would result in an additional loss of revenue for local governments. Under previous law, local governments were allowed, if they chose, to levy a millage rate in FY 2008-09 to recover the losses from the reduced tax base caused by Amendment 1 by a simple majority vote. The amendment to SB 1588 changed the calculation of the “maximum” millage rate that a county, municipality or special district may levy by a simple majority vote for FY 2008-09 only. It provides that the millage rate for FY 2008-09 (the millage rate that can be levied by a simple majority vote) must be calculated as if the tax base had not been reduced by Amendment 1. This would cause the “maximum” millage rate to be reduced to a rate below that of previous law.

Thus, if a local government experienced a 10-percent loss to its tax base resulting from Amendment 1, that government’s simple majority vote “cap” would have been lowered by 10 percent, but offset partially by the change in per capita Florida personal income (+4.15 percent for FY 2008-09). In almost all cases, this meant that it would have required a 2/3 vote of the membership of the governing body for a local government to hold itself harmless from the effects of Amendment 1. The maximum millage rate that may be levied by a 2/3 vote or unanimous vote of the membership of the governing body under existing law did not change. This means taxing authority may levy a millage rate up to a rate that is 110 percent of the (traditional) rolled-back rate, plus the change in per capita Florida personal income (+4.15 percent for FY 2008-09), by a 2/3 vote of the membership of the governing body. Similarly, a

taxing authority may levy a millage rate in excess of 110 percent of the (traditional) rolled-back rate, plus the change in per capita Florida personal income (+4.15 percent for FY 2008-09), by a unanimous vote of the membership of the governing body.

In future years, FY 2009-10 and beyond, the maximum millage rate that may be adopted by a simple majority vote of the membership of the governing body, is the traditional rolled-back rate, plus the change in per capita Florida personal income as published by the Office of Economic and Demographic Research by April 1 of each year.

Furthermore, the definitions used in the TRIM law, such as the definition of the “rolled-back rate,” did not change. This means the existing definition of “rolled-back rate” in the TRIM law is still the threshold for the rate that constitutes a “tax increase” subject to the advertising requirements in FY 2008-09 and beyond.

REFERENCES

EDR Publications.

Florida League of Cities.

Department of Revenue.

Florida Department of Financial Services’ Bureau of Local Government.

Section 7-4

Sales Tax Programs

Municipalities in Florida participate in two sales tax programs:

1. Local Government Half-Cent Sales Tax, and
2. "Local Option Sales Tax."

These programs are explained in detail below, including the complete distribution formulas for each.

A. LOCAL GOVERNMENT HALF-CENT SALES TAX PROGRAM

Authorized in 1982, the program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature. It distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Additionally, the program distributes a portion of communications services tax revenue to eligible fiscally constrained counties. Allocation formulas serve as the basis for these separate distributions. The program's primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.

The program includes three distributions to state sales tax revenues collected. The ordinary distribution to eligible county and municipal governments is possible due to the transfer of 8.814 percent of net sales tax proceeds to the Local Government Half-cent Sales Tax Clearing Trust Fund [hereinafter Trust Fund]. The emergency and supplemental distributions are possible due to the transfer of 0.095 percent of net sales tax proceeds to the Trust Fund. The emergency and supplemental distributions are available to select counties that meet certain fiscal-related eligibility requirements to have an inmate population of greater than seven percent of the total county population, respectively.

As of July 1, 2006, the program includes a separate distribution from the Trust Fund to select counties that meet statutory criteria to qualify as a fiscally constrained county. A fiscally constrained county is one that is entirely within a rural area of critical economic concern as designated by the governor, or for which the value of one mill of property tax levy will raise no more than five million dollars in revenue based on the taxable value. This separate distribution is in addition to the qualifying county's ordinary distribution and any emergency or supplemental distribution.

A county or municipality is authorized to pledge the proceeds for the payment of principal and interest on any capital project. The determination of actual revenue is calculated as follows:

Calculation of Ordinary Distribution Factors for Counties and Municipalities

Distribution Factor = $\text{Municipal Population} \div [(\text{Total County Population} + (2/3 \times \text{Incorporated Population}))]$

Municipal Share = $\text{Distribution} \times \text{Total Half-Cent Ordinary Factor for Each County}$

B. LOCAL OPTION SALES TAX

Seven different types of local discretionary sales surtaxes (also referred to as local option sales taxes) are currently authorized in law and represent potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions, and communications.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction. Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to state's sales and use tax. The following table summarizes how the surtax is collected.

If the sale occurs in a:	And delivery is in:	The surtax is:
County with a surtax	The same county	collected
County with a surtax	A county without a surtax	Not collected
County with a surtax	A different county with a surtax	Collected at the county rate where delivery is made
County without a surtax	A county with a surtax	Collected at the county rate where delivery is made
County without a surtax	County without a surtax	Not collected

Discretionary sales surtax applies to the first \$5,000 of any single taxable item, when sold to the same purchaser at the same time. Single items include items normally sold in bulk and items assembled to comprise a working unit. The \$5,000 limitation does not apply to the rental of commercial real property, transient rentals, or services. With regard to the sale of motor vehicles, mobile homes, boats or aircraft, the surtax applies only to the first \$5,000 of the total sales price. On the sale of a motor vehicle or mobile home, the tax rate is determined by the county where the purchaser resides as shown on the title or registration. On the sale of a boat or aircraft, the tax rate is determined by the county where the boat or aircraft is delivered.

The local discretionary sales surtax applies to communications services. Because the new communications services tax base is much larger than the base under prior law, discretionary sales surtax conversion rates were specified in law. For any county or school board that levies the surtax, the tax rate on communications services.

Of the local discretionary sales surtaxes, proceeds of only three are available to **municipalities**:

1. Local Government Infrastructure Surtax
2. Small County Surtax
3. Charter County Transit System Surtax

1. Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the county's governing body and approved by voters in a countywide referendum. Generally, the proceeds must be expended to finance, plan, and construct infrastructure; to acquire land for public recreation or conservation or protection of natural resources; and to finance the closure of local government-owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection (DEP). Additional spending authority exists for select counties.

A. Authorization to Levy

Local government may levy this surtax at a rate of 0.5 or 1 percent. This levy shall be pursuant to an ordinance enacted by a majority of the members of the county's governing body and approved by the voters in a countywide referendum. In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue. If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect.

Additionally, the surtax may not be levied beyond the time established in the ordinance if the surtax was levied pursuant to a referendum held before July 1, 1993. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. There is no state-mandated limit on the length of levy for those surtax ordinances enacted after July 1, 1993. The levy may only be extended by voter approval in a countywide referendum.

This surtax is one of several surtaxes subject to a combined rate limitation. A county shall not levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

B. Distribution

The surtax proceeds shall be distributed to the county and its respective municipalities according to one of the following procedures.

1. An interlocal agreement between the county's governing body and the governing bodies of the municipalities representing a majority of the county's municipal population. This agreement may include a school district with the consent of all governing bodies previously mentioned.

2. If there is no interlocal agreement, then the distribution will be based on the Local Government Half-cent Sales Tax formulas.

C. Authorized Uses

A school district, county, or municipalities within the county, or municipalities within another county in the case of a negotiated joint county agreement, may use the surtax proceeds and any accrued interest only for the following purposes.

1. Finance, plan, and construct infrastructure.
2. Acquire land for public recreation or conservation or protection of natural resources.
3. Finance the closure of county or municipal-owned solid waste landfills that are already closed or are required to close by order of the DEP. Any use of such proceeds or interest for purposes of landfill closures prior to July 1, 1993, is ratified.

Neither the proceeds nor any accrued interest shall be used to fund the operational expenses of infrastructure, except that any county with a population of 75,000 or less that is required to close a landfill by order of the DEP may use the proceeds and accrued interest for long-term maintenance costs associated with landfill closures. Counties, (i.e., Miami-Dade County) and charter counties may use the proceeds and accrued interest to retire or service indebtedness incurred for bonds issued prior to July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of such proceeds or interest for purposes of retiring or servicing indebtedness incurred for such refunded bonds prior to July 1, 1999, is ratified.

The term infrastructure is defined as any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of five or more years and any related land acquisition, land improvement, design, and engineering costs. This definition also includes a fire department vehicle, emergency medical services vehicle, sheriff's office vehicle, police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least five years. Additionally, infrastructure means any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, those court facilities, as well as any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of five or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or staging area for emergency response equipment during an emergency officially declared by the state or by the local government. Additionally, these "private facility" improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters, and the private facility's owner shall enter into a written contract with the local government providing the improvement funding to make such private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum period of 10 years after the completion of the improvement, with the provision that such obligation will transfer to any subsequent owner until the end of the minimum period.

An amount not to exceed 15 percent of the surtax proceeds may be allocated for the purpose of funding county economic development projects of a general public purpose targeted to improve local economies, including the funding of operational costs and incentives related to such economic development. The referendum ballot statement must indicate the intention to make such an allocation.

School districts, counties, and municipalities may pledge the surtax proceeds for the purpose of servicing new bonded indebtedness. Local governments may use the services of the Division of Bond Finance of the State Board of Administration to issue bonds, and counties and municipalities may join together for the issuance of bonds.

A county with a total population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern that imposed the surtax before July 1, 1992, may use the proceeds and accrued interest of the surtax for any public purpose if the county satisfies the following criteria: 1) the debt-service obligations for any year are met; 2) the county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S., and 3) the county has adopted an amendment to the surtax ordinance pursuant to the procedure authorizing additional uses of the proceeds and accrued interest. Those counties designated as an area of critical state concern that qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for authorized infrastructure purposes.

A county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the designation's removal, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes for 20 years following the designation's removal. After the 20-year period expires, a county may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure if the county adopts an ordinance providing for such continued use of the surtax proceeds.

Likewise, a municipality located within such a county may not use the proceeds and accrued interest for any purpose other than an authorized infrastructure purpose unless the municipality's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S., and the municipality has adopted an amendment to its surtax ordinance or resolution, authorized additional uses of the proceeds and accrued interest. Such municipality may expend the proceeds and accrued interest for any public purpose.

Despite any other use restrictions to the contrary, a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which the referendum is placed before voters, and the municipalities within such a county, may use the surtax proceeds and accrued interest for operation and maintenance of parks and recreation programs and facilities established with the proceeds throughout the duration of the levy or accrued interest earnings are available for such use, whichever period is longer.

2. Small County Surtax

A. Overview

Any county having a total population of 50,000 or less on April 1, 1992, is authorized to levy the Small County Surtax at the rate of 0.5 or 1 percent. County governments may impose the levy by either an extraordinary vote of the governing body if the proceeds are to be expended for operating purposes or by voter approval in a countywide referendum if the proceeds are to be used to service bonded indebtedness.

Only small counties defined as having a total population of 50,000 or less on April 1, 1992, are eligible to levy the surtax. This surtax is one of several surtaxes subject to a combined rate limitation. A county shall not levy this surtax and the Local Government Infrastructure Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

Thirty-one counties had a total population of 50,000 or less on April 1, 1992, and eligible to levy the surtax. However, some eligible counties currently levy the Local Government Infrastructure Surtax at the maximum rate of 1 percent and therefore are not eligible to levy this surtax.

B. Distribution of Proceeds

The surtax proceeds shall be distributed to the county and the municipalities within the county according to one of the following procedures.

1. An interlocal agreement between the county's governing body and the governing bodies of the municipalities representing a majority of the county's municipal population. This agreement may include a school district with the consent of all governing bodies previously mentioned.
2. If there is no interlocal agreement, then the distribution will be based on the Local Government Half-cent Sales Tax formulas.

C. Authorized Use of Proceeds

If the surtax is levied as a result of voter approval in a countywide referendum, the proceeds and any accrued interest may be used by the school district, county, or municipalities within the county, or municipalities within another county in the case of a negotiated joint county agreement, for the purpose of servicing bonded indebtedness to finance, plan, and construct infrastructure and to acquire land for public recreation, conservation, or protection of natural resources. In this case, infrastructure means any fixed capital expenditure or cost associated with the construction, reconstruction, or improvement of public facilities having a life expectancy of five or more years and any related land acquisition, land improvement, design, and engineering costs. If the surtax is levied pursuant to an ordinance approved by an extraordinary vote of the county's governing body, the proceeds and accrued interest may be used for operational expenses of any infrastructure or for any public purpose authorized in the ordinance.

School districts, counties, and municipalities may pledge the surtax proceeds for the purpose of servicing new bonded indebtedness. Local governments may use the services of the Division of Bond Finance of the State Board of Administration to issue bonds. In no case may a jurisdiction issue bonds more frequently than once per year, and counties and municipalities may join together for the issuance of bonds.

3. Charter County and Regional Transportation System Surtax

Each charter county that has adopted a charter, each county the government of which is consolidated with one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority may levy the Charter County and Regional Transportation System Surtax may be levied at a rate of up to 1 percent. Generally, the use of the proceeds is for the development, construction, operation, and maintenance of fixed guideway rapid transit systems, bus systems, and roads and bridges.

A. Authorization to Levy

The levy is subject to a charter amendment approved by a majority vote of the county's electorate. In the case of a consolidated government, the levy is subject to voter approval in a countywide referendum. The twenty charter counties are eligible to levy this surtax. Additionally, eleven non-charter counties that are within an authority are eligible to levy this surtax.

B. Authorized Uses of Proceeds

The surtax proceeds shall be applied to as many or as few of the following uses as the county's governing body deems appropriate.

1. Deposited into the county trust fund and used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, and related costs of a fixed guideway rapid transit system.
2. Remitted by the county's governing body to an expressway or transportation authority created by law to be used at the authority's discretion for the development, construction, operation or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval of the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges.
3. Used by the charter county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and

fixed guideway systems; for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads or bridges; and such proceeds may be pledged by the county's governing body for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads or bridges and no more than 25 percent used for non-transit uses.

4. Used by the charter county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation and maintenance of bus and fixed-guideway systems; for the payment of principal and interest on bonds issued for the construction of fixed-guideway rapid transit systems, bus systems, roads or bridges; and such proceeds may be pledged by the county's governing body for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed-guideway rapid transit systems, bus systems, roads or bridges. Pursuant to an interlocal agreement entered into pursuant to ch. 163, F.S., the charter county's governing body may distribute surtax proceeds to a municipality, or an expressway or transportation authority created by law to be expended for such purposes.

4. Emergency Fire Rescue Services and Facilities Surtax

The Emergency Fire Rescue Services and Facilities Surtax shall be levied at the rate of up to 1 percent pursuant to an ordinance enacted by a majority vote of the county's governing body and approved by voters in a countywide referendum. However, any county that has imposed two separate discretionary surtaxes without expiration cannot levy this surtax. The proceeds must be expended for specified emergency fire rescue services and facilities.

A. Authorization to Levy

Eligible county governments may levy this surtax at a rate of up to 1 percent. This levy shall be pursuant to an ordinance enacted by the county's governing body and approved by the voters in a countywide referendum. The referendum shall be placed on the ballot of a regularly scheduled election, and the referendum ballot must conform to the requirements of s. 101.161, F.S. A required interlocal agreement, as described below, is a precondition to holding the referendum.

The county's governing body must develop and execute an interlocal agreement with participating jurisdictions (i.e., the governing bodies of municipalities, dependent special districts, independent special districts, or municipal service taxing units) that provide emergency fire and rescue services within the county. The interlocal agreement must include a majority of the county's service providers. Upon the surtax taking effect and initiation of collections, a county and any participating jurisdiction entering into the interlocal agreement shall reduce the ad valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services in its next and subsequent budgets by the estimated amount of revenue provided by the surtax. In addition to the Charter County and Regional Transportation System Surtax and the School Capital Outlay Surtax, this surtax is not subject to a combined rate limitation that impacts the other discretionary sales surtaxes.

A. Counties Eligible to Levy

Any county, except Madison, Miami-Dade, and certain portions of Orange and Osceola, is eligible to levy the surtax. Any county that has imposed two separate discretionary surtaxes without expiration is not eligible to levy this surtax. **(Note: IMPORTANT – Please reference Section 212.055(8), Florida Statutes for detailed statutory language on this section and for the statutory information on the Distribution of Proceeds for this section.)**

A. Authorized Uses of Proceeds

The surtax proceeds shall be expended for emergency fire rescue services and facilities. The term *emergency fire rescue services* includes, but is not limited to, the following meanings.

1. Preventing and extinguishing fires.
2. Protecting and saving life and property from fires, natural or intentional acts, or disasters.
3. Enforcing municipal, county, or state fire protection codes and laws pertaining to the prevention and control of fires.
4. Providing pre-hospital emergency medical treatment.

Please reference Section 212.055(8), Florida Statutes, for detailed statutory language on this section.

References

EDR Publications.

Section 212.055(1), Florida Statutes

Section 7-5

Municipal Revenue Sharing

A. OVERVIEW

The Florida Revenue Sharing Act of 1972, codified as Part II of Chapter 218, Florida Statutes, was an attempt by the Florida Legislature to ensure a minimum level of revenue parity across municipalities and counties. Provisions in the enacting legislation created separate revenue sharing trust funds for municipalities and counties, identified appropriate revenue sources, specified formulas for redistribution and listed eligibility requirements. Subsequent changes have not resulted in major revisions to the overall program. Changes have centered on the expansion of county bonding capacity and changes in the revenue sources and tax rates.

The current Municipal Revenue Sharing Trust Fund includes three sources for municipalities: 1.3409 percent of net sales and use tax collections, the state-levied one-cent municipal gas tax collections, and 12.5 percent of the state alternative fuel user decal fee collections. (Additional gas tax revenues are discussed in following sections.)

B. ELIGIBILITY REQUIREMENTS

Pursuant to s. 218.21(3), F.S., all municipalities created pursuant to general or special law and metropolitan and consolidated governments as provided in Article VIII, Sections 6(e) and (f), Florida Constitution (i.e., Miami-Dade and Jacksonville-Duval) are eligible to participate in the municipal revenue sharing program if they fulfill the necessary eligibility requirements. Although a newly incorporated municipality cannot receive revenue-sharing funds, it does begin receiving a share when the necessary requirements are met.

Section 218.21, F.S., defines “minimum entitlement” as the amount of revenue which is necessary to meet a municipality’s obligations as “a result of pledges or assignments or trusts entered into which obligated...revenue sharing trust funds.”

Pursuant to s. 218.23, F.S., a municipality must meet the following requirements to be eligible to participate in revenue sharing **beyond** minimum entitlement in any fiscal year:

1. Report its finances for the most recently completed fiscal year to the Department of Banking and Finance (s. 218.23(1)(a), F.S.).
2. Make provisions for annual post-audits of its financial accounts in accordance with law, pursuant to Chapter 10.500, Rules of the Auditor General (s. 218.23(1)(b), F.S.).
3.
 - a. For local governments eligible in 1972, levy ad valorem taxes (excluding debt service and other special millage) that will produce the equivalent of 3 mills per dollar of assessed valuation, based on the 1973 taxable values as certified by the property appraiser, **or** collect an equivalent amount of revenue from an occupational license tax or a utility tax (or both) in combination with the ad valorem tax; or
 - b. For municipalities eligible after 1972, the 3 mill equivalency requirements will be based on the per dollar of assessed valuation in the year of incorporation (s. 218.23(1), F.S.).
4. Certify that law enforcement officers, as defined in s. 943.10(1), F.S., meet the qualifications set by Criminal Justice Standards and Training Commission, and salary plans meet the provisions of Chapter 943, Florida Statutes, and that no law enforcement officer receives an annual salary of less than \$6,000; the minimum law enforcement officer salary requirement may be waived, if the municipality certifies that it is levying ad valorem taxes at 10 mills (s. 218.23(1)(d), F.S.).

5. Certify that its firefighters, as defined in s. 633.30(1), F.S., meet qualifications set by the Division of State Fire Marshal, and that the provisions of s. 633.382, F.S., have been met (s. 218.23(1)(e), F.S.).
6. Certify that each dependent special district that is budgeted separately from the general budget has met the provisions for an annual post-audit of its financial accounts in accordance with the provisions of law (s. 218.23(1)(f), F.S.).
7. Certify to the Department of Revenue that the requirements of s. 200.065, F.S., ("TRIM") are met, if applicable; this certification is made annually within 30 days of adoption of an ordinance or resolution establishing a final property tax levy, or not later than November 1 if no property tax is levied (s. 218.23(1)(f), F.S.).
8. Notwithstanding the requirement that municipalities produce revenue equivalent to a millage rate of 3 mills per dollar of assessed value (as described in #3 above), no municipality that was eligible to participate in revenue sharing in the three years prior to initially participating in half-cent sales tax shall be ineligible to participate in revenue sharing solely due to a millage or a utility tax reduction afforded by the Local Government Half-Cent Sales Tax (s. 218.23(4), F.S.).

A number of governmental entities are ineligible to receive municipal revenue sharing funds. For example, Attorney General Opinion (AGO) 77-21 stated that municipal services taxing units (MSTUs) or municipal service benefit units (MSBUs) are not eligible to receive funds from the Municipal Revenue Sharing Trust Fund. Two additional opinions determined that both regional authorities (AGO-74-367) and other authorities, such as housing authorities (AGO 73-246), also are not eligible to receive municipal revenue sharing dollars.

C. APPORTIONMENT FACTOR

Section 218.245(2), Florida Statutes, provides that an apportionment factor for distribution of municipal revenue sharing funds is to be calculated for each eligible municipality. This factor is calculated using a three-factor additive formula consisting of three equally-weighted components:

1. population,
2. sales tax, and
3. relative ability to raise revenue.

The calculations are explained in detail below.

1. Weighted Population

The population of an eligible municipality is adjusted by multiplying the municipality's population by the adjustment factor for that particular population class. The weighted population factor is the ratio of the adjusted municipal population to the total adjusted population of all eligible municipalities in the state.

The adjustment factors for each population class are:

Population Class	Adjustment Factor
0-2,000	1.0
2,001-5,000	1.135
5,001-20,000	1.425
20,001-50,000	1.709
Over 50,000	1.791

Stated algebraically:

$$\begin{array}{lcl} \text{Weighted} & & \text{(Municipality's Population x Adjustment Factor)} \\ \text{Population} & = & \text{divided by Total Adjusted Statewide Municipal} \\ \text{Factor} & & \text{Population} \end{array}$$

2. Sales Tax

The sales tax allocation is the ratio of the city's population to the total county population multiplied by the amount of county sales tax collections. The sales tax factor is computed by dividing this sales tax allocation by the total sales tax collections for all eligible municipalities.

Stated algebraically:

$$\begin{array}{lcl} \text{Municipal} & & \text{(Municipality's Population x County Sales} \\ \text{Sales} & = & \text{Tax Collections) divided by Total County} \\ \text{Tax} & & \text{Allocation Population} \end{array}$$
$$\begin{array}{lcl} \text{Sales} & & \text{Municipal Sales Tax Allocation divided} \\ \text{Tax} & = & \text{by Factor Total Sales Tax Collections} \\ & & \text{for All Eligible Municipalities} \end{array}$$

3. Relative Ability to Raise Revenue

The relative ability to raise revenue is determined by the following three-factor formula involving a levy ratio factor, a recalculated population factor, and a relative revenue raising ability factor.

1. Levy ratio factor: determined by dividing the per capita non-exempt assessed real and personal property valuation of all eligible municipalities by the per capita nonexempt real and personal property valuation of each municipality.

Stated algebraically:

$$\begin{array}{lcl} \text{Municipality's} & & \text{Municipality's Property Valuation} \\ \text{Per Capita} & = & \text{divided by} \\ \text{Assessed Value} & & \text{Municipality Population} \end{array}$$

Statewide Per
Capita Assessed
Value = Statewide Municipalities' Property
Valuation divided by Total
Statewide Municipal Population

Levy
Ratio
Factor = Statewide Per Capita Assessed
Value divided by Municipality's
Per Capita Assessed Value

2. Recalculated population factor: determined by multiplying an eligible municipality's population by the levy ratio as calculated above.

Stated algebraically:

Recalculated
Population Factor = Municipality's Population x
Levy Ratio Factor

3. Relative revenue raising ability factor: determined by dividing the recalculated population of each eligible municipality by the sum of all eligible municipalities' recalculated population.

Stated algebraically:

Relative Revenue
Raising Ability
Factor = Municipality's Recalculated Population
divided by Total Statewide Municipal
Recalculated Population

4. Apportionment Factor Calculation

To determine a municipality's guaranteed portion of the municipal revenue sharing program, the three factors calculated above are added together and divided by three to obtain the distribution factor.

Stated Algebraically:

Apportionment
(Distribution) = Weighted Population Factor plus Sales Tax
Allocation Factor plus Relative Revenue
Raising Ability Factor all divided by 3

5. Adjustment for a Metropolitan or Consolidated Government

For a metropolitan or consolidated government, (i.e., Miami-Dade County and City of Jacksonville-Duval County), the factors are further adjusted by multiplying the adjusted or recalculated population or sales tax collections, as the case may be, by a percentage that is derived by dividing the total amount of ad valorem taxes levied by the county government on real and personal property in the area of the county outside of municipal limits or urban service district limits by the total amount of ad valorem taxes levied on real and personal property by the county and municipal governments.

6. Hold-Harmless Adjustment

Revenues attributed to the increase in the state sales tax distribution to the Trust Fund from 1.0715 percent to 1.3409 percent shall be distributed to each eligible municipality and consolidated government in the following manner. Each eligible local government's allocation shall be based on the amount it received from the Local Government Half-cent Sales Tax

Program in the prior state fiscal year divided by the total receipts under the same authority in the prior state fiscal year for all eligible local governments provided; however, for the purpose of calculating this distribution, the amount received in the prior state fiscal year by a consolidated unit of local government (i.e., city of Jacksonville/Duval County) shall be reduced by 50 percent for such local government and for the total receipts. For eligible municipalities that began participating in this allocation in the previous state fiscal year, their annual receipts shall be calculated by dividing their actual receipts by the number of months they participated, and the results multiplied by 12.

In summary, the distribution to an eligible municipality is determined by the following procedure. First, a municipal government's entitlement shall be computed on the basis of the apportionment factor applied to all Trust Fund receipts available for distribution. Second, the revenue to be shared via the formula in any fiscal year is adjusted so that no municipality receives fewer funds than its guaranteed entitlement, which is equal to the aggregate amount received from the state in fiscal year 1971-72 under then-existing statutory provisions. Third, the revenue to be shared via the formula in any fiscal year is adjusted so that all municipalities receive at least their minimum entitlement, which means the amount of revenue necessary for a municipality to meet its obligations as the result of pledges, assignments, or trusts entered into that obligated Trust Fund monies. Finally, after making these adjustments, any remaining Trust Fund monies shall be distributed on the basis of additional money or each qualified municipality in proportion to the total additional money for all qualified municipalities.

D. DISTRIBUTION OF PROCEEDS

The amount and type of monies shared with an eligible municipality is determined by the following procedure.

1. A municipality's entitlement shall be computed on the basis of the apportionment factor provided in s. 218.245, F.S., (described previously), and applied to the receipts in the Municipal Revenue Sharing Trust Fund that are available for distribution; the resulting amount is labeled "**entitlement money**" – i.e., amount of revenue which would be shared with a unit of local government if the distribution were allocated on the basis of the formula computations alone.
2. The revenue to be shared via the formula in any fiscal year is adjusted so that no municipality receives less funds than the aggregate amount it received from the state in FY 1971-72; the resulting amount is labeled "**guaranteed entitlement**" or "**hold harmless money**"; those municipalities incorporated after 1972 receive no guaranteed entitlement monies.
3. Revenues shared with the municipalities shall be adjusted so that no municipality receives less funds than its "minimum entitlement," the amount of revenue necessary to meet its obligations as a result of pledges, assignments, or trusts entered into which obligated funds received from revenue-sharing sources.
4. After making the adjustments described in the preceding sentences and deducting the amount committed to all eligible municipalities, the remaining monies in the trust fund are distributed to those municipalities who qualify to receive "**growth monies**." This final distribution to those eligible municipalities that qualify to receive additional monies beyond the guaranteed

entitlement is based on the ratio of the additional monies of each qualified municipality in proportion to the total additional monies of all those municipalities; this distribution accounts for annual increases or decreases in the trust fund and Miami-Dade's guaranteed entitlement, as provided for in s. 218.21(6)(b), F.S.; as stated, the additional money distributed beyond the guaranteed entitlement is termed "growth money."

In summary, the total annual distribution of revenue sharing funds to a municipality will yield various combinations of guaranteed entitlement and/or growth monies:

1. Guaranteed entitlement monies **PLUS** growth monies,
2. Guaranteed entitlement monies **ONLY**, or
3. Growth monies **ONLY**.

However, it must be remembered that the final distribution amount is, of course, dependent on actual collections.

E. AUTHORIZED USES

Several statutory restrictions exist regarding the authorized use of municipal revenue sharing proceeds. Funds derived from the municipal fuel tax on motor fuel shall be used only for the purchase of transportation facilities and road and street rights-of-way; construction, reconstruction, and maintenance of roads, streets, bicycle paths, and pedestrian pathways; adjustment of city-owned utilities as required by road and street construction; and construction, reconstruction, transportation-related public safety activities, maintenance, and operation of transportation facilities. Municipalities are authorized to expend these funds in conjunction with other municipalities, counties, state government, or the federal government in joint projects.

According to the DOR, municipalities may assume that 28.11 percent of their estimated 20128 fiscal year distribution is derived from the municipal fuel tax. Therefore, at least that proportion of each municipality's revenue sharing distribution must be expended on those transportation-related purposes specifically mentioned in the preceding paragraph.

Municipalities are restricted as to the amount of program funds that can be assigned, pledge, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, and there shall be no other use restriction on these shared revenues. Municipalities may assign, pledge, or set aside as trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness an amount up to 50 percent of the funds received in the prior year. Consequently, it is possible that some portion of a municipality's growth monies will become available as pledge for bond indebtedness.

REFERENCES

EDR Publications.
Florida Statutes.

Section 7-6

Motor Fuel Taxes

(commonly referred to as Gas Taxes)

A. STATE-LEVIED MUNICIPAL GAS TAX

The state levies a one-cent-per-gallon tax on motor fuel, the proceeds of which go into the Revenue Sharing Trust Fund for Municipalities, for ultimate distribution to municipalities. This tax is referred to as the “municipal gas tax.” Funds received from this source are to be used only for transportation facilities and road construction (s. 206.605(2), F.S.). (See the “Municipal Revenue Sharing” section in this chapter of the manual for more information.)

State gas taxes at the present are as follows:

1. four-cents-per-gallon excise tax;
2. 6.9-percent fuel sales tax which is adjusted annually based on the change in the average consumer price index;
3. four-cents-per-gallon which is adjusted annually by the percentage change in the average consumer price index;
4. two cents, set aside in the Florida Constitution for the benefit of the counties; this tax is referred to as the “constitutional gas tax”;
5. one cent, enacted by statute, which goes to the county, referred to as the “county gas tax”; and
6. one-cent municipal gas tax discussed above.

B. LOCAL OPTION GAS TAXES

County governments are authorized to levy up to 12 cents of local-option fuel taxes in the form of three separate levies. The first is a tax of one cent on every net gallon of motor and diesel fuel sold within a county. Known as the Ninth-Cent Fuel Tax, this tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a countywide referendum. Generally, the proceeds may be used to fund transportation expenditures.

The second is a tax of one to six cents on every net gallon of motor and diesel fuel sold within a county. This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a countywide referendum. Generally, the proceeds may be used to fund transportation expenditures.

The third tax is a one to five cents levy upon every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. This additional tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body or voter approval in a countywide referendum. Proceeds received from this additional tax may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.

The Legislature has authorized the statewide equalization of local option tax rates on diesel fuel by requiring that the full six cents of the one to six cents fuel tax as well as the one cent Ninth-Cent Fuel Tax be levied on diesel fuel in every county even though the county government may not have imposed either tax on motor fuel or may not be levying the tax on motor fuel at the maximum rate. Consequently, seven cents worth of local option tax revenue on diesel fuel are distributed to local governments, regardless of whether or not the county government is levying these two taxes on motor fuel at any rate.

1. Distribution

The local option fuel taxes on motor fuel shall be distributed monthly by the DOR to the county reported by the terminal suppliers, wholesalers, and importers as the destination of the gallons distributed for retail sale or use. The taxes on diesel fuel shall be distributed monthly by the DOR to each county according to the procedure specified in law.

With regard to the Ninth-Cent Fuel Tax, the governing body of the county may provide, by joint agreement with one or more municipalities located within the county, for the authorized transportation purposes and the distribution of the tax proceeds within both the incorporated and unincorporated areas of the county. However, the county is not required to share the proceeds of this tax with municipalities.

The county's proceeds from the one to six cents and one to five cents fuel taxes shall be distributed by the DOR according to the distribution factors determined at the local level by interlocal agreement between the county and municipalities within the county's boundaries. If no interlocal agreement is established, then the distribution shall be based on the transportation expenditures of each local government for the immediately preceding five fiscal years, as a portion of the total of such expenditures for the county and all municipalities within the county. These proportions shall be recalculated every 10 years based on the transportation expenditures of the immediately preceding five years.

In addition, any inland county with a population greater than 500,000 as of July 1, 1996, having an interlocal agreement with one or more of the incorporated areas within the county must utilize the population estimates of local government units as of April 1st of each year for dividing the proceeds of the one to six cents fuel tax. This provision applies only to Orange County.

Any newly incorporated municipality, eligible for participation in the distribution of monies under the Local Government Half-cent Sales Tax and Municipal Revenue Sharing Programs and located in a county levying the one to six cents or one to five cents fuel tax, is entitled to receive a distribution of the tax revenues in the first full fiscal year following incorporation. The distribution shall be equal to the county's per lane mile expenditure in the previous year times the number of lane miles within the municipality's jurisdiction or scope of responsibility, in which case the county's share would be reduced proportionately; or as determined by the local act incorporating the municipality. Such a distribution shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds that are backed by these taxes. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of redistribution.

2. Restrictions on Expenditures

Section 336.025(1)(a)2, Florida Statutes, states that county and city governments shall utilize the proceeds of the one to six cent local-option gas tax **only** for transportation expenditures.

Municipalities must use the proceeds of the one to five cent local-option gas tax only for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan, pursuant to s. 336.025(1)(b)3, F.S. (See the "Growth Management" chapter of this manual for more information on the comprehensive plan.)

Section 336.025(7), Florida Statutes, defines the term “transportation expenditures” to include:

1. public transportation operations and maintenance,
2. roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment,
3. roadway and right-of-way drainage,
4. street lighting,
5. traffic signs, traffic engineering, signalization and pavement markings,
6. bridge maintenance and operation, and
7. debt service and current expenditures for capital projects in the foregoing program areas, including construction or reconstruction of roads.

References

EDR Publications.

Chapter 336, Florida Statutes.

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Section 7-7

Optional Tourist Taxes

OVERVIEW OF STATE AUTHORIZED TOURISM-RELATED TAXES

A limited number of municipalities were granted authority in 1967 to levy a tax similar to a Tourist Development Tax (TDT). The Legislature does not appear receptive to extending such authority.

Current law authorized five separate tourist development taxes on transient rental transactions. They are:

1. Original Tourist Development Tax
2. Additional Tourist Development Tax
3. Professional Sports Franchise Facility Tax
4. Additional Professional Sports Franchise Facility Tax
5. High Tourism Impact Tax.

In addition to the above-referenced taxes, there are three separate convention development taxes:

1. Consolidated County Convention Tax
2. Charter County Convention Tax
3. Special District, Special and Sub County Convention Tax

Depending on a county's eligibility to levy, the maximum tax rate varies from a minimum of three percent to a maximum of six percent. The levies may be authorized by vote of the county's governing body or referendum approval. Generally, the revenues may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy.

Any county may levy and impose a tourist development tax on the exercise within its boundaries of the taxable privilege except there shall be no additional levy of a tourist development tax in any municipalities presently imposing the Municipal Resort Tax. (Chapter 67-930, Laws of Florida, as amended.)

A county may elect to levy and impose the tourist development tax in a subcounty special district. However, if a county elects to levy and impose the tax on a subcounty special district basis, the district shall embrace all or a significant contiguous portion of the county. The county shall assist the Department of Revenue (DOR) in identifying the rental units in the district that are subject to the tax.

These levies require the adoption of an authorizing ordinance by vote of the county's governing body. Additionally, some levies require referendum approval or provide the option for the tax to be approved by referendum.

It is the Legislature's intent that every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming-house, mobile home park, recreational vehicle park or condominium for a term of six months or less is exercising a taxable privilege, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of ch. 212, F.S.

For complete information on the many tourist/bed taxes see the EDR Local Government Financial Information Handbook at <http://edr.state.fl.us/Content/local-government/reports/lgfih12.pdf>.

References

EDR Publications.

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Section 7-8

Other Municipal Revenue Sources

This chapter attempts to present an overview of some of those revenue sources not described in the preceding sections. These sources are found throughout the various categories of municipal revenue sources in earlier sections.

A. PUBLIC SERVICE OR UTILITY TAX

1. Description

Section 166.231(1)(a), Florida Statutes, provides that a municipality may levy a tax, not to exceed 10 percent, on the purchase of electricity, metered or bottled gas (natural liquefied petroleum gas or manufactured), and water service. This tax is often referred to as a “utility tax.” The tax shall be levied only upon purchases within the municipality.

2. Reported Revenues

Utility taxes account for \$930.2 million in total municipal revenues, or approximately 3.39 percent of total revenues in FY 2009-010.

3. Limitations on the Public Service Tax

As previously mentioned, a public service tax may not exceed 10 percent of the cost of service.

Some local municipalities that tax at less than 10 percent do so on a sliding scale (e.g., 10 percent on the first \$25, 5 percent on the next \$50, and 2 percent thereafter). Although this method is employed by some local governments, municipal officials should be aware that several Attorney General Opinions over the last 14 years have said that any type of sliding scale or cap on public service taxes is illegal (AG’s opinions 89-11 and 94-76, etc.). (Municipal officials may contact the Florida League of Cities for more information.)

Section 166.231(1)(b), Florida Statutes, states that the public service tax “shall not be applied against any fuel adjustment charge,” where such charges are defined as “all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.” This limitation was imposed to prevent municipalities from experiencing a windfall in revenues due to the rapid increase in the price of oil as a result of the 1973 Arab Oil Embargo; some local officials point out that this restriction may have been necessary at the time, but should now be removed.

B. COMMUNICATIONS SERVICES TAX

In 2000, the Florida Legislature created the Communications Services Tax. This legislation created a new simplified tax structure for communications services which is codified in Chapter 202, Florida Statutes. The new tax structure took effect October 1, 2001.

Municipalities and charter counties are authorized to levy a tax up to 5.1 percent on the transmission of voice, data, audio, video or other information services, including cable services. In addition, municipalities are authorized to levy an additional surcharge up to 0.12 percent to cover the costs of permitting activity within public rights of way. Please note that some cities’ rates are higher due to a revenue-neutral conversion rate enacted by the Legislature for this law. Communication Services Tax revenues account for \$366 million in total municipal revenues, or approximately 1.33 percent of total revenues in FY 2009-010.

C. FRANCHISE FEES

A “franchise fee” is often confused with a public service or utility tax. There is, however, a very clear distinction. A franchise fee is a negotiated fee to a **company or utility** for the use of municipal rights of way (for their poles, lines, pipes, etc.), and could include the value of the right for the utility to be the exclusive provider of its services within a specified area. It is charged **directly to the utility** and payable to the municipal governing body by the utility as a cost of doing business. It cannot be a direct charge to the customers of the utility, but it appears to be done so due to a Florida Public Service Commission rule.

On the other hand, the utility tax discussed previously is a tax imposed **directly on the customer** by the municipality, much like a sales tax. It is collected by the utility, but the utility has no part in the determination of the terms, equity or amount of the tax. The amount of the tax is a variable based on the amount of service used by the customer. Franchise fees amounted to \$698.5 million in municipal revenues in FY 2009-10, or 2.55 percent of total revenues.

D. LOCAL BUSINESS TAX

1. Description

Pursuant to Chapter 205, Florida Statutes, counties and municipalities are authorized to levy a local business tax. As part of the levy, each local government establishes categories of professions, occupations, and businesses, and then imposes a tax on each designated category. Under current law, the rate structures and classifications cannot be modified but the rates can be increased five percent every other year. Revenues collected remain with local governments as general revenue.. Local Business Tax Revenues amounted to \$128.1 million in municipal revenues in FY 2009-10.

2. History

Formerly called occupational license taxes, they were first authorized in Florida in 1869. The state prescribed rates, and counties could receive 50 percent of the state taxes collected. Additionally, cities and towns were authorized to impose their own tax not to exceed 50 percent of the state license tax. In 1967, Chapter 205, Florida Statutes, “Occupational License Taxes,” was amended to require that two-thirds of the occupational license taxes collected by the county would be distributed to the state, with the other one-third remaining in the county where collected. Municipalities could enact a similar tax, but only at a rate equal to 50 percent of that allowed for counties to assess. Rates for individual business and occupational types were specified and certain exemptions were allowed.

In 1972, Chapter 205, Florida Statutes, was amended to make the occupational license tax a **local tax** and eliminate the requirement that county collected taxes be transferred to the state. In 1980 and 1982, the Florida Legislature amended Chapter 205 again to allow percentage increases in the occupational license tax rates charged by counties and municipalities. In 1984, fifty percent exemptions were authorized for business located in designated Florida enterprise zones.

In 2006, the Florida Legislature formally changed the name to the Local Business Tax. The Legislature created an additional exemption in 2011 which exempted from the local business tax an individual who engages in or manages a business, profession or occupation as an employee of another person. The exemption only applies to ordinances adopted after October 13, 2010.

In 2012 the Legislature exempted real estate sales associates and broker associates from the requirement to pay the local business tax or be required to obtain a local business tax receipt.

E. SPECIAL ASSESSMENTS

Special assessments are a form of revenue levied by all types of local governments for a variety of public purposes. A “special assessment” has been defined as a levy “imposed on property owners

within a limited area to help pay the cost of a local improvement which especially benefits property within that area.” It has also been defined as a “method of financing” for a levy “imposed on properties specially benefited by an improvement to defray some or all of the cost of the improvement.” The types of improvements typically financed through special assessments are street paving, sidewalk and gutter construction, and street lighting. Currently, a clear definition of special assessments does not appear in Florida statutory law. An understanding of special assessments must be based on general descriptions of local sources of financing and revenues, the laws or legal powers that authorize their levy in Florida, and the interpretations that have been articulated in Florida case law.

General descriptions of special assessments often attempt to distinguish them from taxes and service charges. A key distinction in a comparison of taxes and special assessments is the reliance of special assessments on the “benefit principle” or the benefit to property. When applied, this principle does not redistribute private wealth to the entire community, but apportions the cost of a particular public improvement according to the benefit that the property receives from it. As provided by one source, special assessments are distinguished as follows:

A “special assessment” is like a tax in that it is an enforced contribution from the property owner; it may possess other points of similarity to a tax, but it is inherently different and governed by entirely different principles. It is imposed upon the theory that the portion of the community, which is required to bear it, receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity, and may be determined legislatively or judicially...

An important distinction between special assessments and user or service charges is the description. Assessments and service charges are similar in many respects, but a significant difference is that special assessments are an enforceable levy and a service charge is voluntary, depending upon whether the service is used. Special assessments accounted for over \$500 million in total municipal revenue in FY 2011-12.

F. MOBILE HOME LICENSE TAX

Sections 320.08(10) and (11), Florida Statutes, provide that an annual license tax can be levied on park trailers and mobile homes in lieu of ad valorem taxes. The license tax fees, ranging from \$25 to \$80, are collected by the county tax collectors and remitted to the Florida Department of Highway Safety and Motor Vehicles. The proceeds, deposited into the License Tax Collection Trust Fund, are remitted back to the respective counties and municipalities where such units governed by s. 320.081(4) and (5), F.S., are located. There are no specific state restrictions on the uses of this revenue.

The proceeds shall be distributed as follows:

1. fifty percent of the proceeds to the District School Board,
2. the remainder either to the local Board of County Commissioners for units within the unincorporated areas, or to any municipality within the county for units located within its corporate limits.

G. INSURANCE PREMIUM TAX

Each qualified municipality, having a lawfully established fund providing pension benefits to firefighters, may impose an excise tax of 1.85 percent of the gross amount of receipts from policyholders on all premiums collected on property insurance policies covering property within the legally defined limits of the municipality or special fire control district. The tax revenues shall be distributed to the municipality according to the insured property’s location. The net proceeds of this excise tax shall be paid into the firefighters’ pension trust fund established by municipalities.

Each qualified municipality, having a lawfully established fund providing retirement benefits to police officers, may impose an excise tax amounting to 0.85 percent of the gross amount of receipts from policyholders on all premiums collected on casualty insurance policies covering property within the municipality's legally defined limits. The net proceeds of this excise tax shall be paid into the municipal police officers' retirement trust fund established by municipalities.

Any municipality having a lawfully established firefighters' pension trust fund may impose the tax upon every insurance company, corporation or other insurer engaged in the business of property insurance. Any municipality having a lawfully established municipal police officers' retirement trust fund may impose the tax upon every insurance company, corporation or other insurer engaged in the business of casualty insurance.

Both excise taxes are payable annually on March 1st of each year after the passage of an ordinance assessing and imposing the taxes.

The net proceeds of the 1.85-percent tax are used to supplement firefighters' pension trust funds. Net proceeds of the 0.85-percent tax are used to supplement police officers' retirement trust funds.

(For more information on the Firefighters' Pension Trust Fund and Police Officer's Retirement Trust Fund, refer to Chapter 5, Sections 5-1 and 5-2, of this manual.)

H. BEVERAGE LICENSE TAX

Various alcoholic beverage license taxes are levied on manufacturers, distributors, vendors, and sales agents of alcoholic beverages in Florida. The tax is administered, collected, enforced, and distributed back to the local governments by the Division of Alcoholic Beverages and Tobacco within the Florida Department of Business and Professional Regulation. Proceeds from the license tax fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund, which is subject to the 7.3-percent General Revenue Service Charge.

From the alcoholic beverage license tax proceeds collected within an incorporated municipality, 38 percent is returned to the appropriate municipal officer. An authorized use of the proceeds is not specified in the statutes.

I. FINES AND FORFEITURES

This revenue source includes receipts from fines and penalties imposed for the commission of statutory offenses, violation of legal administrative rules and regulations, and for neglect of official duty.

Fines include, but are not limited to, court fines, violations of municipal ordinances, pollution control violations, animal control fines and library fines. (Many of these violations and fines have been discussed throughout other parts of this manual.) Forfeitures include revenues resulting from confiscation of deposits or bonds held as performance guarantees, and proceeds from the sale of contraband property seized by law enforcement agencies.

Revenues from fines and forfeitures are usually much lower than many people expect. For FY 2009-010, this source represented only 0.58 percent of total revenues.

J. INVESTMENT INCOME

Revenues derived from the investment of cash receipts and idle funds are an important source of revenue. Many local governments in Florida are recognizing the importance of establishing effective investment policies and cash management programs.

The 1995 Florida Legislature, also recognizing this critical need of state and local governments, enacted Chapter 95-194, Laws of Florida. This act creates the state investment policy for public funds and provides its applicability to the state, local governments, and public officers. This act also creates the "State Investment Policy Committee" and provides for its duties in recommending changes to the state investment policy and its duties in reviewing investments and vendors of investments eligible for receiving public funds.

Section 166.261, Florida Statutes, is amended by this legislation to prescribe the duties of municipalities with respect to investment funds: "The governing body of each municipality shall invest and reinvest any surplus funds in its control or possession in accordance with the state investment policy for public funds." The term "surplus funds" is redefined as "funds in any general or special account or fund of the municipality, held or controlled by the governing body of the municipality, which funds are not reasonably contemplated to be needed to meet current expenses" (Chapter 95-194, Laws).

This law further requires that all municipalities shall adopt **written** investment policies by October 1, 1995 **or** a municipality's investments must be limited to certain categories of investments authorized by statute. (See Section 218.415, Florida Statutes, for more detailed information.)

REFERENCES

EDR Publications.

Laws of Florida

Florida Department of Financial Services' Bureau of Local Government.

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Section 7-9

Municipal Expenditures

A. OVERVIEW OF EXPENDITURES

Florida's municipalities reported total expenditures of \$27.4 billion for FY 2008-09. Monies expended by municipal governments normally cover a wide variety of areas. The specific areas, though, are largely dependent upon the perceived needs of the municipality's citizens. The Florida Department of Financial Services lists the following categories of municipal government expenditures:

1. Physical Environment
2. Public Safety
3. General Government Services
4. Transportation
5. Recreation and Culture
6. Economic Development
7. Debt Service
8. Human Services

B. EXPENDITURE CATEGORIES

This section briefly discusses the eight categories of municipal expenditures. The services provided by municipalities are discussed in detail in other chapters of this manual, and these chapters should be referred to for a more complete and comprehensive picture of required and optional municipal expenditures.

1. Physical Environment

The category of "physical environment" represents municipal expenditures for costs of services, the primary purpose of which is to achieve a satisfactory living environment. These services may include: garbage collection, solid waste, electricity, water and sewer, gas, flood control, etc. These expenditures amounted to more than \$7.8 billion or 28.1 percent of all municipal expenditures in FY 2008-09.

2. General Government Services

The second largest expenditure category is general government services. These are services that benefit the public and municipal governing body as a whole, and may include: finance and administration, judiciary, planning, legal, etc. The costs of such services constituted approximately \$6.2 billion, or 22.3 percent, of total municipal expenditures in FY 2008-09.

3. Public Safety

Public safety is the third largest source of expenditures for municipalities, constituting \$5.5 billion, or 19.7 percent, of total reported expenditures in FY 2008-09. This category accounts for the costs of providing services for the security of persons and property within the municipality's jurisdiction. Such services include: law enforcement, fire control, detention and/or correction, ambulance and rescue, inspections, etc.

4. Transportation

Transportation is the fourth largest source of expenditures for municipal governments in Florida, amounting to approximately \$2.2 billion, or 7.8 percent, of total reported expenditures in FY 2008-09. This category includes the costs for services providing for the safe and adequate flow of vehicles, travelers and pedestrians. Services may include: road and street facilities, airports, transit systems, parking, water transportation, etc.

5. Recreation and Culture

Recreation and culture includes the costs of providing libraries, parks and recreational facilities, cultural services, special events, and special recreational facilities. These expenditures amounted to \$1.8 billion, or 6.5 percent, of total municipal expenditures in FY 2008-09.

6. Economic Environment

Expenditures for the costs of providing services which develop and improve the economic condition of the community are included in economic environment expenditures. Services may include: housing/urban development, downtown improvement, employment opportunity, etc. These costs were \$760.3 million in FY 2008-09, or 2.7 percent, of total expenditures.

7. Debt Service

Debt service is shown as a separate category due to state reporting requirements. This category reflects those funds expended toward principal, interest and various handling fees associated with municipal bond issues.

8. Human Services

Human services expenditures amounted to \$227.7million in FY 2008-09, representing 0.8 percent of total municipal expenditures. This category includes those costs of providing services for the care, treatment, and control of human illness, injury, disability and welfare of the community as a whole and its individuals. Services include those associated with hospitals, health, welfare and mental health.

REFERENCES

EDR Publications. Florida Department of Financial Services' Bureau of Local Government.

Chapter 8

Growth Management

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Section 8-1

Planning and Growth Management in Florida

This chapter explains the local comprehensive planning responsibilities of cities and counties. It begins with an overview of state planning and growth management legislation so that the responsibilities of local government can be understood within the broader historical and legal context. It then provides a description of the local planning process.

A: HISTORY OF PLANNING AND GROWTH MANAGEMENT LAW IN FLORIDA

1. Legislation from 1972 to 1985

A 1985 statute, known as the Local Government Comprehensive Planning and Land Development Regulation Act is the basis for today's planning and growth management legislation. This section describes legislation adopted between 1972 and 1985. The following section covers major legislation adopted between 1985 and 2011.

The year 1972 was a landmark year for planning and resource protection in Florida. That year, Gov. Bob Graham signed a number of bills establishing statewide natural resource planning programs and requiring that natural resources be protected as part of the land development process.

a. 1972: Environmental Land and Water Management Act – Chapter 380, F.S.

This statute created two major growth management programs. The Area of Critical State Concern Program was established to protect valuable natural areas under intense development pressure. The Development of Regional Impact Program requires that the impacts of large developments affecting adjoining counties or cities, or significant state resources, are addressed.

1. Area of Critical State Concern – Ch. 380.05, F.S.

This designation has been applied to places where more stringent regulations and state oversight were deemed necessary to protect resources of statewide significance. The following are designated as Areas of Critical State Concern:

1. City of Apalachicola (Franklin County),
2. City of Key West and the Florida Keys (Monroe County),
3. Green Swamp (portions of Polk and Lake counties), and
4. Big Cypress Swamp (Collier County).

The state reviews all development orders issued by local governments within Areas of Critical State Concern and may appeal any orders believed to be inconsistent with state guidelines.

2. Developments of Regional Impact (DRI) – Ch. 380.06, F.S.

DRIs are defined as having impacts to resources or facilities of regional or statewide significance. State rules establish thresholds for DRIs based on the types of development proposed and their locations. For example, a residential development of 250 units may be considered a DRI in Washington County, whereas the threshold in Hillsborough County is 3,000 units.

DRIs are subject to review by the Regional Planning Council and the state, but approval authority rests with the local government in whose jurisdiction the project is located.

Over the years, changes have been made to the DRI process to achieve planning goals. The thresholds for DRIs in certain rural areas have been raised to promote economic development. The Legislature also created the Florida Quality Development (FQD) program as an alternative to the traditional DRI. In exchange for meeting higher standards for design and resource protection, an FQD is eligible for expedited review and may use the FQD certification in its marketing.

b. 1972: Florida Water Resources Act – Chapter 373, F.S.

The Water Resources Act established the water management districts and their roles and responsibilities. Water management districts study long-range water supply and issue water-use permits.

c. 1972: Florida State Comprehensive Planning Act – Sections 186.001-186.031 and 186.801-186.901, F.S.

This act mandated the preparation of a state comprehensive plan. Such a plan was prepared and submitted to the Legislature, but was rejected.

d. 1972: Florida Regional Planning Council Act – Sections 186.501-186.513, F.S.

This act established the Regional Planning Councils and their roles and functions. Councils are advisory and coordinating entities. They provide technical assistance to their member governments and review and comment on DRI development orders and plans and plan amendments.

e. 1975: Local Government Comprehensive Planning Act – Chapter 163 Part II, F.S.

This statute mandated the adoption of local comprehensive plans and required the inclusion of certain elements. Development was required to be consistent with the plan. The State did not establish minimum standards. Plans did not have to be officially adopted and there was no requirement for land development regulations to implement the plan.

f. 1984: State and Regional Planning Act – Chapter 187, F.S.

This statute required the adoption of a state comprehensive plan. The plan was adopted in 1985. Regional Planning Councils were required to prepare regional policy plans and submit them to the Legislature for approval.

2. Legislation from 1985 to 2005

a. 1985: Local Government Comprehensive Planning and Land Development Regulation Act – Sections 163.3164-163.3217, F.S.

This statute is the basis for the current local comprehensive planning process. Signed into law in 1985 by Gov. Bob Graham, the act put Florida in the forefront of land- use planning. It differed from previous growth management efforts by establishing a much higher standard for local plans:

1. Local plans are required to meet minimum standards established by state rule. Plans that are not “in compliance” with state requirements are subject to sanctions.
2. Local governments must demonstrate that necessary infrastructure will be available concurrent with new development (“concurrency”).
3. Citizens have a role in challenging local governments’ decisions regarding plan amendments, land development regulations and development orders.
4. Local governments must adopt land development regulations to implement the plan.
5. Comprehensive plans must be financially feasible.

An understanding of these five rules above is fundamental to successful implementation of state requirements. A brief description of each is provided below. For more information, please see the bibliography at the end of this chapter.

- 1. Compliance with Minimum State Standards.** As mentioned above, earlier statutes addressing local planning did not authorize state oversight of plans. With the 1985 Act, the Florida Department of Community Affairs (DCA), as the state land planning agency, was authorized to establish minimum requirements for all local comprehensive plans. The DCA rule is contained in Chapter 9J-5 of the Florida Administrative Code. The standards adopted in the rule address plan preparation (i.e., data and analysis requirements) and plan contents (i.e., subjects that must be addressed in the goals, objectives, and policies of each element). Plan amendments must also comply with these standards. (See section 8.2)

The process for adopting a plan amendment is explained in Section 8.2 of this chapter¹. For purposes of understanding “compliance,” it suffices to say that the State has the authority to determine whether an amendment is or is not compliance. Plans that are not in compliance are subject to sanctions.

Discussion: Almost since Chapter 9J-5’s inception, there have been major concerns about the approach in the rule. By setting a minimum standard, the rule does not take into account the great diversity among local governments. Urban, rural, built out or growing – all local governments had to respond to the same criteria. The state has tried to reduce the “one size fits all” approach as new legislative programs have been introduced, but there have been no major changes to the approach in Chapter 9J-5 since its adoption.

- 2. Concurrency:** A major impetus for the adoption of the 1985 act was widespread public concern over the impacts of unregulated growth on infrastructure such as water supply and transportation. The 1985 act met this challenge by requiring that infrastructure – transportation, water, sewer, solid waste, stormwater, and

¹ Chapter 163 and Rule 9J-5 address both the preparation of comprehensive plans and amendments to adopted plans. Since all local governments currently have plans in place, only newly formed cities will be adopting new plans. For this reason, this chapter refers solely to the plan amendment process.

parks and recreation² – be available to meet the demands of new development at the time impacts of that development occurred. In other words, sufficient infrastructure capacity needed to be available “concurrent” with the impacts of new development. Each local government is required to establish level of service standards for these concurrency facilities, as well as a concurrency management system for monitoring development.

Discussion: Concurrency implementation has become extremely complicated and fraught with difficulties. Three major challenges are: level of service standards, costs and sprawl impacts.

Level of Service Standards: The implementation of concurrency has been hampered because many facilities, particularly transportation facilities, were operating below the acceptable level of service before concurrency came into effect. Neither local governments nor the state have been able to provide funding that adequately addresses level-of-service deficits. Additionally, adjoining local governments have taken differing approaches to establishing level-of-service standards and monitoring concurrency. This has created confusion as to the degree of impact within adjoining jurisdictions.

Costs: The cost of providing infrastructure continues to escalate. Major costs include right-of-way acquisition for new roads or road widening and the cost of developing new water supplies, such as desalinization plants. The allocation of future costs has proven to be as difficult as dealing with existing deficiencies, as impact fees and other assessments have affected the affordability of housing in many parts of the state.

Sprawl Impacts: Transportation concurrency has been cited as a cause of urban sprawl. There are essentially two ways to meet the concurrency requirements. In more urban areas, where existing levels of service are more likely to be below the standards established in the comprehensive plan, the level of service can be met through improvements to facilities. Alternatively, developers can locate projects in less developed locations (e.g., suburban or rural areas) where there is sufficient capacity. The latter approach is less expensive and easier to achieve. Thus, transportation concurrency requirements have discouraged urban development and tended to promote sprawl.

The state has tried to address this problem by establishing criteria for transportation concurrency exemption areas, concurrency exception areas, and multi-modal districts. Most recently, there have been discussions about eliminating transportation concurrency completely and replacing it with a fee based on the vehicle miles traveled (VMTs) per development. Projects that are located further from the urban core and require more travel would be more expensive to permit than projects closer to schools, employment, and shopping.

- 3. Standing:** Citizens that qualify as “affected parties” have the ability to challenge comprehensive plan amendments on the basis that they are not in compliance with state requirements. Citizens may also challenge development regulations and development orders on the basis that the approvals are not consistent with the local comprehensive plan. The statute establishes how citizens may qualify to have standing to make such a challenge.

² In 2005, public school facilities were added to the list of concurrency facilities.

Discussion: Citizen dissatisfaction with the impacts of growth resulted in many challenges to plan amendments and development orders. Most often, these challenges allege that the local government failed to adequately address potential impacts of a proposed development or that the proposed development is incompatible with the surrounding area.

While residents may become very involved in specific land-use decisions that affect their neighborhoods, it is difficult to get them involved in a meaningful way to help write the rules (i.e., plan policies and land-development regulations) that drive the decisions on plan amendments and development approvals. The state has encouraged local governments to enter into “visioning” processes intended to build consensus on the overall future growth of the city.

Citizen dissatisfaction has been a driving force behind the Hometown Democracy initiative, which, if approved as a constitutional amendment, would require citizen approval of proposed plan amendments.

- 4. Land Development Regulations:** Local governments are required to adopt land-development regulations to implement the comprehensive plan. Although the minimum scope of the regulations is specified in statute, land-development regulations are not subject to state review for compliance. As noted above, citizens do, under certain circumstances, have the right to challenge development regulations.

Discussion: As noted in the discussion on citizen standing, the public usually focuses on land-use issues only after a development has been proposed. Citizens rarely get involved early in the development of the comprehensive plan or the land-development regulations. In 1993, a Florida Supreme Court decision in the case of the ***Board of County Commissioners of Brevard County v. Snyder***, changed the standard of review for most zoning and land-development approvals. Before *Snyder*, local governments had significant discretion in deciding zoning and development cases. In *Snyder*, the Supreme Court ruled that these decisions involve the application of already established rules (i.e., the comprehensive plan) and are not subject to such discretion. Legally, decisions involving the application of rules are known as “quasi-judicial proceedings.”

Citizens are often frustrated by quasi-judicial because of their legalistic character. This reinforces the benefit of having the public involved in the preparation of plan amendment and land-development regulations.

- 5. Financial Feasibility:** The 1985 act incorporated the concept of “growth paying for itself.” If a local government intended to accommodate a significant amount of new growth, it needed to demonstrate how the infrastructure and services needed to serve those new residents would be provided. To promote financial feasibility, the 1985 statute required that each comprehensive plan contain a capital improvement element. The element must include a five-year capital improvement schedule that identifies improvements needed to correct existing deficiencies and provide for anticipated development. The 2005 Growth Management Act had a significant impact on how local governments were expected to address financial feasibility requirements. Therefore, the implications of the financial feasibility requirements are discussed in the following section.

3. 2005 Growth Management Act

Twenty years after the adoption of the 1985 law, the Legislature made significant changes to Chapter 163. These changes reflected Gov. Jeb Bush's philosophy that growth should pay for itself. Among the major issues addressed in the 2005 act are the following:

1. Definition of Financial Feasibility
2. School Concurrency
3. Water Supply Planning

1. Financial Feasibility: As noted in the previous section, the concept of financial feasibility was incorporated into the 1985 statute. The 2005 Act clarified the definition of financial feasibility by requiring that the first three years of the five- year capital improvement schedule contain committed sources of funding. Years four and five may include planned sources. In recognition of the extensive backlog of needed facilities, the Act authorized local governments to adopt a 10- or 15- year long-term concurrency management system for transportation and school facilities.

The five-year capital improvement schedule must be amended annually to remain current. DCA found that many local governments were not updating their schedule on an annual basis (if at all). To ensure compliance with this requirement, local governments that do not adopt an updated schedule and transmit it to DCA will not be permitted to amend their Future Land Use Map. The amended schedule may be transmitted in conjunction with the local government's annual budgeting process, outside the twice yearly limitation on plan amendments.

2. School Concurrency: Prior to 2005, public school facility elements were optional. The 2005 legislation mandated school facilities concurrency. The statute contains the following major requirements:

1. School boards and local governments must update existing public school interlocal agreements and include concurrency service areas for schools.
2. Local governments must adopt a Public School Facilities Element as part of the comprehensive plan.
3. The comprehensive plan must contain level-of-service standards for schools.
4. The capital improvements element of the comprehensive plan must include a financially feasible Public School Capital Facilities Program.

DCA established by rule a schedule for submitting the Public Schools Facilities Element. All cities and counties were scheduled to adopt the element in 2008. If a local government does not comply with the requirements, it will not be permitted to adopt a plan amendment that increases density. The school board may be subject to sanctions equivalent to the available funds for school construction.

3. Water Supply Planning: Each of the water management districts in the state periodically evaluates whether their water supply is sufficient to meet the demand for the next 20 years. If it is not, the district is required to prepare a water supply plan. This plan must include a list of projects that can provide additional water supply while meeting environmental considerations.

The 2005 Act required that local governments within areas subject to water supply planning must include in their comprehensive plan a 10-year work plan that identifies projects from the district's regional supply plan. DCA issued a schedule for complying with these requirements. All 10-year work plans must have been completed by the end of 2008.

Discussion of the 2005 Act: It is too soon to evaluate the consequences of the 2005 Act. However, it is clear that the act has put a tremendous workload burden on local governments. The requirements for water supply work plans and school concurrency demand very technical analysis. The implications of the policy decisions on neighborhoods and the cost of services are substantial. As a result, many local governments have failed to meet the submital schedule established by DCA. As of June 2008, 344 local governments were required to have submitted their Public Educational Facilities Element. Only 69, or 20 percent, had done so. Similarly, 479 local governments were required to have submitted their updated capital improvements element, but only 60, or 13 percent had done so.

4. 2009 Growth Management Reform

In 2009 urban areas are defined as "Dense Urban Land Areas" (DULA), CH. 163 F.S. As defined, a Dense Urban Land Area means a local government having an average of at least 1,000 people per-square mile of land area, or a county, including all cities located therein, which has a population of at least 1 million, according to the latest census and latest population estimates from the Office of Economic and Demographic Research.

- a. A city having an average of at least 1,000 people per square mile and a total population of 5,000 will be considered a DULA. This includes approximately 190 cities and affects another 24 counties statewide.
- b. The DRI program is eliminated in DULAs.

5. 2011 Community Planning Act

The Community Planning Act of 2011 (Act) made comprehensive changes to the way Florida manages growth. This legislation made significant changes to reflect Governor Scott's philosophy that the fewer hurdles new growth has to overcome the faster new business/jobs can improve the struggling economy.

"The Act removed unnecessary levels of review at a reduced cost to the state, property owners and developers. The Act gave local governments more control over what goes on in their jurisdiction, where only they are impacted. Therefore, there is increased opportunity for local government cooperation without state intervention, except in those circumstances where the state can show that critical state resources (e.g. intermodal transportation systems and the everglades) are impacted.

Also, the cost to obtain development approvals and to develop property should decrease, thereby allowing more cost effective commercial and industrial development, making Florida a more competitive market for new business.

Finally, it allows existing development orders to remain in place so that we can maintain a supply of known quantity development as the markets make it feasible to again develop property."³

³ <http://www.gunster.com/wp-content/uploads/Growth-Management-White-Paper-20111.pdf>

Among the major issues addressed in the 2011 Act are the following:

1. Makes concurrency for parks and recreation, schools, and transportation facilities optional for local governments.
2. Applies and revises the expedited comprehensive plan amendment process statewide.
3. Deletes the requirement that comprehensive plans be financially feasible.
4. Deletes the twice a year limitation on comprehensive plan amendments.
5. Revises the small scale amendment process.
6. Clarifies and broadens the window for permit extensions.
7. Creates a 4-year development of regional impact permit extension.
8. Removes industrial areas, hotels/motels, and theaters from the list of developments of regional impact.
9. Creates an exemption from the DRI process for mining projects and allows those mines to enter into agreements with the Department of Transportation.
10. Adds a new 2-year permit extension, but caps the maximum extension at 4 years.
11. Prohibits local governments from having referenda for local comprehensive plan amendments.
12. Clarifies requirements for adopting criteria to address compatibility of lands relating to military installations.
13. Allows a certain plan amendment to be readopted by a local government without being resubmitted to the state land planning agency.
14. Clarifies when a local government can reject a proposed change to a development of regional impact.

Section 8-2

The Local Comprehensive Planning Process

A. LEGAL STATUS OF PLAN – CH. 163.3194, F.S.

Local governments must adopt their comprehensive plans by ordinance. All land-development regulations and all public and private development must be in conformance with the comprehensive plan.

B. CONTENT OF PLAN

State law mandates that the following elements be included in the comprehensive plan:

1. Capital Improvements and Concurrency Management System
2. Future Land Use
3. Traffic Circulation or Transportation
4. Sanitary Sewer, Solid Waste, Drainage (Stormwater), Potable Water and Natural Groundwater Aquifer Recharge
5. Conservation
6. Recreation and Open Space
7. Housing
8. Coastal Management (for coastal governments)
9. Public School Facilities
10. Intergovernmental Coordination

Local governments are permitted to adopt optional elements. State statute lists examples, including the following:

1. Public Buildings and Related Facilities
2. Community Design
3. Redevelopment
4. Public Safety
5. Historical and Scenic Preservation
6. Economic Development

C. GENERAL REQUIREMENTS FOR PLANS AND PLAN AMENDMENTS - RULE 9J-.005, F.A.C.

The following are key general requirements that apply to all plans and plan amendments.

1. The plan must be internally consistent.
2. Plans and plan amendments must be based upon relevant and appropriate data and analysis.
3. The plan must include two timeframes: one for a minimum of five years and one for a minimum of 10 years.

Discussion: The use of “relevant and appropriate” data to support plan amendments is very important. While the comprehensive plan is a policy document, it should be based on objective assessments and projections of current and future conditions. The use of the proper data and analysis will support the local government’s policy direction and defend the plan amendment if it is challenged.

It should also be noted that the state is encouraging local governments to look beyond the minimum 10-year planning horizon. A longer term planning horizon is used when a local government is implementing a 15-year concurrency management program. It may also be appropriate if a city cannot physically expand and wishes to establish a “build out” scenario.

1. Minimum Standards for Required Elements

In addition to establishing the general requirements for local plans, Rule 9J-5 contains standards for each mandated element that address 1) the data to be considered, 2) the analysis to be conducted, and 3) the topics to be addressed in the element’s goals, objectives, and policies. This discussion includes only a brief summary of these elements and their requirements. Please refer to Rule 9J-5 for a complete listing of the extensive requirements.

a. Capital Improvements Element – 9J05.016, F.A.C.

The Capital Improvements Element is intended to identify the capital needs of the local government and the financial resources available to meet those needs. Local governments identify deficiencies in the existing infrastructure and the additional impacts of development anticipated in the plan. Then, local governments identify revenues available to meet these deficiencies. All the concurrency infrastructure facilities must be addressed (transportation, potable water, sewer, stormwater, solid waste, parks, and schools).

The capital improvements element must contain a five-year capital improvement schedule that identifies the improvements funded for the next five years. The first three years of the five-year capital improvement schedule contain committed sources of funding. Years four and five may include planned sources. The five-year capital improvement schedule must be amended annually to remain current.

Additionally, the element must include the assurance that an adequate concurrency management system will be implemented

b. Future Land Use Element – 9J-5.006, F.A.C.

The Future Land Use Element describes the overall pattern and character of development expected to occur over the plan’s horizon. The element must include a description of future land-use categories (e.g., residential, commercial, mixed use), including maximum density and intensity. The element must also contain a future land use map, which depicts the future land-use categories.

c. Transportation Element/Traffic Circulation Element

The requirements for this element differ based on whether or not a local government is within an urban area of a Metropolitan Planning Organization (MPO). Local governments within the boundary of an MPO are required to prepare a transportation element that considers all modes of transportation, including transit, airports and bicycle and pedestrian routes. The element should address how transportation needs will be met, how the different transportation modes will be integrated, and how the local government will coordinate transportation, land use and infrastructure planning. The element must also set level of service standards.

The requirements for local governments outside urban areas are less extensive. Local governments must identify existing and proposed transportation routes, including roads and bicycle and pedestrian paths, and establish level-of-service standards.

In either case, the needs identified in this analysis are subsequently incorporated into the capital improvements element as appropriate.

d. Sanitary Sewer, Solid Waste, Drainage, Potable Water and Natural Groundwater Aquifer Re-charge Element (Note: “Drainage” is now more often referred to as “Stormwater Management.”)

This element addresses the major infrastructure needed to serve development, other than schools and transportation. The element is intended to establish level of service standards for these facilities, and to establish water quality standards for stormwater. The analysis required for this element must consider the condition of existing facilities and current and future demand. The needs identified in this analysis are subsequently incorporated into the capital improvements element as appropriate.

e. Conservation Element

The Conservation Element addresses how the local government will protect important natural resources. The rule requires that environmental resources be identified and policies developed to protect such resources as wetlands, floodplains, wildlife and marine habitats, and habitat for threatened or endangered species or species of special concern.

f. Recreation and Open Space Element

The minimum rule requirements for the Recreation and Open Space Element have been repealed. State statute still requires the preparation of the element, which address the provision of a comprehensive recreation system.

g. Housing Element

The Housing Element must address the needs of all sectors of the population, including very-low-income residents and group homes.

h. Coastal Management Element

Local governments located along the coast must prepare a coastal management element. The rule requires local governments to 1) identify significant resources and establish policies to protect them, 2) address public access to the waterfront, and 3) establish policies that address the hazards associated with coastal development.

The primary hazard to be recognized in the plan is the potential impact of hurricanes. The element must include policies discouraging development in the Coastal High Hazard Area (the area within the storm surge for a Category 1 hurricane), maintaining evacuation times, and post-disaster redevelopment practices.

i. Public Schools Facilities Element

The public schools facility element is intended to implement school concurrency provisions. The element must also address how schools fit into the broader context of community development – i.e., co-location of schools and other community facilities such as parks, measures of compatibility for schools and the surrounding area, and the siting of schools in residential areas to promote schools as community focal points.

j. Intergovernmental Coordination

This element is intended to establish the mechanisms by which a local government will coordinate its planning activities with other units of government. The element is required to contain procedures to identify and implement joint planning areas, especially for the purpose of annexation and municipal incorporation.

D. AMENDING THE COMPREHENSIVE PLAN

The legislature revised the procedures for the submittal and adoption of comprehensive plan amendments based on the new statutory changes effective June 2, 2011. Most importantly the twice a year limitation on comprehensive plan amendments has been deleted.

1. Expedited State Review

a. The expedited state review process applies to all comprehensive plan amendments except for small scale and state coordinated review amendments. The expedited review process is as follows:

1. Local government shall transmit amendment(s) within ten working (10) days after initial public hearing (see 163.3184(3)(b)1, Florida Statutes).
 - i. Local government transmits the complete proposed plan amendment as follows:
 - ii. To the State Land Planning Agency (Department of Economic Opportunity):
 - iii. One paper copy, and
 - iv. Two electronic copies on a CD ROM in Portable Document Format (PDF)
 - v. To the review agencies:
 - vi. One copy in any format
2. Within five (5) working days the local government and agencies are notified by the State Land Planning Agency of receipt of amendment.
3. Review agencies send comments directly to the local government and State Land Planning Agency. Local government must receive comments from review agencies within 30 days after receipt proposed of amendment package (see 163.3184(3)(b)2, Florida Statutes).
4. State Land Planning Agency issues its comment letter to the local government. Local government must receive comments from review agencies within 30 days of receipt of proposed amendment package.

A. Adopted Phase

1. Local government shall hold second public hearing within 180 days after receipt of agency comments (see 163.3184(3)(c)1, Florida Statutes). If the local government fails within 180 days after receipt of agency comments to hold a second public hearing, the amendments shall be deemed withdrawn unless extended by agreement and notice to the State Land Planning Agency and any affected party that provided comments on the amendment.

Local governments shall transmit three copies of the adopted amendment package within ten working (10) days after the second public hearing to the State Land Planning Agency and one copy to any other agency or local government that provided timely comments (see 163.3184(3)(c)2, Florida Statutes). State Land Planning Agency shall determine completeness of package and notify local government within five (5) working days of receipt (see 163.3184(3)(c)3, Florida Statutes).

B. Effective Date

Within 30 days after the local government adopts amendment, an affected person may file petition with the Department of Administrative Hearings. Within 30 days of receipt of complete adopted plan amendment, the State Land Planning Agency reviews adopted plan amendment. Amendment becomes effective 31 days after the State Land Planning

Agency determines the amendment package is complete and no petition is filed by an affected party.

2. State Coordinated Review Process

The State Coordinated Review Process applies in the following situations:

- i. The State Coordinated Review Process applies to areas of Critical State Concern pursuant to Section 380.05, Florida Statutes.
- ii. Rural Land Stewardship pursuant to Section 163.3248, Florida Statutes.
- iii. Sector plans pursuant to Section 163.3245, Florida Statutes.
- iv. Comprehensive plans based on evaluation and appraisal reports pursuant to Section 163.3191, Florida Statutes.
- v. A new plan for newly incorporated municipalities adopted pursuant to Section 163.3167, Florida Statutes.

a. Local government transmits the complete proposed plan amendment as follows:

1. To the State Land Planning Agency (Department of Economic Opportunity):
 - i. One paper copy, and Two electronic copies on a CD ROM in Portable Document Format (PDF).
2. To the review agencies:
 - i. One copy any format
3. The transmittal letter / cover sheet shall clearly indicate "amendment is subject to State Coordinated Review process pursuant to Section 163.3184(4), Florida Statutes".
4. Within five (5) working days the local government and agencies are notified by the State Land Planning Agency of receipt of the amendment.
5. Within 30 days of receipt by the State Land Planning Agency of the complete amendment, the reviewing agencies shall send comments directly to the State Land Planning Agency.
6. Within 60 days after receipt of complete amendment, the State Land Planning Agency issues the Objection, Recommendation and Comments Report (ORC) to the local government.

A. Adopted Phase

Local government shall hold a second public hearing within 180 days after receipt of the ORC. If the local government fails within 180 days after receipt of the ORC to hold a second public hearing, the amendment(s) shall be deemed withdrawn unless extended by agreement and notice to the State Land Planning Agency and any affected party that provided comments on the amendment.

Within 30 days after the local government adopts the amendment, an affected person may file petition with the Department of Administrative Hearings. Local governments shall transmit three copies of the adopted amendment package within 10 working days after the second public hearing to the State Land Planning Agency and one copy to any other agency or local government that provided timely comments. The State Land Planning Agency shall determine the completeness of the package and notify the local government within five (5) working days of receipt (see Section 163.3184(3)(c)3, Florida Statutes).

B. Effective Date

Within 45 days of receipt of a complete adopted plan amendment. The State Land Planning Agency issues Notice of Intent to find plan in compliance or not in compliance. The State Land Planning Agency shall post a copy of Notice of Intent on its web site. Plan amendment shall go into effect pursuant to the State Land Planning Agency's Notice of Intent if in compliance and no challenge is filed by an affected party when the Notice of Intent is posted to the State Land Planning Agency's web site.

REFERENCES

Community Stewardship II: A Citizen's Guide to the Nuts and Bolts of Florida's Growth Management Process, 1000 Friends of Florida, December 2004

Comprehensive Planning for Growth Management in Florida - Publication FE642 of the Food and Resource Economics Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL. Published July 2006. Roy R. Carriker

Florida Department of Economic Opportunity Website, <http://www.floridajobs.org/community-planning-and-development/programs/comprehensive-planning/amendment-submittal-and-processing-guidelines>

Gunster Law Firm, Growth Management in Florida a New Direction, <http://www.gunster.com/wp-content/uploads/Growth-Management-White-Paper-20111.pdf>

Section 8-3

Regional Planning Councils

Regional Planning Councils are quasi-governmental organizations that are designated by Florida (Ch. 186, Florida Statutes) to address problems and plan solutions that are of greater-than-local concern or scope, and are to be recognized by local governments as one of the means to provide input into state policy development. With regard to transportation-related issues, RPCs are empowered to provide technical assistance to local governments on growth management matters; coordinate land development and transportation policies in a manner that fosters region-wide transportation systems; review local government comprehensive plan amendments, evaluation/appraisal reports, and Developments of Regional Impacts for consistency with state and regional plans; and, review the plans of independent transportation authorities and metropolitan planning organizations to identify inconsistencies between those plans and applicable local government plans.

A. PRODUCTS

In addition to various studies of the resources of the region, the principal product of each RPC is the Strategic Regional Policy Plan (SRPP). The SRPP identifies key regional resources and facilities, examines current and forecasted conditions and trends (including expected growth patterns), and establishes regional goals and policies that guide a program of actions to address identified problems and needs. An example of strategic subject areas that a SRPP may address includes affordable housing, economic development, emergency preparedness, natural resources and regional transportation.

RPCs may also be involved in a variety of other programs other than growth management, such as emergency preparedness programs planning, GIS services, statistical analysis, small business development and public health projects.

B. COMPOSITION

Each county in the region shall have a member on the Board of Directors of the RPC in its region and shall have at least one vote. Local governments and the Governor of Florida may appoint either locally elected officials or lay citizens, provided that at least two-thirds of the voting members are locally elected officials. Each RPC's Board may be composed of the following members:

1. Local elected officials (city and county commissioner).
2. Officials appointed by the governor, including an elected school board member to be nominated by the Florida School Board Association.
3. Ex officio nonvoting members appointed by the governor.

C. ORGANIZATION

There are 11 RPCs in the State of Florida; one for each comprehensive planning district of the state.

1. West Florida RPC, Pensacola
2. Apalachee RPC, Tallahassee
3. North Central Florida RPC, Gainesville
4. Northeast Florida RPC, Jacksonville
5. Withlacoochee RPC, Ocala
6. East Central Florida RPC, Orlando
7. Central Florida RPC, Bartow
8. Tampa Bay RPC, Tampa
9. Southwest Florida RPC, Fort Myers
10. Treasure Coast RPC, Stuart
11. South Florida RPC, Miami

REFERENCES

http://en.wikipedia.org/wiki/Regional-Planning_Councils

Chapter 9

Florida League of Cities

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Section 9-1

Organization

Founded on the belief that local self-government is the keystone of American democracy, the Florida League of Cities is the united voice for Florida's municipal governments. Its goals are to serve the needs of Florida's cities and promote local self-government.

Florida's city officials formed as a group of municipal governments for the first time in 1922. They wanted to shape legislation, share the advantages of cooperative action, and exchange ideas and experiences. Growing from a small number of cities and towns, the League's membership now represents more than 400 cities, towns and villages in the Sunshine State. The League is governed by a Board of Directors composed of elected municipal officials. The League functions under its charter and by-laws, while the strategic plan outlines the mission, goals and objectives. Copies of these documents are available at www.floridaleagueofcities.com. The League's headquarters is in Tallahassee, and its Insurance Services and Technology Services Department are located in Orlando.

The League strives to be the premier provider of many products and services developed especially for Florida's cities. Our strength and success are dependent upon the support and participation of our members. We continue to explore new ideas for programs, products and services that will meet the needs of municipalities today and tomorrow.

A. MEMBERSHIP

Membership is limited to any municipality or other unit of local government rendering municipal services in the State of Florida. From a modest beginning of just a few cities and towns, the League has grown throughout the years to include practically all the municipalities in the state; 99 percent of the municipal population of Florida is represented by the League through voluntary membership of cities, towns, villages and charter counties.

B. OFFICERS

The League's Board currently consists of: the League's officers (a president, first vice-president and second vice-president); 32 city officials representing 14 geographical districts; a city official from each of Florida's 10 most populous cities; all past presidents still serving in office; any city official from Florida serving as an officer of the National League of Cities; and any city official beginning his or her 50th year in elected municipal office.

The executive director serves as the secretary-treasurer. A non-voting member is authorized from the Florida City and County Management Association. All officers and directors of the League are elected at the annual meeting. The Charter provides that officers and directors shall be elected officials of municipalities in good standing. In all business conducted at the annual meeting of the League, including the election of officers, each member in good standing is entitled to a weighted vote in accordance with the latest annualized population estimates provided by the State of Florida.

100,000 and more	–	5 votes
25,000 to 100,000	–	4 votes
5,000 to 25,000	–	3 votes
1,000 to 5,000	–	2 votes
Less than 1,000	–	1 vote

C. MEETINGS

Each year the League plans, manages and conducts an annual conference and business meeting in August, an annual legislative conference in November, and various training programs for Florida municipal officials to address the problems common to municipal operation and services to citizens.

D. LOCAL AND REGIONAL LEAGUES

Most of the state is covered by county or regional leagues, which are developed by city officials to resolve local municipal problems. In some instances, regional leagues provide “umbrella” services to local leagues of cities.

The types of activities within each league vary greatly from networking opportunities, educational programs, state and federal advocacy work, intergovernmental relations with county and school board officials, and other projects.

The local and regional leagues provide an excellent base for developing and assisting the state League on issues relating to urban policy and administration on a statewide basis. The state League looks to the local leagues for active participation and leadership.

E. FINANCIAL OPERATIONS

All League operations are conducted under the guidance of the executive director, appointed by the Board of Directors. In addition, the Board of Directors appoints the League auditor to audit the League’s financial transactions and to report annually on the League’s financial condition.

Income is derived from annual membership dues paid by member governments according to their populations; contractual fees from serving as administrator of the FLC- sponsored financial and insurance trusts; and other income from League operations such as publications and conference registration fees.

Expenditures are budgeted and approved annually by the Board of Directors in accordance with the programs and services offered to the membership. The annual financial audit is available upon request to all members of the League.

Section 9-2

Operations

A. LEGISLATIVE AFFAIRS DEPARTMENT

The **LEGISLATIVE AFFAIRS DEPARTMENT** represents municipal government interests at the state and federal levels – one of the most important services provided by the League. The League’s legislative activities are guided by the belief that all politics is local and the best strategy for sustained legislative success is one that continually engages local officials’ participation.

There are several ways elected and appointed officials participate in the League’s advocacy efforts. One is by serving on a committee. There are five Legislative Policy Committees – **Finance and Taxation, Intergovernmental Relations, Energy and Environmental Quality, Growth Management and Transportation, and Urban Administration** – that develop and support broad municipal issues considered by the Florida Legislature. Members are appointed annually by the League president.

The department works closely with the **Advocacy Committee**, a leadership council responsible for building long-term public support for League policies.

The Legislative Affairs Department also staffs the **Federal Action Strike Team**, which focuses on federal issues that affect municipalities, coordinates relationships with Florida’s congressional leaders and works closely with the National League of Cities.

B. COMMUNICATIONS AND POLITICAL INITIATIVES DEPARTMENT

The **COMMUNICATIONS AND POLITICAL INITIATIVES DEPARTMENT** handles all media relations, social media coordination and the League’s publications including the *FLC E-News* newsletter, annual municipal directory, and *Quality Cities* magazine.

The department directs the policy research and external political activities of the League. The research supports the agenda of the League’s legislative efforts and is a clearinghouse and resource for cities. The department builds political support for League initiatives at the state and federal levels and directs state constitutional issues that affect municipal government.

The department manages the **Florida League of Mayors**.

C. EXECUTIVE DEPARTMENT

The **EXECUTIVE DEPARTMENT** serves as the primary liaison to the Board of Directors, members serving on the various League-sponsored trusts, and Florida’s local and regional leagues. The department also oversees the League’s meetings, such as the **Annual Conference**.

The Executive Department manages the **Florida Association of City Clerks**.

D. INSURANCE AND FINANCIAL SERVICES DEPARTMENT

The **INSURANCE AND FINANCIAL SERVICES DEPARTMENT** offers a comprehensive package of insurance and financial services to Florida’s local governments.

Through Insurance Services, the League administers the **Florida Municipal Insurance Trust (FMIT)**, which provides workers’ compensation, liability, auto, property and health insurance to governmental entities in Florida. The FMIT, owned by participating members, is one of the largest programs of its kind. It offers custom policies and lower rates through a unique revenue-sharing plan that saves members millions of dollars per year.

The department manages the **Florida Municipal Association for Safety and Health**.

Through Financial Services, the department administers:

- The **Florida Municipal Investment Trust (FMIvT)**, a local government investment pool that offers high-quality investment options for surplus and pension assets.
- The **Florida Municipal Loan Council (FMLC)**, a fixed-rate loan pool program for cities to use for capital improvements, renovations, fixed asset additions or refinancing of existing debt.
- The **Florida Municipal Pension Trust Fund (FMPTF)**, which provides full-service retirement plan administration for defined benefit, defined contribution, deferred compensation and other post-employment benefit (OPEB) plans.

The department manages the **Florida Government Finance Officers Association**.

E. LEGAL DEPARTMENT

The **LEGAL DEPARTMENT** apprises League members of legal matters affecting their duties and responsibilities, and advances the membership's point of view at all levels of government. Legal staff is available to consult with Florida's city attorneys on legal problems facing their particular municipalities, and offer advice on ordinances and ordinance search assistance. The Legal Department provides counsel on the effect of proposed legislation, monitors the development of state agency rules and files amicus curiae briefs in the state's appellate courts.

The Legal Department's **Special Investigation Unit** investigates people suspected of committing insurance-related fraud against the Florida Municipal Insurance Trust.

The department manages the **Florida Municipal Attorneys Association**.

F. MEMBERSHIP DEVELOPMENT DEPARTMENT

The **MEMBERSHIP DEVELOPMENT DEPARTMENT** is the initial point of contact for many city officials. The department serves as an information referral resource for members and oversees:

- Training programs, including a monthly webinar series on city-related topics, advisory board training and a regional summit series. This department also spearheads and runs FLC University – a comprehensive educational program designed to meet the diverse needs, challenges and issues facing Florida's cities and their citizens.
- Training for elected officials, including the **Institute for Municipal Elected Officials (IEMO)** and the **Advanced IEMO**, intensive training sessions to assist city officials in effectively meeting the requirements of their elected role.
- **Financial Technical Assistance Services**, information and "one-on-one" training for League members and their staff on revenue enhancement and budgeting.
- **Civics Education**, including publications such as *The ABCs of City Government* and *My City: I'm Part of It, I'm Proud of It!*; promoting Florida City Government Week; and providing municipal and civics information to city officials and teachers.
- The **International Relations Program**.
- The **Florida Municipal Achievement Awards** program.
- The Membership Development Department manages the **Florida City and County Management Association** and the **Florida Redevelopment Association**.

G. LEGAL DEPARTMENT

The **TECHNOLOGY SERVICES DEPARTMENT** provides technology assistance to League staff, and manages the **Florida Local Government Information Systems Association**.

H. CONTACT INFORMATION

Florida League of Cities Inc.
P.O. Box 1757
301 South Bronough Street, Suite 300
Tallahassee, FL 32302-1757
(850) 222-9684
1-(800) 342-8112

Florida League of Cities, Inc.
Insurance Services/Technology Services
125 East Colonial Drive
Orlando, FL 32853-0065
(407) 425-9142
1-(800) 445-6248

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Section 9-3

Resources

Center for Florida Local Government Excellence (a partnership of FCCMA, IOG and FSCI focused on academics, research and local government issues) <http://cflge.org>

Center for State and Local Government Excellence (a national partnership of NLC, ICMA and other governmental) www.slge.org

Code Research (Web-based research of municipal and county codes) www.municode.com

Federal Grants www.Grants.gov (find and apply for federal grants there)

Florida Association of City Clerks (FACC) www.facc.org

Florida Association of Code Enforcement (FACE) www.face.org

Florida Association of Counties (FAC) www.fl-counties.com

Florida City and County Management Association (FCCMA) www.fccma.org **Florida Government Finance Officers Association** (FGFOA) www.fgfoa.org

Florida League of Cities (FLC) (the official League Web site) www.floridaleagueofcities.com

Florida League of Cities Financial and Technical Assistance for Florida Municipalities (Web-based and hard-copy publication on grants, loans, technical assistance and other resources available to Florida municipalities: free to members) www.floridaleagueofcities.com

Florida League of Cities Financial Services (investment, loan and bond programs governed by cities for cities) www.floridaleagueofcities.com/Finance.aspx

Florida League of Cities Public Risk Services (insurance programs governed by cities for cities) insurance.flcities.com/Default.aspx

Florida League of Cities Risk Management (assists members with creating and sustaining a safe work environment. Effective Risk Control reduces and even eliminates risks, which preserves members' resources and funds) insurance.flcities.com/fmitSafety.aspx

Florida Legislature Web site www.leg.state.fl.us (Find information about your legislators, what bills are filed, by whom, what their history and progress is year-round; research statutes and the constitution; search for names of lobbyists and who they represent; search for key words in Florida statutes)

Florida Local Government Information Systems Association (FLGISA) www.flgisa.org

Florida League of Mayors (FLM) www.floridamayors.org

Florida Municipal Association of Safety and Health (FMASH) www.fmash.org

Florida Municipal Attorneys Association (FMAA) www.fmaa.org

Florida Redevelopment Association (FRA) www.redevelopment.net

Florida Resource Directory (a service of the Governor's Office of Tourism, Trade and Economic Development) www.floridaresourcedirectory.org

Government Finance Officers Association (GFOA) (representing state and local government financial staff; offering training and professional development) www.gfoa.org

International City/County Management Association (ICMA) (excellent resource for elected and appointed officials, with an emphasis on those governmental aspects of the council-manager form of government) www.icma.org

International Institute of Municipal Clerks (IIMC) (representing municipal clerks and providing certification and professional development) www.iimc.org

Legislative Committee on Intergovernmental Relations (LCIR) (studies, policy reports and research on Florida local governments) www.floridalcir.gov

The Lou Frey Institute of Politics and Government at the University of Central Florida and the Bob Graham Center for Public Service at the University of Florida have created the Florida Joint Center for Citizenship. The role of the Joint Center is to promote civic learning and engagement among Florida's citizens, especially young citizens.

- **Lou Frey Institute of Politics and Government at the University of Central Florida** <http://loufrey.cos.ucf.edu/>
- **Graham Center for Public Service** www.graham.centers.ufl.edu/initiatives.html

John Scott Dailey Florida Institute of Government (IOG) (low-cost regionally-based research, technical assistance and training for local government officials and employees) <http://iog.fsu.edu>

National Civic League (publishes the "Model City Charter" and other valuable resources) www.ncl.org

National League of Cities (membership required for certain services) www.nlc.org

State of Florida Information Site www.MyFlorida.com (list of state agencies, staff, divisions, functions, contact information, as well as an extensive directory for state employees; links to city and county Web sites)

The Center for Leadership and Civic Education <http://thecenter.fsu.edu/index.html>

Chapter 10

Reference Guide

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Section 10-1

Glossary of Key Terms

Advisory Board: appointed by a city to advise a council on certain matters; usually comprised of volunteer citizens.

Ad Valorem (tax): Latin phrase meaning “to the value of” and used interchangeably with the term property tax; the largest tax source for city and county government in Florida.

Annexation: how a municipality expands its physical boundaries, and how a property owner in the unincorporated area becomes part of an incorporated area; covered by Ch. 171, Florida Statutes.

Block Grant: a federal or state designation of funds that are awarded through competition or various qualifications. The funding may be used for an area (block) of programs.

Charter: the broad governing document for municipal governments (cities, towns, villages and charter counties); adopted by the people and amended by the people through referendum. It is derived from the French word for “contract.” Every city in Florida has a charter; only a few of the counties have charters.

Charter Officer: a position created and defined through a charter. Has legal standing because of placement in charter. (Example: the council or commission of a city are charter officers.)

City: municipal government; general-purposed local government created by the people to self-govern. Created through Ch. 165, Florida Statutes (From the Greek, civitas, for citizen.)

Code: the body of ordinances for a city or county; often codified regularly to make sure all ordinances are non-conflicting with one another.

Commission: elected body of a county or municipal government; also used to refer to the elected school board members.

Comprehensive Plan (“Comp” Plan): required of the state, counties and municipalities in Florida; includes plans for development, land use, transportation and other factors to help plan for a 20-year cycle, and to manage growth.

Concurrency: state law requiring that infrastructure be in place before development occurs; features prominently in city and county comprehensive plans.

Constitution (both federal and state): the broad governing documents for both entities; adopted by the people and amended by the people through referendum. The precepts of a constitution are then enacted through law.

Constitutional Officer: a position created and defined in a constitution; has legal standing through such creation. (Example: the sheriff is a constitutional officer of a county.)

Council: the elected body of a city government (in Florida, there is occasional use of councilor, supervisor, trustee and alderman; but less commonly than council or commission).

County: sub state; arm of state, from the French word designating the land/region of a count (nobleman). A unit of general-purpose local government created by the state to deliver state services.

Fee: a charge for service issued by a local government; adopted through an ordinance. It is voluntary in purpose and proceeds must go to the service provided. Also called charge for service; user fee.

Growth Management: In Florida, a set of laws and policies covering acceptable land use, conservation, development, zoning and other governmental regulation of growth.

Home Rule: The Florida Constitution grants (1968), and the Florida Legislature upheld (1973), this power for city and county governments. It provides authority to adopt ordinances and enact programs without permission from the state, provided such ordinances do not conflict with state or federal law.

Incorporation: in government, used to describe creation of a municipality. The act of creating a city, town or village through referendum. Outlined in Ch. 165, Florida Statutes.

Infrastructure: the physical, man-made structures that support a service; i.e., pipes for water and sewer; water and wastewater treatment plants; paved roads; buildings and supportive systems for buildings; stormwater systems; parks.

Initiative: an effort placed before voters to amend a charter, ordinance or other legal action. Often defined in charter, or law, as to procedure; often requires gathering a set number of signatures to gain ballot access.

Intergovernmental: affecting one or more governments; overlapping goals of more than one government; coordinated activities of more than one government; shared sources of revenues among governments.

Interlocal: refers to action between two governments, usually as an agreement for service, an exchange of funding, or other legally binding agreement.

Law: an enforceable action taken by government to restrict actions or set standards for compliance.

Mandate: a legal action by a government requiring another level of government to do something; usually does not include funding (unfunded mandate).

Mayor: term used in municipal charters for the person on the Council or Commission who leads it; in certain charters, refers to a separate position not on the Council or Commission who is the city's administrator. Usually refers to the elected leader of a municipal government.

Municipal (Municipality): refers to city government; from the Latin “municipus” – many over the people. Used when you don’t want to distinguish between city, town or village; also used legislatively to separate cities from counties.

Mutual Aid Agreement: inter-local agreement between and among governments to render assistance in disaster response and recovery.

Ordinance: a legal action taken by a city/county government; often used to distinguish between state and federal laws.

Place Name: used by planners to distinguish unincorporated areas known by local names (examples in Florida: Two Egg; Christmas).

Public Hearing: a noticed meeting (per statute and/or ordinance) relating to legal action by a government; usually requires that the public must be heard before action is taken.

Referendum (a): a vote held on a government action; usually set in state or city/county law.

Resolution: when adopted by a city or county, this commemorative or expressive document has standing, but is usually not legally binding in the manner of an ordinance, unless that city’s charter provides for such powers.

School District: In Florida, this special-purpose district is created by the state to provide K-12 public education. School districts are funded through state and a required local effort (RLE), which is a levy of property tax set by the state and levied by the school district board of commissioners. In Florida, this district shares the same physical boundaries as a county.

Special District: created by the Legislature or a city or county, special districts are classified as dependent or independent according to statutory criteria. Known as special- purpose local governments. (Examples: independent fire district; dependent housing authority.) For a list of all special districts and related information, go to www.floridaspecialdistricts.org.

Sunshine: Short-hand for Florida’s Open Meetings/Open Records Law; in the Florida Constitution and Chs. 112 and 186, Florida Statutes. Applies to the state in a limited capacity, and to local governments in a very extensive capacity. (“All meetings are held in the Sunshine.”)

Tax: a mandatory payment from a citizen to a government; levied through the authority of a government. Rates are established by the government through either the state constitution or by government law.

Town: a municipal government; also used to describe unincorporated areas. (From the Old English – “lives within the walls.”)

Unincorporated: In Florida, land in a county that is not within the boundaries of a municipality. Often called by a locally known name; may have a zip code.

Village: a municipal government; also used to describe unincorporated areas. (From the Latin, “villa, villagio” – place to dwell.)

Workshop: for local governments, a meeting at which issues are discussed without a vote. Under Florida’s Sunshine Laws, this is one of the most effective means of publicly discussing public business without taking action, so that all members of the governing body know where one another stands on an issue.

Zoning: set of laws creating categories of land use within a city or county; used to separate areas by activity or use of property. (Example: commercial zoning; residential zoning; industrial zoning.)

Section 10-2

Acronyms and Abbreviations

Used Within Florida Governments

ADA – Americans with Disabilities Act; federal and state law
AGO – Attorney General Opinions (state level legal advice compiled on the AG web site)
APA Florida – Florida Chapter of the American Planning Association
BEBR – Bureau of Economic and Business Research (at UF; calculates populations)
BOCC – Board of County Commissioners
CDBG – Community Development Block Grant (Federal/State distributes to small cities)
CIE – Capital Improvement Element: planning document for infrastructure maintenance and improvements
CIP – Capital Improvement Plan – local government document outlining several years of long-term planning, usually related to infrastructure
CRA – Community Redevelopment Agency
DEM – Division of Emergency Management – governor’s office division that oversees all emergency operations for state and local governments (man-made and natural)
DDA – Downtown Development Authority
DEP – Department of Environmental Protection (State)
DOR – Department of Revenue (State)
DOT – Department of Transportation
EAR – Evaluation Appraisal Report – part of county and city comprehensive plans
EOC – Emergency Operations Center – State and 67 county offices that serve as command centers for disaster response and recovery
EDC – Economic Development Commission (county)
EPA – Environmental Protection Administration (Federal)
FAC – Florida Association of Counties
FACC – Florida Association of City Clerks
FACC – Florida Association of Clerks of Court
FASD – Florida Association of Special Districts
FBA – Florida Brownfields Association
FCCMA – Florida City and County Management Association
FEMA – Federal Emergency Management Agency
FGFOA – Florida Government Finance Officers’ Association
FHC – Florida Housing Coalition
FLGISA – Florida Local Government Information Systems Association
FLC – Florida League of Cities
FLM – Florida League of Mayors
FLSA – Federal Fair Labor Standards Act
FMAA – Florida Municipal Attorneys Association
FMASH – Florida Municipal Association for Safety and Health
FMOAA – Florida Municipal Officials Alumni Association
FRA – Florida Redevelopment Association

FRCA – Florida Regional Councils Associations (all of the RPCs)

FRDAP – Florida Recreation Development Assistance Program

F.S. – Florida Statute – the statutory provisions of Florida law

FSBA – Florida School Boards Association

GASB – Government Accounting Standards Board

GFOA – National Government Finance Officers Association

HUD – Federal Housing and Urban Development

ICMA – International City/County Management Association – professional organization for local public managers

IOG – Institute of Government (state); John Scott Dailey Florida Institute of Government, located at several universities and used by counties and cities

JPA – Joint Planning Agreement; used by counties and cities to set boundaries for service delivery and/or utility services

LCIR – Legislative Committee on Intergovernmental Relations

LPA – Local Planning Agency (city or county)

MPO – Metropolitan Planning Organization – a state designation of a state-coordinated advisory board that works with federal and state transportation planning (roads, airports, bridges, ports)

MSA – Metropolitan Statistical Area – federal designation for areas of 50,000 population or greater; does not take city or county governmental boundaries into consideration. Used for planning purposes and qualifications for certain programs

MSBU – Municipal Services Benefit Unit – created by counties, these districts provide services through fee or assessment under Florida law; can include municipal areas.

MSTU – Municipal Services Taxing Unit – created by counties, these districts provide services through the property tax under Florida law; can include municipal areas.

NACo – National Association of Counties

OSHA – Occupational Safety and Health Administration (Federal)

OTTED – Governor’s Office of Trade, Tourism and Economic Development

P&Z – Planning and Zoning (usually refers to a committee or board for a city or county)

PERC – Public Employees Relations Commission

PSC – Public Service Commission – Florida’s regulatory body for utilities

PUD – Planned Unit Development

RPC – Regional Planning Councils (11 planning regions in Florida)

SBA – State Board of Administration

SERT – State Emergency Response Team

TDC – Tourist Development Council – legislatively created districts that determine spending plans for tourist tax usage and advise counties and cities on tourism matters

TRIM – Truth in Millage; a Florida law requiring the publication of property tax information

WMD – Water Management District – five regional boards that issue consumptive use permits for water (agriculture, industrial, commercial, governmental)

FLORIDA LEGISLATIVE TERMS

HB – House Bill; always an odd number

CB – Committee Bill; filed by the committee as a whole, not an individual member

CS – Committee substitute; language is substituted for an existing bill

SB – Senate Bill; always an even number

Sine Die – when the Legislature adjourns at the end of a particular session

TP – Temporarily Pass – a bill is left pending in committee

FUN ACRONYMS

BANANA – Build Absolutely Nothing Anywhere Near Anyone

CAVE – Citizens Against Virtually Everything

NIMBY – Not In My Back Yard

NIMTO – Not in My Term of Office

NOPE – Not on Planet Earth

NIMLT – (“Nim-el-tee”) – Not in My Life Time

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City of Fernandina Beach Governing Documents

The City Charter
Comprehensive Plan
Land Development Code
City Ordinances

City of Fernandina Beach Charter

We, the people of the City Of Fernandina (Fernandina Beach since 1921), desiring to avail ourselves of the right to establish a home-rule charter, in accordance with the constitution and the laws of the State of Florida do ordain and establish this Charter and form of government for the City of Fernandina, Florida.

Charter – Commission

- ❑ Creates Commission, sets election cycles, designates powers of Commission
- ❑ Commissioners may not hold more than one office in the City, or have more than 2 consecutive terms in office
- ❑ All powers of the City other than provided for by Charter or State constitution are vested in the City Commission
- ❑ Dealing with Administrative staff: the Mayor and Commissioners shall deal with administrative service through the respective Charter officer

Charter – City Manager

- ☐ Appointed by City Commission
- ☐ Responsible for proper administration of all affairs of the city
 - ☐ Ensures laws are enforced
 - ☐ Appoint employees and supervise departments of municipal government
 - ☐ Attend Commission meetings to advise
 - ☐ Purchasing agent for the City

Charter – City Attorney

- ☐Appointed by City Commission
- ☐Responsible for:
 - ☐Preparing and approving all contracts
 - ☐To prosecute and defend all causes of action by authorization of a resolution
 - ☐Provide opinions of law relating to activities of the City, Commission, City Manager, City Clerk and City staff
 - ☐Prepare all City ordinances and resolutions

Charter – City Clerk

- ☐ Appointed by City Commission
- ☐ Responsible for:
 - ☐ Attending City Commission meetings and keeping a journal of its proceedings; as well as journals for all boards and committees
 - ☐ Conduct municipal elections
 - ☐ Legal custodian of all city records and the seal of the City
 - ☐ Authenticate all ordinances, resolutions, and transcripts of legislative functions
 - ☐ Publish public notices
 - ☐ Prepare all awards, proclamations, other formal documentation

Commission Rules of Procedure:

Conduct of Meetings

- During meetings, Commissioners desiring to speak address the Mayor, and when recognized, may speak on the question under debate.
- A Commissioner, once recognized, shall not be interrupted unless a point of order is raised by another member, is called to order by the Mayor, or yields to questions.
- Commissioners wishing to question administrative staff shall direct their questions to the City Manager, who will answer them or designate a member of city staff for that purpose.

Commission Rules of Procedure:

Conduct of Meetings

- ☐ Every Commissioner present when a question is called shall vote either “yes” or “no” when a question is called, except on matters involving conflicts of interest
- ☐ A Commissioner prevented from voting by a conflict of interest may participate in the discussion of the question and disclose the nature of the conflict of interest.
- ☐ After the result of a vote is announced, a Commission member may not change a vote unless before the adjournment of a meeting, that member makes a motion to reconsider the action.

Commission Rules of Procedure:

Conduct of Meetings

- ☐ A person wishing to address the Commission must first register with the City Clerk and complete a speaker's form.
- ☐ Only one person may approach the microphone at any one time, and only the person at the microphone may speak.
- ☐ Speakers may file copies of their remarks or supporting information with the City Clerk
- ☐ Speakers have a time limit of 3 minutes

Commission Rules of Procedure:

Conduct of Meetings

- Regular meetings are held on the first and third Tuesday of each month
- Special Meetings may be called by the Mayor, any two commissioners, or the City Manager
- The Charter Officers (City Manager, City Attorney, and City Clerk) attend all City Commission meetings.
- During workshop sessions, Commission members may not call upon public to speak unless a majority of the Commission agrees to allow public comment.

Code of Ordinances

- ☐ General laws of the city
- ☐ Violations can result in citations and/or code enforcement board hearings and liens on private property

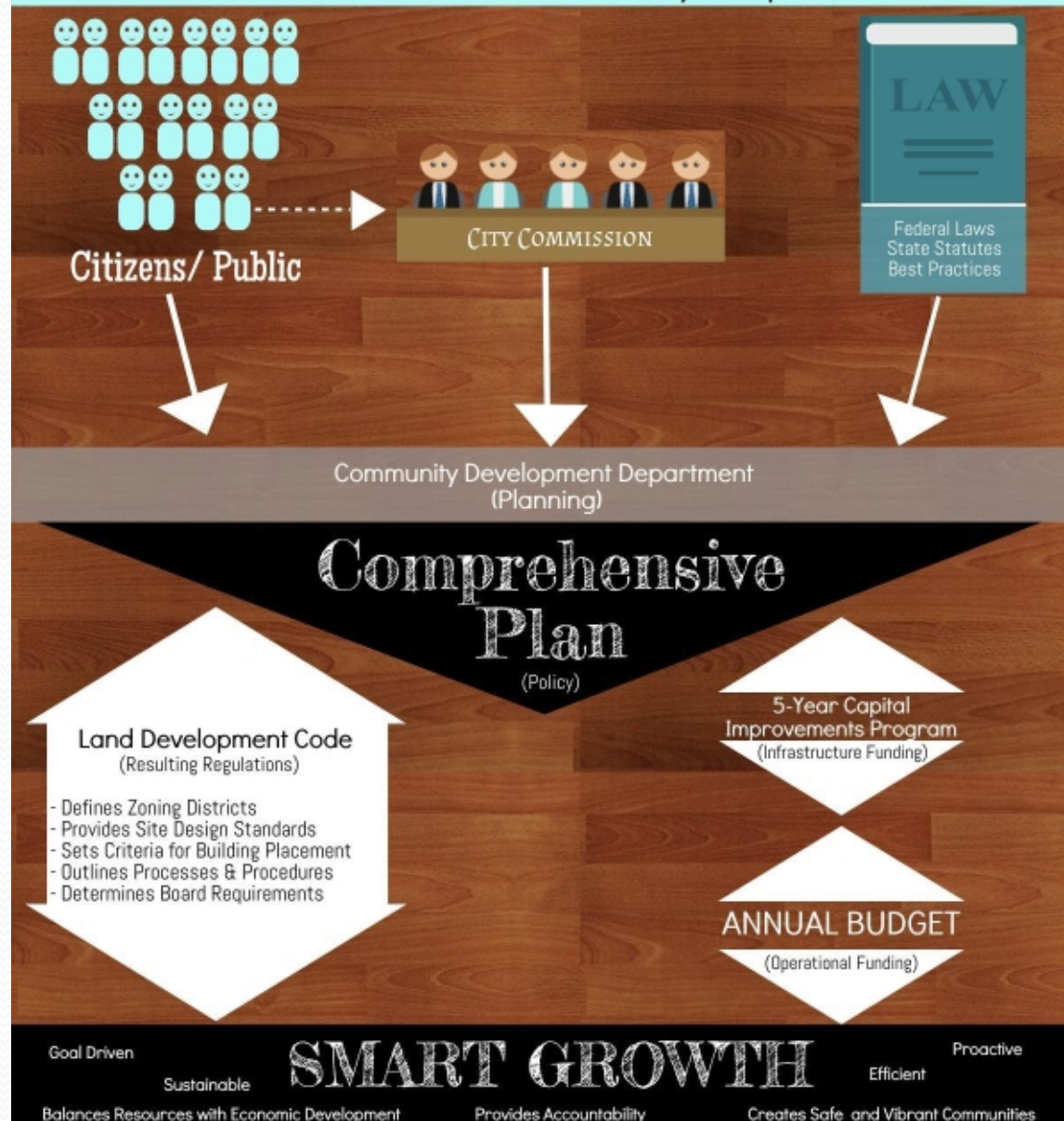
Comprehensive Plan

- Sets the principles, guidelines, standards and strategies for future development in the city
- “Constitution” for all future development in the city

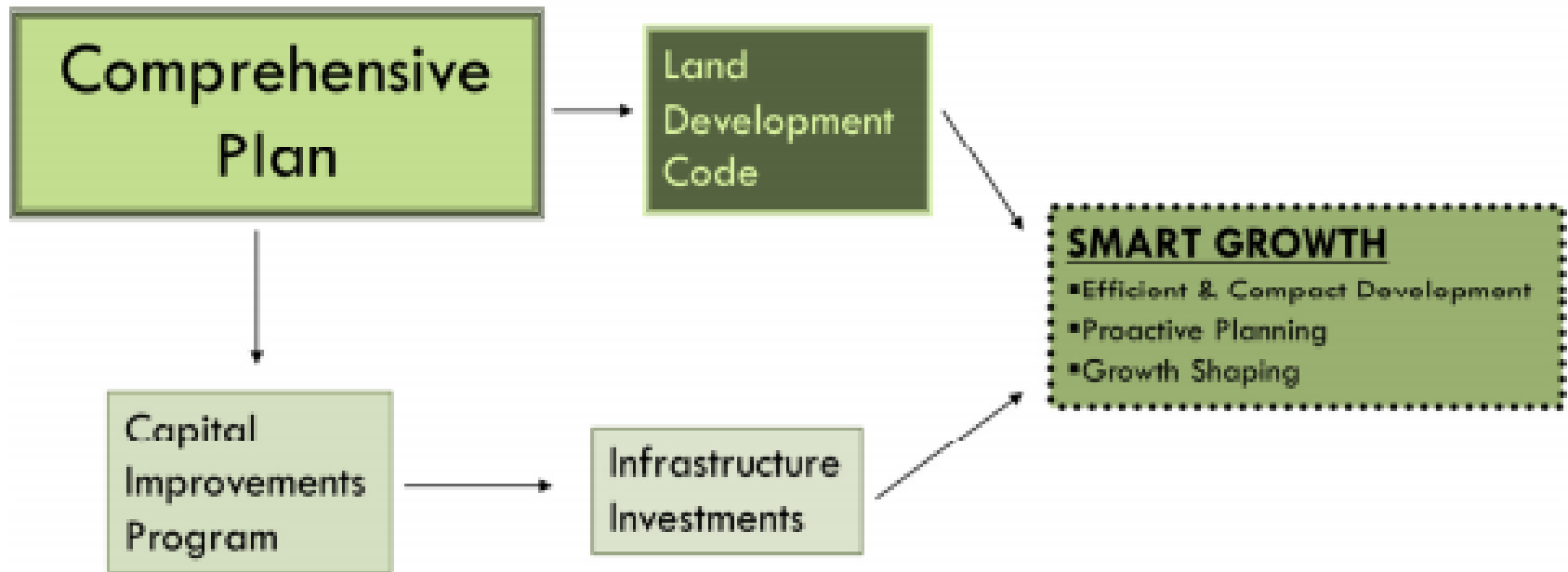
YOUR COMMUNITY'S VISION

The Fernandina Beach Comprehensive Plan

How is the future of our City shaped?



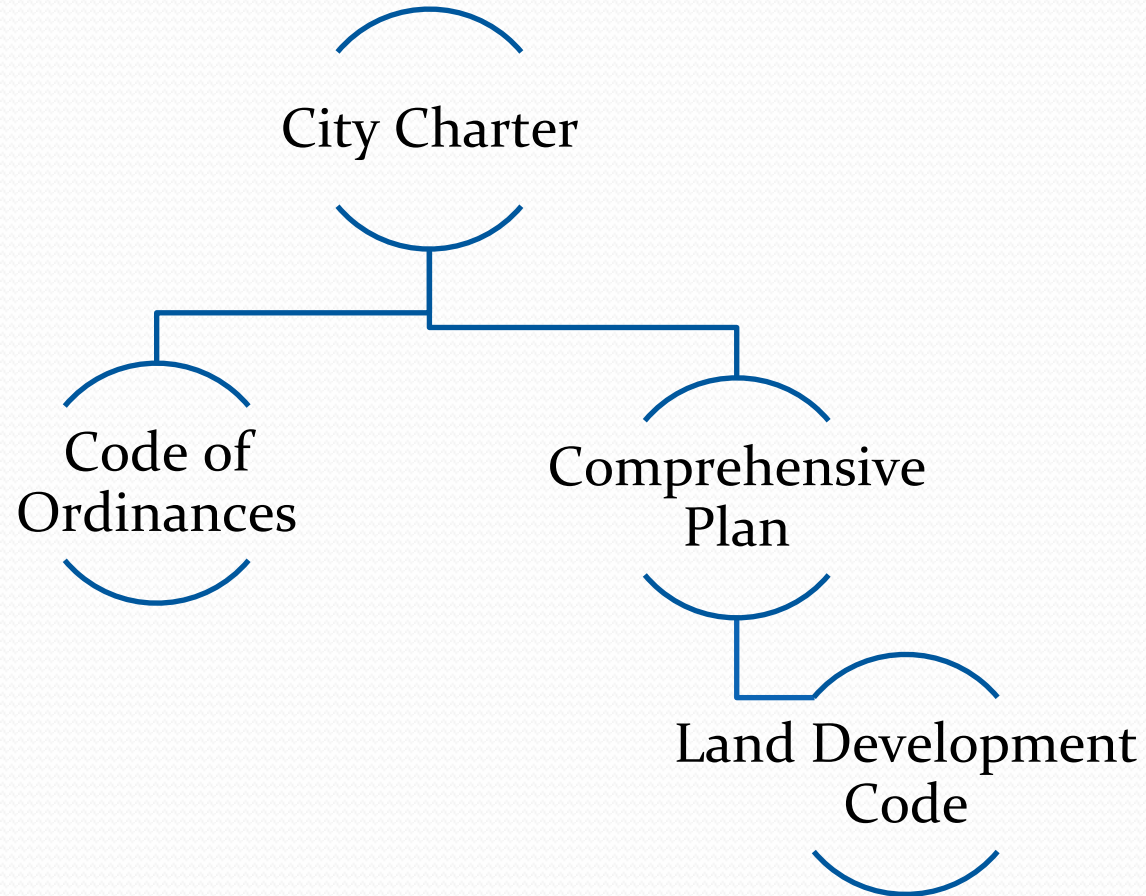
Why Plan?



Land Development Code

- The Comprehensive Plan is the “constitution” of development and the Land Development Code is the enabling legislation or “statutes”
- Legislation that implements the comprehensive plan

How they Interact



Committees & Boards

- ☐ Airport Advisory Commission
- ☐ Community Redevelopment Area (CRA) Advisory Board
- ☐ Parks & Recreation Advisory Committee
- ☐ Planning Advisory Board
- ☐ Technical Review Committee Arts & Culture Nassau
- ☐ Golf Course Advisory Board
- ☐ Board of Trustees General Employees Pension Plan
- ☐ Board of Trustees Police & Fire Pension Plan
- ☐ Community Development Block Grant Citizens Advisory Board
- ☐ Peck Center Committee

Committees & Boards: Quasi-Judicial

These Boards have decision making authority, whereas the others offer recommendations for Commission action.

- ☐ Board of Adjustment
- ☐ Code Enforcement & Appeals Board
- ☐ Historic District Council