

# 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](mailto: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](http://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, Ochesee (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](http://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)
<b>Appointment</b>	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.
<b>Policy Formulation</b>	The manager should have direct responsibility for policy formulation on overall problems.	(same as municipal manager)
<b>Budget</b>	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.
<b>Appointing Authority</b>	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.
<b>Organizational Relationships</b>	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.
<b>External Relationships</b>	Responsibilities of manager should include extensive external relationships involving the overall problems of city operations.	(same as municipal manager)
<b>Qualifications</b>	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](http://www.ncl.org). Revised each decade: 8<sup>th</sup> 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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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 improvement 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 landfills 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 <sup>(1)</sup>	22.19%
3. Property Tax	14.95%
4. Intergovernmental Revenue <sup>(2)</sup>	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 <sup>(3)</sup>	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 represents 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:**

$$\begin{array}{l} \text{Weighted} \\ \text{Population} \\ \text{Factor} \end{array} = \frac{(\text{Municipality's Population} \times \text{Adjustment Factor})}{\text{Total Adjusted Statewide Municipal Population}}$$

**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:**

$$\begin{array}{l} \text{Municipal} \\ \text{Sales} \\ \text{Tax} \end{array} = \frac{(\text{Municipality's Population} \times \text{County Sales Tax Collections})}{\text{Total County Allocation Population}}$$
  
$$\begin{array}{l} \text{Sales} \\ \text{Tax} \end{array} = \frac{\text{Municipal Sales Tax Allocation}}{\text{Factor Total Sales Tax Collections for All Eligible Municipalities}}$$

**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:**

$$\begin{array}{l} \text{Municipality's} \\ \text{Per Capita} \\ \text{Assessed Value} \end{array} = \frac{\text{Municipality's Property Valuation}}{\text{Municipality Population}}$$

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) =  $\frac{\text{Weighted Population Factor plus Sales Tax Allocation Factor plus Relative Revenue Raising Ability Factor}}{3}$

**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 1<sup>st</sup> 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 1<sup>st</sup> 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 chapter<sup>1</sup>. 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

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<sup>1</sup> 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 recreation<sup>2</sup> – 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.

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<sup>2</sup> 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."<sup>3</sup>

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<sup>3</sup> <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**

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# 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](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](http://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** appraises 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](http://www.slge.org)

**Code Research** (Web-based research of municipal and county codes) [www.municode.com](http://www.municode.com)

**Federal Grants** [www.Grants.gov](http://www.Grants.gov) (find and apply for federal grants there)

**Florida Association of City Clerks** (FACC) [www.facc.org](http://www.facc.org)

**Florida Association of Code Enforcement** (FACE) [www.face.org](http://www.face.org)

**Florida Association of Counties** (FAC) [www.fl-counties.com](http://www.fl-counties.com)

**Florida City and County Management Association** (FCCMA) [www.fccma.org](http://www.fccma.org) **Florida Government Finance Officers Association** (FGFOA) [www.fgfoa.org](http://www.fgfoa.org)

**Florida League of Cities** (FLC) (the official League Web site) [www.floridaleagueofcities.com](http://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](http://www.floridaleagueofcities.com)

**Florida League of Cities Financial Services** (investment, loan and bond programs governed by cities for cities) [www.floridaleagueofcities.com/Finance.aspx](http://www.floridaleagueofcities.com/Finance.aspx)

**Florida League of Cities Public Risk Services** (insurance programs governed by cities for cities) [insurance.flcities.com/Default.aspx](http://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](http://insurance.flcities.com/fmitSafety.aspx)

**Florida Legislature Web site** [www.leg.state.fl.us](http://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](http://www.flgisa.org)

**Florida League of Mayors** (FLM) [www.floridamayors.org](http://www.floridamayors.org)

**Florida Municipal Association of Safety and Health (FMASH)** [www.fmash.org](http://www.fmash.org)

**Florida Municipal Attorneys Association (FMAA)** [www.fmaa.org](http://www.fmaa.org)

**Florida Redevelopment Association (FRA)** [www.redevelopment.net](http://www.redevelopment.net)

**Florida Resource Directory** (a service of the Governor's Office of Tourism, Trade and Economic Development) [www.floridaresourcedirectory.org](http://www.floridaresourcedirectory.org)

**Government Finance Officers Association (GFOA)** (representing state and local government financial staff; offering training and professional development) [www.gfoa.org](http://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](http://www.icma.org)

**International Institute of Municipal Clerks (IIMC)** (representing municipal clerks and providing certification and professional development) [www.iimc.org](http://www.iimc.org)

**Legislative Committee on Intergovernmental Relations (LCIR)** (studies, policy reports and research on Florida local governments) [www.floridalcir.gov](http://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](http://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](http://www.ncl.org)

**National League of Cities** (membership required for certain services) [www.nlc.org](http://www.nlc.org)

**State of Florida Information Site** [www.MyFlorida.com](http://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](http://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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