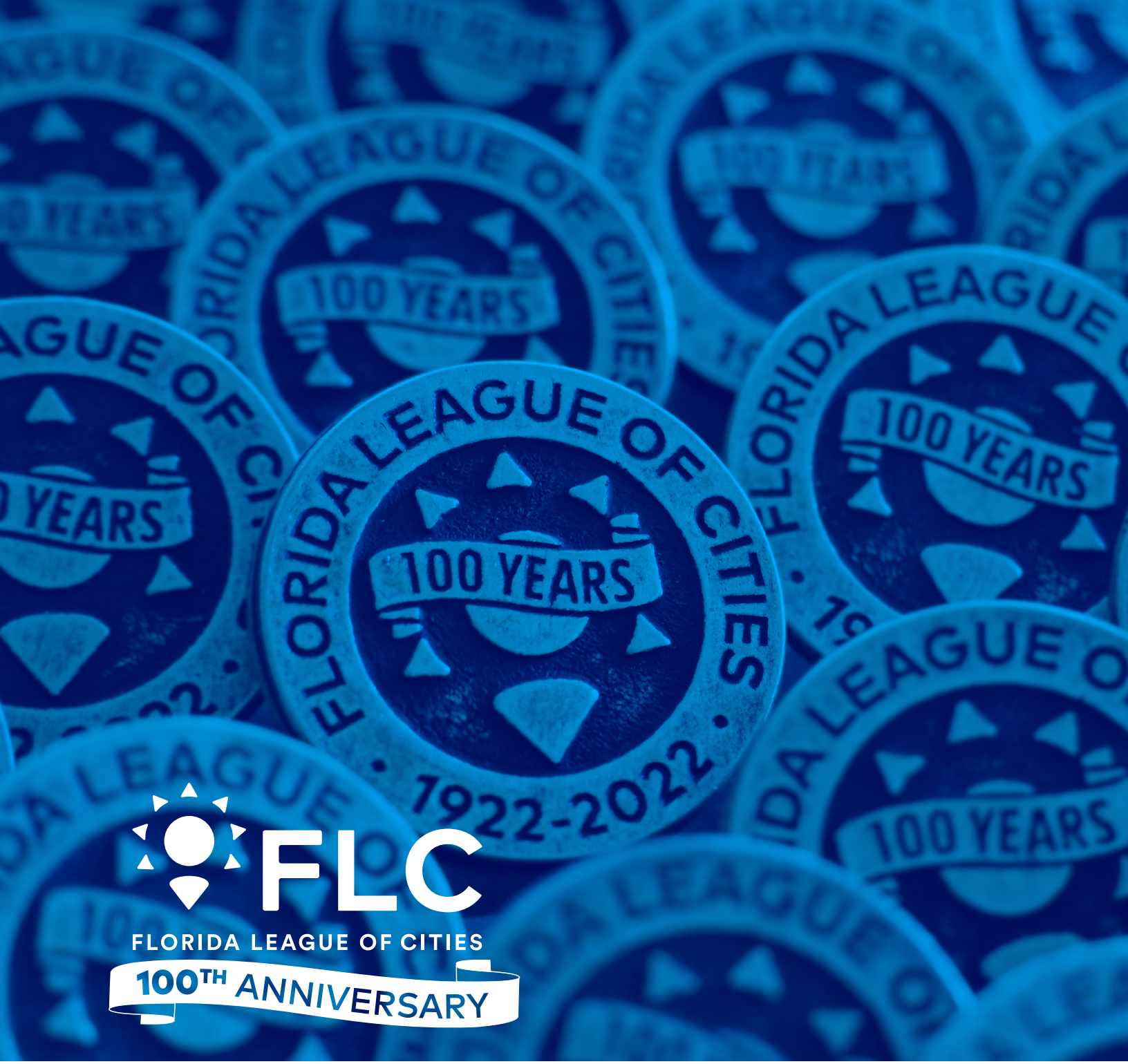

Florida Municipal Officials Manual

2022

This 100th Anniversary Edition of the Florida Municipal Officials Manual is dedicated to the memory of

Raymond C. Sittig
1929-2012
Florida League of Cities (FLC) Employee 1959-2012
Executive Director 1970-1995

and in honor of

Michael Sittig
FLC Employee 1970-2020
FLC Executive Director 1995-2020
Director Emeritus 2020

for their visionary leadership and devotion to the FLC, for championing excellence in municipal governance and for their unwavering support for municipal Home Rule.

Acknowledgments:
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PREFACE

The Florida Municipal Officials Manual is a publication of the Florida League of Cities.

Nature of the Manual

This manual is intended as a reference on common topics of municipal interest to be used by municipal officials, municipal staff and interested persons. It is specific to Florida. Newly elected officials will find it a handy reference, as will appointed administrators and clerks who may be unfamiliar with Florida's governmental structure.

This manual should not be viewed as containing legal opinion or definitive information on matters of law or statutory interpretation. Legal counsel should be obtained from one's city attorney. As this manual is not updated each year, the citations for specific state statutes are not given. The state constitution and all statutes may be found at: *leg.state.fl.us/statutes/*. For references to federal legislation, please see the regulation at: *usa.gov*.

Terms such as municipal and city are used interchangeably as well as municipal governing body and city council.

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Florida Municipal Government in Nation and State

SECTION 1
Municipalities in the Federal System

Florida municipalities exist within the American federal system. This fact has many implications for the way a municipal government functions and 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 that 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 founders labored mightily and produced a new, "hybrid" form of government – something between the other two forms. In this new form, the national government, as represented in the Congress, was granted certain enumerated powers (enumerated because they are listed or numbered) in Article 1, Section 8, U.S. Constitution. Additionally, 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 – one which interpreted the lawmaking power of Congress very generously. Meanwhile, the 10th Amendment, which states that all powers not given to Congress shall be reserved to the states or the people thereof, was interpreted as having little meaning at all. While the original intent of the Founding Fathers was to create a system that 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 provides 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 provides 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 tremendously expanded the potential power of the national government in its relationship to the states. First, they gave a broad new grant of lawmaking power to 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 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, as the forces of decentralization – and even of division – were dominant throughout the first two-thirds of the century.

After the Civil War, Congress began to assert the authority that the earlier Supreme Court had granted. By this time, however, the Supreme Court had become a conservative institution that 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 and their responsibilities expanded, by decisions of 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 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. At the same time, municipalities are restricted by federal policy and regulation; they are also required to perform various mandated activities.

The prospects for radical change in this dynamic are not very bright. For nearly 90 years, Congress has been aggressive both in usurping traditional state and local powers and in mandating new state and local responsibilities. For the same years, the federal judiciary has mostly approved such Congressional actions while extending its 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; however, it is not enforced. There continues to be national debate over states' rights and local government issues related to preemptions of authority and unfunded mandates.

REFERENCES

- U.S. Const. art. 1.
- U.S Const. amend. XIV, sec. 1 and 5.
- U.S. Const. amend. XV, sec. 1 and 2.

SECTION 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 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 nobility and business people 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 American Revolution transformed the colonies into states, the state governments assumed the role of the Crown as the source of municipal government authority, allowing the state governments to assume the role of granting municipal charters. From this practice evolved the traditional American legal principle that a municipality is a creation 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 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. 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 that applies uniformly to all municipalities and prescribes their jurisdictions and powers. The Legislature's control over municipal governments was absolute. Municipalities were regarded as entities 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. A 1934 constitutional amendment prohibited local acts but was ignored by the Legislature in the following years.

One feature of the 1885 Florida Constitution as it came to be amended was that a special or local act required that either a notice be published in the affected community or 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 applied to only a single municipality. By utilizing such legislation (sometimes called "population acts"), the Legislature avoided the notification-or-referendum requirement that applied to local acts.

In summary, under the 1885 Florida Constitution, municipal governments were completely controlled by the state Legislature, which enjoyed not only the power of enacting legislation that 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 municipal **"Home Rule"** power, municipal governments' authority was limited to that expressly granted by the Legislature or that which could be necessarily implied from an express grant. Any reasonable doubt regarding a municipality's right to exercise power was to be resolved (by a court) against the municipality. This statement of municipal authority was widely known as **"Dillon's Rule"** and generally prevailed throughout the United States in the absence of grants of municipal Home Rule powers. Judge John F. Dillon of Iowa authored this decision in two court cases in 1868. Nationally, it has become a short-hand method of explaining narrow interpretations of county and municipal authority.

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 in the past treatment of municipal governments. 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 that 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 by state or federal law. 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.*" Chapter 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 that 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 Chapter 166, Florida Statutes. 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 to 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 in that it may restrict the powers of municipal self-government by erecting specific prohibitions. Absent such prohibitions, municipal officials may exercise any power so long as it is for a municipal purpose. There have been both preemptions and mandates upon county and municipal governments since 1973.

The Florida League of Cities (FLC) 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, Florida Constitution. Section 10 requires that all special laws (including local acts) be accompanied either by local notification or by provision for a local referendum. Section 11 prohibits special laws and general laws of a 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 overall design to take local decisions out of the Legislature ... "*

The 1971 Legislature took additional action regarding population acts by enacting Chapter 71-20, Laws of Florida, 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. They are still used, as is illustrated by Chapter 87-258, Laws of Florida, which authorized the levying of a convention-development tax. The act reads, in part, as follows:

> *Each county which was chartered under Article 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: 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," in this manual 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 on municipal governments.

REFERENCES

- Florida Const. art. 3, sec. 10-11; art. 8, sec. 2.
- Florida Statutes. Chapter 166.
- Laws of Florida. Chapter 69-33; Chapter 71-129; Chapter 87-258.
- Ralph Marsicano. "Development of Home Rule," Florida Municipal Record 57, no. 10 (April 1984): 7.
- National League of Cities. "Cities 101 - Delegation of Power." *nlc.org*.

SECTION 3
State Constitutional Provisions Affecting Municipalities

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

A. ARTICLE II, SECTION 8: ETHICS IN GOVERNMENT

This section applies certain ethics requirements to municipal officers, particularly 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. ARTICLE III, SECTION 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 residents. The prohibition intended to prevent the Legislature from enacting legislation on certain topics that applied to only one local unit. However, the permissive element has been used by the Legislature to achieve the same end.

C. ARTICLE III, SECTION 14: CIVIL SERVICE SYSTEM

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

D. ARTICLE IV, SECTION 1, AND ARTICLE IV, SECTION 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 public peace and execute the laws of the state. The governor may suspend from office any municipal officer indicted for a 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. ARTICLE V, SECTION 1: COURTS

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

F. ARTICLE VI, SECTIONS 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, Section 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 reelection 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. ARTICLE VII, SECTIONS 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 for local governments. All other forms of taxation are preempted by 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. ARTICLE VII, SECTIONS 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. ARTICLE VIII, SECTION 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 a vote of the affected electors.

REFERENCES

- 1969 Florida Const. art. II, III, IV, V, VI, VII, VIII.

CHAPTER 2

Primary Elements of Municipal Government

SECTION 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). This document specifies the composition of the elected body and the duties of appointed officials.

The council is responsible for creating and enforcing the laws of the city, which are called ordinances. The council also has an oversight role that varies in its responsibilities based on 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 first two are known as "mayor-council" forms. Descriptions for the forms follow:

A. COUNCIL-WEAK MAYOR

The original form of municipal government in America was council-weak mayor, 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, libraries) 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 and public works director – report to the council as a whole. In Florida, this form is found In municipalities under 20,000 in population.

B. COUNCIL-STRONG MAYOR

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 is the chief executive, and the office of mayor has substantial influence in the policymaking 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. In Florida, the majority of municipalities with this form have a non-legislative mayor whose function is the elected executive role.

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, ceremonial tasks and other functions. In this way, administrative management by a hired assistant to the mayor may be combined with strong political and policy leadership by the mayor. In Florida, some of the municipalities with this form also give the mayor a veto over legislative matters.

C. COMMISSION

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 policymaking 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, TX, 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 the administration. Further, it became difficult to functionally manage departments on a part-time council basis. In Florida, this form exists in less than five municipalities.

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 policymaking body is labeled "commission."

D. COUNCIL-MANAGER

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 was 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 may serve as the spokesperson for the city. The mayor may be an important political figure but has little, if any, role in day-to-day municipal administration. In council-manager cities, the office of mayor is filled in one of three ways: direct election, rotation among the council or election from the council.

The council-manager form, first used in 1908 in Staunton, VA, received nationwide attention six years later when Dayton, OH, 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 been backlogged since the Depression years of the 1930s. Faced with such challenges, many municipalities adopted the council-manager form. The form 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 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. 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.

The use of the title "administrator" can cause confusion in this form of government as the title does not always indicate the same responsibilities or authority as a manager. For example, in the council-weak mayor form, there are cities with an administrator

position, with the council retaining all authority over hiring, firing and employment matters. In this case, the administrator may assist the council and may even supervise certain positions; however, it is not the same as a "manager" position. Using information from the International City/County Management Association (ICMA), early versions of this form sometimes placed an administrator over general governmental functions and referred to it as "general administration." There remain several distinctions between administrators and managers today. The manager's hallmarks are preparation of agenda material, recommendations of policy to the council, budget preparation and employment authority.

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" (Article VIII, Section 2(b), Florida Constitution). State statutes require only that an acceptable proposed municipal charter is one that "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 in municipal government form have been from some other form to the council-manager form. Approximately 285 Florida cities (out of more than 400) have a position of manager.

In all Florida cities, members of the council or commission are elected by the voters of the city. Certain administrative positions are filled by elections in a few cities. These include the offices of clerk, police chief and fire chief.

REFERENCES

- Florida Const. art. 8, sec. 2(b).
- Florida Statutes. Chapter 165, Section 061.
- Florida League of Cities. Membership Directory.
- National Civic League. *Model City Charter*, 9th Edition.

TABLE 2-1
Comparison of Municipal Executive Types

SOURCE: International City/County Management Association, Directory of Local Governments, Washington, D.C.

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

External Relationships	Responsibilities of manager should include extensive external relationships involving the overall problems of city operations.	(same as municipal manager)
Qualifications	The qualifications for the position should be based on the educational and administrative background of candidates.	(same as municipal manager)

SECTION 2
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 presents a concise and workable legal framework for the government of the municipality. In addition, according to the National Civic League, a good charter is one that "sets before the citizens a clear picture of their powers and responsibilities and before the officials and employees a statement of their duties and mutual interrelations." Additionally, 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 that they desire.

B. CONTENTS OF A CHARTER

A charter should contain details that 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 "too much" in the charter.

1. Recommended Subjects

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

1. Powers of the city.
2. City council.
3. City manager (if this form of government is chosen; not included otherwise).
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 and a workbook for charter review committees, which may serve as a guide in the preparation or revision of a charter. See the following:

National Civic League. *Model City Charter.* 9th edition, 2021. Revised each decade. Website: *www.ncl.org*. Contact information: 303.571.4343. 1445 Market Street, #300, Denver, Colorado.

Copies of current Florida city charters may be obtained from the cities themselves and are often posted on city websites.

3. The Charter and Home Rule
With the advent of municipal Home Rule in 1969, a municipal government is not restricted to those powers that 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 that 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 of Florida.

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, Florida Statutes. 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 a referendum.

REFERENCES

- Florida Statutes. Chapters 165, 166 and 171.

SECTION 3
Incorporation, Merger and Dissolution

The formation and dissolution of municipalities are governed by Chapter 165, Florida Statutes, except in Miami-Dade County, operating under its county 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 an act of the state government and in accordance with applicable state laws (Article VIII, Section 2(a), Florida Constitution) and 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 that 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 from 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, and the charter is included in the special act along with the feasibility study.

3. Adoption of a Charter

Having been proposed by one of the methods described above, the Legislature considers the special act and its contents. 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 the charter of the municipal government created by the act. Most municipalities, after the special act has been adopted and signed by the governor, include the charter question on the ballot for adoption by the voters.

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 the 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

Chapter 165, Florida Statutes, includes guidelines for incorporation; however, these may be set aside or waived at the request of the legislative delegation. 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% of the qualified voters in the area. Refer to Chapter 165, Florida Statutes, 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, Florida Statutes.

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 incorporation or dissolution.

REFERENCES

- Florida Const. art. 8, sec. 2.
- Florida Statutes. Chapter 165.

SECTION 4
Annexation

The Municipal Annexation or Contraction Act of 1974, which is codified with amendments 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. This option is often called voluntary 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 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% 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 the 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 that clearly shows the area. In most cases, the 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 or has no population present, 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% of the voters residing in the enclave.

If more than 70% 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% of the land consent to annexation. This consent must be obtained prior to a referendum.

Under certain conditions, an annexation referendum may be conducted by mail. The annexation procedure also requires 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.
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, Florida Statutes, apply, including the requirement of a charter adopted by a 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 Section 171.051, Florida Statutes.

REFERENCES

- Florida Statutes. Chapter 171 and Sections 101.6102(5) and 190.047.

SECTION 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 the Division of Elections, Florida Department of State.

B. VOTER REGISTRATION

Voter registration is governed by Chapters 97 and 98, 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 instead 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 are a matter controlled preemptively 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.
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 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 that 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 to minimize the election of minority-group candidates.
4. Failure to draw district lines to ensure the election of minority-group candidates.
5. Drawing of district lines to ensure the election of minority-group candidates, if done solely for that purpose and if the result is an odd-shaped district that 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, and a few charter counties have selected dates for their respective municipalities. The most popular months are November and December of odd-numbered years and March and April of even-numbered years. In the event of an emergency, the governor may suspend or delay an election by executive order and then set a new date.

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 for delivering the necessary records and equipment to the appropriate city officials before the election and collecting 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 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.

H. CAMPAIGN SIGNS

Municipal candidates are not directly affected by a state law that 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 are 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.
2. If there is no newspaper of general circulation in the municipality, posting in no less than five places within the municipality.

This holding of bond referenda is governed by local law, 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 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 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.

REFERENCES

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

SECTION 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 that a city has adopted, although additional legal restrictions in some states, as well as individual personalities, may also be significant factors. In Florida, there are municipalities with no mayoral position and a council chairperson or council president has this function.

1. **Qualifications**
   Formal qualifications for the office of mayor may be specified in the city charter. Typically, the sole stated qualification is that one is a qualified elector of the city.

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. This can occur on a rotational basis or in an election by members of the council. In some cities, the mayor is elected by popular vote for a shorter or longer term than other council members.

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 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 policymaking 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 utilized by the community.

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.

B. COUNCIL MEMBERS

The elected municipal governing body is responsible for the policymaking 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. Some city charters have chosen the administrator title with the same authority as a manager; however, for most Florida municipalities the title of administrator Is not the same as a manager.

If the position is not provided in the charter, it Is found as an ordinance, and in a few cases, within a resolution.

For questions on these distinctions and information on professional development and sample job descriptions, please contact the Florida City and County Management Association (FCCMA) at *fccma.org*.

D. CLERK

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 charter or ordinance or by the clerk's supervisor (mayor or manager). These additional duties could include those of treasurer or finance officer, 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 elective. In most, the clerk is appointed by the mayor, the council or by the manager. In some communities, one person is designated as both city manager and city clerk. In many small Florida communities, the role of clerk serves as a "hub" for coordination of service delivery and works with the mayor and council on a wide range of responsibilities.

For assistance with clerk job descriptions and professional development for municipal clerks, please contact the Florida Association of City Clerks (FACC) at *floridaclerks.org*.

E. TREASURER/FINANCE OFFICER

The position of treasurer or financial officer is generally established by charter. The treasurer serves as chief fiscal officer of the municipality. However, in the council-manager form, this position reports to the manager, and in some cases, the manager is also the chief financial officer. Specific duties of the treasurer/financial director include the collection, receipt and custody of payment of municipal employees and all vendors providing goods and services. In addition, this position 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 or annually) to the council on the financial condition of the municipality.

For job descriptions and professional development Information related to finance officers and treasurers, please contact the Florida Government Finance Officers Association (FGFOA) at *fgfoa.org*.

F. ATTORNEY

In most cities in Florida, the council appoints a city attorney for legal counsel. A city attorney may be a full-time or 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 the office. In some cities, the council is quick to involve the attorney in varied aspects of city policymaking and administration. In other cities, the attorney's services are resorted to only when a legal issue absolutely requires it.

For information and professional development resources for municipal attorneys, please contact the Florida Municipal Attorneys Association (FMAA) at *fmaa.org*.

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, Florida Statutes, 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 are sometimes assigned significant powers of policymaking 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 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 and residents 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 and public-record laws ("Sunshine Laws") and individual members may be required to comply with financial disclosure laws. 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.

REFERENCE

International City/County Management Association. "Elected Officials Handbooks." *icma.org*.

CHAPTER 3

Standards of Conduct

SECTION 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 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" (Article II, Section 8, Florida Constitution) contains only a small part of the complete set of formal standards. The Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes), while more extensive than the Sunshine Amendment, also contains only part of the entire set of standards of conduct.

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.

SECTION 2
Constitutional Provisions

The Florida Constitution contains a few sections that pertain to the conduct of municipal officers. This can be found in two sections of the Constitution: Articles II and IV.

A. THE SUNSHINE AMENDMENT (ARTICLE II)

Article II, Section 8 was added to the Florida Constitution in 1976 through 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 (Article II, Section 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 Section 106.07, Florida Statutes.

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 Section 112.316, Florida Statutes.

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 Section 112.3173, Florida Statutes.

These sections are supplemented by state law in Chapter 112, Florida Statutes and are frequently updated by the Legislature. Officials are encouraged to check with their attorneys for regular updates on changes to the law. In addition, the "Florida Sunshine Manual," published by the First Amendment Foundation, has a handy index for finding changes to both public meetings and public records laws.

B. POWERS OF THE GOVERNOR (ARTICLE IV)

The state governor is granted several powers so 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 Const. art. II, sec. 8; art. IV, secs. 1 and 7(c).
- First Amendment Foundation. "Government in The Sunshine Manual." Chapters 112, 386, 199, 106. Telephone: 800.337.3518.

SECTION 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 of Florida, 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. As changes are regularly made to Chapter 112, Florida Statutes, by the Legislature, each official and staff person should seek updates from their municipal attorney.

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 an 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 the 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 personal gain or benefit or the personal gain or benefit of any other person or business entity.

7. Post-Employment Restrictions
A person elected to any municipal office may not personally represent another person or entity for compensation before the governing body of which he or she was an officer for two years after vacating 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 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, advance or advocate for such benefit to a position over which he or she exercises jurisdiction, any relative. "Relatives" includes parents; uncles, aunts and first cousins; siblings, their spouses and their children; spouses and their parents; children and their spouses; stepparents, step-siblings 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 an 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, before the vote is 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 before the meeting at which the matter is discussed, in which case the memorandum shall be read publicly at the meeting before 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 receivers of funds must be given, as well as the dates of transactions. Check the statute with your city attorney for the latest requirements.

15. Solicitation and Disclosure of Honoraria
An honorarium is a payment of money or anything of value, directly or indirectly, to a municipal officer or 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 writing by the reporting individual, other than a book which is not intended to be published. An 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 an honorarium that is related to his or her public office duties, nor may the officer accept an 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 an 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 a 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" in Chapter 3 of 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 before retirement or if office or employment is terminated because of a specified offense.

D. COMPLAINTS ("WHISTLEBLOWERS")

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 the written consent of the individual unless the internal auditor or inspector general finds the disclosure unavoidable during 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, Florida Statutes, 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 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 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. The terms of the 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" (Chapter 112, Part IV, Florida Statutes) and of any other breach of public trust, as established in Article II, Section 8, Florida Constitution.

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.
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:

- 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 the Florida secretary of state. There also is a specific form that must be used in the filing of a formal complaint.

E. ANNUAL TRAINING REQUIREMENT
In 2014, elected municipal officers were added to the list of elected officials who must annually complete four hours of specific training on Florida Ethics Law, Public Records Law and Public Meetings Law. This class consists of two hours of Chapter 112, Florida Statutes, one hour of Chapter 119, Florida Statutes, and one hour of Chapter 286, Florida Statutes. Officers report on their annual financial disclosure form, called Form 1, each year for which office is held. There are penalties for failing to complete the training annually.

F. ADVISORY OPINIONS
An advisory opinion concerning the interpretation of the Code of Ethics may be obtained from the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709 or 850.488.7864. Visit *ethics.state.fl.us.* for additional information. 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 or call 850.487.1963. For more information, visit *ethics.state.fl.us/research/opinions.aspx*.

REFERENCES

- Florida Constitution. Chapter 112.
- Laws of Florida. Chapter 74-176.
- Florida Commission on Ethics. Members, training and other information. *ethics.state.fl.us*.
- Florida Commission on Ethics. "Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees." ethics.state.fl.us.

SECTION 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 action or nonaction or the promise of such.

"Bribery" occurs when a benefit is offered to influence the public servant's action. A "benefit not authorized by law" is involved when the benefit is offered as a reward for action or nonaction, but without 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, Florida Statutes, is defined as a third-degree felony, punishable by a term of imprisonment not exceeding five years and a fine not exceeding $10,000.

SECTION 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. The county supervisor of elections' office also has forms and/or links to these forms. This information should also be included in a new official's orientation.

REFERENCES

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

SECTION 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 if indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.

A temporary vacancy in an 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, and 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, receive pay allowance or be entitled to any emoluments or privileges of the office during the suspension.

If a suspended board member is found not guilty or acquitted of the charge for which they were suspended, the board member shall be reinstated and receive full back pay and benefits for the entire period of suspension. If the term of office is 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 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 a 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.

CHAPTER 4

The Policymaking Process

SECTION 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. Satisfying these requirements is a complex task, which must be conscientiously addressed by council members and staff. Many jurisdictions will adopt rules of procedures to assist with the conduct of elected bodies' business at prescribed meetings.

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 preannounced 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 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's 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. Workshops, or non-legislative meetings, also include the opportunity for the public to be heard; this law changed in the early 2000s. A municipality may choose at which point on the agenda public comment is heard in a workshop setting.

b. Special Legislative Meetings
An emergency or other special situation may require the convening of a special legislative meeting, that is, one that 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 not to violate the state's open-meeting 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 "shirtsleeve" meetings where the council discusses topics informally 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 to promote informal discussion.

These sessions may take many forms and may address virtually any subject matter. A typical workshop may consist of a 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. To allow some understanding of the status of a 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 limit the public's participation, but not deny it. For example, public comment might be limited to the beginning or end of the workshop rather than occurring on each item of the agenda.

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, which would allow 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 of Order," Code of Conduct, etc.) and to elect officers 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 below. 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 that 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.)

2. Advance Notice Requirement
Reasonable advance notice is required for every meeting. There are several acceptable methods to provide notice of council meetings. The most commonly used methods are the printing of notices on websites and in local newspapers and the posting of notices at convenient locations. The front door of the city hall and a bulletin board in the lobby of the 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, 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 about "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.
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 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 that 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 before "new" business to allow the completion of matters already under discussion before opening new subjects for consideration.

Agenda items must be 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. This may be accomplished by advertising items of importance that may be scheduled at a "time-certain" on the advertised agenda.

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 that 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 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 that 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.

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 of this manual, "The Code of Ethics."

References

- Florida Statutes. Chapters 112 and 286.
- Roberts, H. M. (1998). "Robert's Rules of Order." Berkley Publishing Corporation.

SECTION 2
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./Madame 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 commission/council, e.g., for rezoning actions.

Actions taken by a commission/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").

Commission/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" (Article VIII, Section 2(b), Florida Constitution).

Statutes recognize two types of formal actions by municipal councils – ordinances and resolutions.

1. Ordinances

An ordinance is an official legislative action that establishes "a regulation of a general and permanent nature and enforceable as a local law" (Florida Statutes).

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" (Florida Statutes). Actions of a lawmaking nature must be accomplished in the form of an ordinance, not a resolution.

B. SCOPE OF AUTHORITY

The policymaking 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" (Subsection 166.021(1), Florida Statutes); 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" (Subsection 166.021(4), Florida Statutes).

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 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" (U.S. Constitution, Amendment 14).
    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 that are expressly prohibited by the Florida Constitution, such as unilateral annexation, merger or exercise of extraterritorial powers (Article VIII, Section 2(c), Florida Constitution).
    d. A municipality may not exercise powers expressly prohibited or preempted by state law, such as the 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 that has been expressly preempted either by the state constitution or state statute. Preemption is not always complete. 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 commission/council may specify additional procedural requirements, it may neither lessen nor reduce the requirements of the statute nor other requirements as provided by general law.

1. General Requirements

Certain requirements apply to all formal policymaking 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 before 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, the 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 use 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 are required for the enactment of an emergency ordinance.
9. Votes on the 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 that would rezone specific parcels of real property or that would substantially change permitted uses within zoning categories. These requirements are:

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: Subsection 166.041(3)(c), Florida Statutes, allows a municipal governing body, by a majority plus one vote, to conduct public hearings on ordinances that rezone real property or that affect 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 five 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.

NOTE: A new law in 2022 may impact advertisements of such notices; please consult with the municipal attorney for any changes that coincide with the publication of this manual.

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.

D. 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.

E. 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.
3. The trailer, which contains the effective date and any posting and publication information.

In 2022, Florida law was changed to require a business impact estimate. Each municipality will be developing this process as this manual is being published. Staff and the municipal attorney should be consulted for this 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 introducing 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 that 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 government offices that will receive a copy of the document.

F. 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 recodified on a regular schedule. The frequency is dependent upon the volume of ordinances.

2. **Administrative Code and Codification**
   Many municipalities also keep a log or journal of all ordinances, reflecting certain key information. Ideally, log entries for each ordinance will reflect:

   a. The date of enactment, the vote by which it was enacted, and its effective date.
   b. Its location in the municipal code.
   c. All amendments to it.
   d. Full reference to any related court cases.
   e. Any relation to other earlier or later ordinances.

A log is not a legal record, but it can serve as an excellent administrative tool that will enable the municipality to record the entire life of an ordinance.

Each municipality's records should be kept in accordance with state law; for assistance with this please contact the Florida Department of State, Division of Library and Information Services, Archives Office at *www.dos.state.com/library-archives/records-management*.

References

- Florida Const. art. 8, sec. 2.
- Florida Statutes. Chapter 166.

SECTION 3
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 policymaking or decision-making role.

- ... applies to discussions and deliberations as well as to formal action; therefore, the law applies 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 a 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 that 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, Tallahassee, FL, by calling 850.222.3518 or 800.337.3518. Visit *floridafaf.org* for additional information.

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 Subsection 286.011(1), Florida Statutes, 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:

a. The attorney has advised the municipality at a public meeting that he or she desires advice concerning the litigation.
b. The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
c. The 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.
d. 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.
e. The transcript shall become part of the public record upon the conclusion of the litigation.

NOTE: The subject of cybersecurity may be added to the list of exceptions as of the 2022 Legislative Session; please consult your municipal attorney on this matter.

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 (Section 286.26, Florida Statutes). If a physically handicapped person submits a written request to attend a meeting and this request is received at least 48 hours before 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 the 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, that person 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 a possible conflict of interest requires abstaining.

References

- Florida Statutes. Chapter 286, Section 447.605.
- "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 Tallahassee, FL. 850.222.3518 or 800.337.3518. *floridafaf.org*.

SECTION 4
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 (Chapter 119, Florida Statutes), which contains requirements that public records be made available for public inspection, be kept in usable condition, be kept in safe places, be kept in convenient places and provide copying of records 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 their designee. Most official custodians will be appointed administrators rather than elected officials. However, elected officials are responsible for seeing to it that this law, like others, is adhered to by employees.

With increasing changes to technology, the types of records are updated frequently into Chapter 119, Florida Statutes, and as such, elected officials and municipal staff should regularly seek updates to this law.

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 or stored electronically in a way that is regularly accessible. 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 to be repaired or reproduced.

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 from 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 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 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 worksheets, 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 a 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. TRAINING OF MUNICIPAL EMPLOYEES RELATED TO PUBLIC RECORDS

All municipalities are encouraged to offer regular, timely training on the handling of a public records request. Some cities provide a laminated card for employees to carry with talking points so that instructions can be carefully given at any location.

J. 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. The division also provides training and the division's website has excellent resource materials.

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, Tallahassee, FL 32301. 850.222.3518 or 800.337.3518. Visit *floridafaf.org* for more information.
- Brechner Report. Published by The Brechner Center for Freedom of Information, University of Florida, Gainesville, FL. 352.392.2273.
- Division of Library and Information Services section on Records Management. *dos.myflorida.com/library-archives/records-management/*.

CHAPTER 5

Public Safety

SECTION 1
Law Enforcement

A municipality has options when it comes to law enforcement. It may enact and maintain a municipal police force consisting of one or more law enforcement officers, or it may permit law enforcement to rest with the county Sheriff. A third option is to 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.

Many relatively large municipalities 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. 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 VIII, Section 2, Florida Constitution.

A city council may enact ordinances that 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 (Chapter 252, Florida Statutes).

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 Sections 943.085-943.25, Florida Statutes. However, an elected officer may participate in the programs and benefits if they comply 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 a civil suit.
4. Requirement of a notice of disciplinary action before any personnel action can be taken.
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 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 the administration of the fund (Subsection 185.05(1), Florida Statutes).

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 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.

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, when a municipality establishes a police department, law enforcement within municipal boundaries is the 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 backup 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 permits voluntary cooperation and assistance of routine law enforcement nature across jurisdictional lines.
2. A requested-operational-assistance agreement permits cooperation in an emergency.
3. A combination of (1) and (2).

All such agreements must be put in writing. Municipal officials should pursue such agreements 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 website at *fdle.state.fl.us*.

REFERENCES

- Florida Const. art. 8, sec. 2.
- Florida Statutes. Chapters 23, 112 (Part 6), 185.252, 776, and 943.

SECTION 2
Fire Protection

A. SERVICE PROVISION OPTIONS

Municipal governments enjoy a wide range of options regarding 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.

A municipality is free to decide whether to be involved in fire protection services at all. Under the Home Rule principle and other existing Laws of Florida, a municipality is not required to provide fire protection services, but 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 the provision of fire protection services. Even so, options will exist 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, unpaid volunteers or a combination of the two).
4. Full assumption of responsibility 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 also possible with one approach utilized in part of the municipality's area and another approach utilized in another part, such as an outlying area that 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. Each year, the Florida League of Cities conducts a survey to determine which services are provided, and this information can be obtained from the annual CityStats survey related to fire services.

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 that 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 firefighting 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. The fire department should be involved in systematic efforts to prevent fires and minimize 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 that eliminate or lessen the possibility of fire, reduce the potential magnitude and/or complexity of a fire and 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.
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 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 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 regulatory responsibilities, can also play major roles in the 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.
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 that fails to adopt other standards. Municipal officials are encouraged to be reasonable in the application of standards to buildings that 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 plan 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 comply. 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 the 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 and speeches to civic clubs may also be helpful. 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 firefighting efforts: number of firefighters, their physical condition and their training; the proximity of

firefighting 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, they are 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 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 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 performing such work. The marshal also enforces continuing education requirements for the 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, installed in accordance with standards of the National Fire Protection Association and installed, inspected, serviced and maintained in accordance with manufacturers' 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 agencies involved in the state's role of 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" to ensure compliance with local construction codes and 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, Florida Statutes, or it may be of the municipality's own design.

a. Chapter 175 Programs
If set up in compliance with Chapter 175, Florida Statutes, 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% 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 increase costs for 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% 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 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 conditions, it shall be presumed that this condition is job-related unless the city can 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. In any judicial or administrative proceeding brought under the provisions of Chapter 175, Florida Statutes, 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. The Division of Retirement also must 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 the 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).
- Florida League of Cities. "Membership Directory."

SECTION 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 may 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.

SECTION 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.
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 non-criminal 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 a population of 5,000 or greater, and of either five or seven members in cities with a 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 subcontractor. Initial appointments shall be for a mix of one-, two-, and three-year terms, depending on the 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 they 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

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; they shall notify the violator, notify the board and request a hearing.

Each enforcement board shall have the power to adopt rules, issue subpoenas, take testimony under oath and issue orders having the 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 (OR MAGISTRATES)
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. 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.") 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, 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 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, *face-online.org*.

SECTION 5
Alcoholic Beverages

The Florida Constitution assigns 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 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 are 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 Chapter 7, "Municipal Finance," 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 numerous considerations, including:

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.
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 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 Section 252.38, Florida Statutes. The actual standing of municipalities to establish emergency-management programs, therefore, is unclear (See Attorney General 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 before an emergency and shall utilize the services and facilities 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 emergencies.

REFERENCES

- Florida Statutes. Chapter 252.
- Attorney General's Opinion no. 078-167.

SECTION 7
Occupational, Business and Professional Regulation

A. REGULATORY POWERS

As expressed in Article VIII, Section 2, Florida Constitution, and Florida Statutes, Florida's municipal Home Rule principle gives municipalities 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 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.

2. 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 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 the 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 the commencement of the work.
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 a source of "profit" for municipalities.

C. LOCAL BUSINESS LICENSE TAX

A municipality "may levy by appropriate resolution or ordinance, a 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 Const. art. 8, sec. 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

SECTION 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 VIII, 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 Florida Statutes.

Local traffic control and parking laws are supplemental to the State Uniform Traffic Control Law and must not 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 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 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. An additional one to five cents gas tax.
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 to obtain property for public use as "streets, lanes, alleys and ways" Section 166.411, Florida Statutes.

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" Section 95.361, Florida Statutes.

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 the 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 the affected property agree to cover 100% 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 expenses 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 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 that 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 to secure and utilize future transportation rights of way.

Local governments may designate a transportation corridor by including the corridor in their local comprehensive plan by the 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 before 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 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 a discussion of local comprehensive plans.)

2. Florida Transportation Plan

The Department of Transportation (DOT) is responsible for the development and update of a statewide transportation plan, consistent with the State Comprehensive Plan. This transportation plan is commonly known as the "Florida Transportation Plan." The Florida Transportation Commission has oversight for this process. This plan establishes 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

1. Florida Const. art. 8, sec. 2.
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.
3. Laws of Florida. Chapters 85-180, 86-243.

SECTION 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).
4. Do nothing.

If the county levies a local-option gas tax, each city receives a share of the proceeds to spend 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 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 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 regarding 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 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 for public:

1. Bus transit service development.
2. Local fixed guideway capital projects.
3. Transit service development and transit corridor projects.
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 3
Airports

It is important to note the overall operation of a general aviation airport is subject to the operational governance and regulatory authority of the Federal Aviation Administration (FAA). Local governments are preempted in large part from dictating the uses of a publicly funded general aviation airport operation.

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, 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.

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.
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 Section 333.05, Florida Statutes, including the requirement of a public hearing.

Zoning regulations may require that a permit be obtained from the municipality before 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 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% 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 the 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 their 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 that 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 airside activities. DOT may fund up to 50% of the non-federal share of the costs of many eligible projects. For land acquisition, DOT may lend funds for 75% 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 any airport under the control of such an authority.

REFERENCES

- Florida Statutes. Chapters 330, 332 and 333.

SECTION 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 to 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 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, Florida Statutes, 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.

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 that has already been through a primary treatment. The 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 many ways. It can be directed into a lake, bay, stream or wetland. It can be

used to water 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 the "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
Municipal collection 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.
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 lids; 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 landfill is the most common method of solid waste disposal. In a sanitary landfill, 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 landfill, thereby reducing possible contamination and greatly extending the life of a landfill 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, that might be affected by contracting out or relinquishment.
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 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 leftover 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 Chapter 403, Florida Statutes.

E. EXTRA-TERRITORIAL POWERS

A city may exercise its corporate powers in an unincorporated territory outside its corporate limits to operate a liquid waste or solid waste sanitation program as necessary or desirable for the promotion of 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 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 levy the same rates, fees and charges as consumers inside the city. In addition, it may add a surcharge of not more than 25%, which may be done without a hearing, "except as may be provided for service to consumers inside the municipality."
2. The city may levy 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 within the city limits; in addition, a second 25% may be levied. However, the total of all rates, fees and charges shall not be more than 50% over the total charged to 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. At the state level, sanitation-related responsibilities are carried out by DEP and the Department of Health.

1. Department of Environmental Protection
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, with 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, 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 Public Service Commission 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) and payments for the 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" that 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 number of services used by the property owner. Ad valorem taxation has the advantage 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 because the utility charges are tax deductible as a 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 it generates over 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 on 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, 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, 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.

a. 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% 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 to achieve a 30% 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 the collection and transportation of solid waste within its jurisdictional boundaries to county-operated disposal facilities (if it does not operate its 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 the 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 the 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; Sections 367.022(2), 381.0062-381.0067.
- Florida League of Cities. "Summary of the 1988 Solid Waste Act: A Status Report" Quality Cities. 1988.

SECTION 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 18, 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.

Cities routinely provide both active and passive recreation programs. Passive programs, such as parks and walking trails, are generally considered to be public goods and provided without fees or charges. Active recreation programs, such as softball, soccer, golf, tennis, basketball, etc., vary greatly as to the percentage of costs that are recovered. There is recognition that active programs for children are important to their physical development and well-being, and fees and charges are generally subsidized to ensure that all children, including low-income populations, have access and the ability to participate. Adult programs, on the other hand, tend to have fees that recover more, if not all, of the direct costs. Some activities can be seen as important community facilities/programs, and it is difficult to set fees sufficient to fully recover the costs. Therefore, a portion of the costs is subsidized by general fund revenues. The appropriate level of fees is a policy decision and one that commissioners should be actively engaged in setting.

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 before the 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.
6. Officials' role in recreation programs – municipal officials are encouraged to participate in recreation programs 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 the acquisition of the facility. Also, there may be public resistance to charges. In any event, demand for participation in recreational programs and 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.

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 that, 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 to finance bonds. A special form of recreation district – such as a 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. This is done through the development and administration of the Statewide Comprehensive Outdoor Recreation Plan (SCORP). The state encourages local governments through the provision of grants for outdoor recreation development projects that further the SCORP goals and objectives.

It is also the 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 their opinion, a disorderly 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, Florida Statutes.

REFERENCES

- Florida Statutes. Chapters 166 and 418, Sections 30.291, 95.36, 163.3177(6), 187.201(10) and 375.075.

SECTION 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 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% 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 Section 217.17, Florida Statutes, 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 agency 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, Florida Statutes, 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 monies 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 Section 288.06561, Florida Statutes. The division shall adopt rules for the administration of library construction grants. For the purposes of this section, Section 257.21, Florida Statutes, does not apply. (Note: this language is excerpted from Section 257.191 of the Florida Statutes. Please refer to that statute for additional information related to library construction grants.)

E. EVOLVING ROLE OF LIBRARIES

Today's municipal libraries and county library system locations within a municipality are faced with many opportunities to provide community engagement through use of common space, computers, training rooms and even art exhibits. Most cities with libraries in their respective jurisdiction find it a valuable community resource.

REFERENCES

- Florida Statutes. Section 257.17, "Operating Grants," and Section 257.191, "Construction Grants."

SECTION 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 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 that 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, Sections 497.006(6) and 497.253.

SECTION 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, 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 that 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 comply 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, Florida Statutes.

REFERENCES

- Florida Statutes. Chapters 308, 309, 310, 314, 315; Sections 125.012, 163.3178, 403.02(9), 403.021.

SECTION 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 that 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 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, Sections 159.02(18), 166.046 and 166.231(1)(a).

CHAPTER 7

Municipal Finance and Budgeting

SECTION 1
Introduction to Municipal Finance

While there are many similarities between corporate finance for private entities and municipal finance for local governments, there are some very real and substantive differences. One of the most basic is that local governments are perpetual institutions that exist to meet the current and long-term service demands of their citizens. Corporate entities tend to have limited life spans as the demand for the products and services they provide come and go. There are very few corporations that have been in existence for over a hundred years, while most cities that existed 100 years ago continue to exist and provide services today. Generally, those services provided by government (law enforcement, fire protection, judicial, public workxs, planning and zoning, and many others) do not readily lend themselves to a private sector structure.

Government services/products are generally public goods provided to all citizens that typically are paid totally for or need to be subsidized by some form of legislatively mandated fee or tax to cover the full cost. Products and services provided by corporations are discretionary, meaning citizens choose whether to purchase them, and the fees/charges cover the costs of providing such services and yield a profit margin to the corporation.

What is municipal finance? It is the accounting, monitoring, control and reporting of municipal resources and the disposition of these resources to provide citizens, elected officers, executive staff and other stakeholders the ability to understand and evaluate the financial operations of a government. It standardizes the collection and reporting of information, allowing year-to-year comparisons of operations and between entities.

The services provided by government are also intrinsic for society to exist and function. A community without laws, law enforcement, public streets, drainage and a host of other governmental services cannot exist and function effectively. Cities exist to support urban and suburban communities. While rural areas require some services, they are more limited and do not require the same level of services found in urban environments (sidewalks, parks, active recreation, drainage and sewer systems). Typically, the more densely populated the community, the more interaction there will be between its citizens, creating a greater need for municipal services. The lower density in rural areas also makes providing many municipal services too expensive or unnecessary. The continued migration of citizens from rural areas to urban areas increases the demand for governmental services and, therefore, the importance of municipal finance.

Many constitutional requirements and state statutes exist to ensure the long-term financial viability of municipal governments and to provide financial transparency for its citizens, bondholders and business partners. Municipal finance has evolved to ensure the continued provision of essential government services and the permanence and financial stability of the institutions. Constitutional requirements and state laws exist to ensure financial transparency for its citizens, bondholders and business partners. The

separation of assets and functions also exists to ensure those activities that are self-supporting and self-sustaining are not being subsidized by general taxation (airports, ports, water and sewer systems, etc.).

It is common in the business world to borrow for short-term cash and operating expenditures and to pledge the assets of the corporation as security. Florida law precludes borrowing money for finance deficits or other operating needs and limits borrowing solely to finance long-term capital projects/assets and equipment. Cities can only pledge revenues to support the debt and cannot mortgage their streets, municipal buildings, parks etc., to support that debt. These restrictions were incorporated into the Florida Constitution after the Great Depression of the 1930s and have helped Florida avoid being added to the list of fiscally distressed cities, counties or states we frequently read about in the news.

Overall, Florida's financial structural requirements have proven to be very effective. There has not been a municipal bankruptcy in Florida in nearly 100 years since the Great Depression. Those few Florida cities that have gotten into financial trouble have been able to continue to provide essential services and work their way out of their financial problems.

As a locally elected official, you serve essentially as the board of directors for the municipal corporation. You have a judiciary responsibility to ensure the long-term financial health of the institution, including, but not limited to, the following.

- Ensure that sufficient current revenues are adequate to pay current expenditures.
- Ensure that adequate reserves exist to pay unexpected and unbudgeted expenses/losses.
- Ensure that existing infrastructure is maintained and enhancements are made to support anticipated growth.
- Ensure that appropriate oversight is given to financial issues through a review of internal and external audits and review of internal controls and financial policies.
- Ensure that the costs of capital projects are appropriately balanced between current users/taxpayers funded by current revenues and future users funded by debt.
- Ensure that pensions and post-employment benefits are being adequately funded as the benefits accrue.
- Ensure that risks are appropriately mitigated through the purchase of insurance and internal reserves.

Cities vary greatly from city to city based upon services provided, economics, income level of citizens and traditions. Commissioners are encouraged to spend time with their finance staff to understand not only "how" your city is financed, but also the history and rationale behind the structure. Your professional finance staff is there to help you and will appreciate your taking the time to become informed. They want your city to be

fiscally healthy and look forward to working with you to achieve and maintain that goal. Keep in mind that your decisions and actions may have long-term consequences for your community, and your citizens are depending upon you to ensure the uninterrupted delivery of needed services and the infrastructure is adequate to meet the needs of today and are being planned for tomorrow.

SECTION 2
Revenues

INTRODUCTION AND HISTORY

To a great extent, local government revenues in Florida are prescribed by state law or prior judicial decisions. While there is some flexibility as to which taxes/charges you can assess and at what level, there is little flexibility in expanding the list. The Florida Constitution specifically allows cities to levy property taxes; all other taxes are reserved for the state. The Florida Legislature has authorized certain other taxes to be levied by cities, but they are fairly limited.

Florida, over the past 30 years, has narrowed its tax base by repealing or limiting many historic sources of tax revenue. During this time frame, Florida has restricted ad valorem tax revenues through constitutional and legislative initiatives taking private property off the tax roll, limiting the millage rate that could be assessed or providing other exemptions. To meet the service demands of its citizens, Florida is becoming less dependent upon general government taxes and more dependent upon fees and charges for services. Historically, stormwater, garbage, fire services and active recreation programs were supported primarily by taxes, and now most of these services are funded from fees and charges. As taxing flexibility becomes more and more restricted, local governments are moving away from deciding funding strategies based on fairness, efficiency and understandability to one based on necessity.

There are certain objectives of a "good public policy" revenue structure. First, you want a structure that is equitable and spreads the costs of providing services based upon either consumption or ability to pay. A revenue system should be simple and easy to understand by citizens. Failure to understand the method, costs or basis of assessment will result in diminished citizen support. Lastly, it needs to be efficient. Programs where the costs of collection represent a significant portion of the revenues collected should be reviewed and avoided if possible.

General government revenues include the following categories: property taxes, other locally levied taxes, fees and charges, and intergovernmental revenues. In addition, local governments also collect revenues from permitting fees, licensing fees, interest earned on investments, fines and forfeiture revenues, and/or other miscellaneous revenues. Revenues from fees vary widely from city to city based upon services being provided and how much of the costs associated with providing a service will be recovered directly through assessed fees. There are four broad categories of revenues.

1. Locally assessed taxes, which are taxes where the city controls the tax rate even if it is not the collecting entity.
2. Fees and charges that are set by the city for specific services and collected locally.
3. Intergovernmental shared revenues, which include taxes levied by the county, state or federal government and shared with the local government. Cities

generally have no or very limited input into the levy of these taxes and how they are distributed. Taxes assessed at the state or national level and remitted to local governments often come with "strings" limiting their use, or they are contingent upon certain spending requirements.

4. Miscellaneous revenues, which is a catch-all for revenue streams that are not either taxes or charges and consist of the sale of assets, interest, earned income, assets seized by law enforcement, rents, donations and other small miscellaneous revenues.

Historically, cities were primarily funded by taxes and were less reliant on fees and charges. In recent years this has reversed, and the current trend has been to rely more and more on fees and charges to fund city government and rely less on taxes. This is a national trend and is true at all levels of government. As we have become more urban, the demand for governmental services has increased and so has the cost of providing those services. Taxpayers seem less and less inclined to want to use general taxation to support services, and funding these services from user fees is becoming more the norm. Toll roads, tolls on bridges, park entrance fees, fees for youth sports, street lighting, etc., are increasing as we reduce reliance on ad valorem and other general taxes.

As a general rule taxes tend to be more progressive and fees and charges more regressive. Taxes are generally based on current income or wealth, wherein the greater your income/wealth, the more you pay. Fees and charges generally have no relationship to income/wealth or the ability to pay but are tied to consumption or participation/usage. So the higher-income individual generally pays the same as the low-income individual for the same service.

Taxes were generally used to fund services that were available to everyone and where there was perceived to be a strong public good. Historically, garbage collection, stormwater, active children's recreation programs, fire services, street lighting and even sewer costs were often included in governments' general budgets, funded by general taxes and not specific fees.

It was becoming increasingly difficult for citizens to measure the efficiency of city governments. As demand for services increased due to urbanization, they saw governmental budgets growing and taxes increasing, often at rates exceeding inflation. Funding the government from fees/charges versus taxes may have reduced the overall tax burden but it simply shifted who paid, not how much was paid. One of the benefits of charging for a service is that it increases citizens' awareness of their level of use/consumption of municipal services and provides a linkage between services delivered and the amount paid.

A. LOCALLY LEVIED TAXES

Florida has a limited number of locally levied tax options. The Florida Constitution reserves all revenues to the state other than property taxes. Other locally levied taxes are created by statute rather than being granted by the Constitution. Florida Statutes have granted cities the authority to levy Public Service Tax (tax levied on Electric, Water,

Natural Gas, Fuel Oil, Propane and Water sales), Telecommunications Tax, Insurance Premium Taxes and Local Business Taxes. There are state statutes that provide for specific revenue sources for a limited number of cities. These are not identified or discussed herein but a summary of them can be found in the Local Government Financial Information Handbook published by the Office of Economic and Demographic Research.

1. Property Taxes

Ad valorem tax or "property tax" is a major source of revenue for local governments in Florida. Ad valorem taxes constitute 30% of total county revenue and 15% of total municipal revenues. 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 some "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 (10 mills each for the county, city and the school board); 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. Millage is derived from the French word for 'thousand' and one mill is 1/1000 of one dollar.

Most cities and counties are below the 10-mill cap. However, some of the smaller rural counties and smaller low-income cities are at or are approaching the 10-mill cap. There is an inverse correlation between high income/high property values and tax rates. The higher the property values, the lower the millage needs to be to generate the revenues necessary to support municipal services. There are some notable exceptions for some high-income cities where citizen demands for service and service levels are very high, and property owners are willing and able to pay the taxes necessary to support these services.

a. Municipal Millages

Municipal government millages are composed of four categories of millage rates.

1. Municipal general millage is the non-voted millage rate set by the municipality's governing body.
2. Municipal debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Article VII, Section 12, Florida Constitution.
3. Municipal voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, Section 9(b), Florida Constitution.
4. Municipal dependent special district millage is set by the municipality's governing body pursuant to Section 200.001(5), Florida Statutes, and added

to the municipality's millage to which the district is dependent and included as municipal millage for the purpose of the 10-mill cap.

b. County Furnishing Municipal Services

General law implements the constitutional provision authorizing a county furnishing municipal services to levy additional taxes within the limits fixed for municipal purposes via the establishment of municipal service taxing or benefit units. The distinction between a municipal service taxing unit (MSTU) and a municipal service benefit unit (MSBU) is that an MSTU is the correct terminology when the mechanism used to fund the county services is derived through taxes rather than service charges or special assessments; i.e., MSBU. The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years. The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area that is less than countywide to fund municipal services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties may levy up to 10 mills.

c. Assessment and Collection Process

Florida has one of the most efficient and progressive assessment and collection processes used by any state. The Florida Constitution provides that two county constitutional officers – the property appraiser and tax collector – have primary responsibility for the administration and collection of ad valorem taxes for all local government units (cities, counties, school boards, special districts, etc.). The property appraiser is charged with determining the fair market value, the assessed value and the values of applicable exemptions to arrive at the taxable value of all property within the county. The tax collector is charged with the collection for all units. Unlike in some other states whereby separate tax bills are sent out by the county, city, school board and other taxing entities, Florida has a consolidated tax bill that includes all taxing entities on one bill, collected by one agency and distributed pursuant to statutes. The Department of Revenue provides some level of oversight to ensure that tax values are consistently set across the state and collection efforts are also consistently enforced.

d. Exemptions

During the past 50 years, there has been a significant erosion of the property tax base as property values for tax purposes have diverged from market values. This has been the result of new or increased exemptions being advanced by the Legislature and approved by the voter, such as increased homestead exemptions, agricultural land, environmentally endangered land, historically significant land, pollution control devices and Save Our Homes. These exemptions limit the

rate of increase in taxable value for assessment purposes. There is more and more disparity between similar-priced homes and the taxes that are assessed against them. During periods when home prices are rising rapidly, it is the new resident moving from out of state whose taxes are disproportionately higher than neighbors. Previously, when homeowners moved, the new home was taxed at the same rate as new homeowners. However, in 2008 the voters approved Amendment 1, which provided portability for existing homeowners moving to a new home. They were able to bring forward the lower assessed values from their prior home to their new home. The Legislature routinely proposes new exemptions, and in 2018 Florida voted to increase the homestead exemption by adoption of a constitutional amendment.

Florida has a centralized assessment process wherein all property within the county is assessed by the property appraiser. The property appraiser specifically determines the property values and the taxable value after all exemptions have been taken. This is the basis upon which a city's taxes are levied. On or before June 2, the property appraiser must provide each unit of local government with the estimated taxable values to be used for the next fiscal year. This can be used for planning purposes with the preliminary tax roll released to local governments no later than July 1.

The exemptions have, in many cases, resulted in higher millage rates as local governments strive to fund services with a smaller tax base. The pressures both from citizens interested in curbing taxes and the Legislature's desire to make it harder to use property taxes as a primary funding mechanism will continue the shift in revenues from general use taxes to user fees and charges.

e. Truth in Millage (TRIM)

Chapter 200, Florida Statutes, sets forth the process that all local governments must follow to levy property taxes and the schedule for incorporation into their budgeting process. The purpose is to provide transparency to taxpayers in how local taxing authorities propose and approve millage rates as part of the taxing authorities' budget adoption process. This is a highly prescribed process with specific dates, times, meetings, notices and forms that must be followed by all units of local government. This is called the Truth in Millage or TRIM. (This section is a very general outline and not a detailed description of the process.)

Local governments have until August 4 each year to file with the property appraiser and the tax collector the tentative millage rate. Local governments are effectively setting at this time the maximum millage rate they will assess for the coming year. They must also schedule and hold public hearings. The first must be between September 3 and September 18[i], the second and last, within 15 days of holding the first public hearing at which it will adopt the final millage. No later than three days after the second public hearing, the city must file its millage rate ordinance with the property appraiser and tax collector. Within 60 days after the

second public hearing, the Department of Revenue will indicate compliance or noncompliance with the statutes.

f. Roll Back Rate

Each year, the city is responsible for determining the rate at which the unit of local government should assess to raise the same amount of revenues without consideration of annexations or new construction. This rate is called the Roll Back Rate. It advises the public about what taxes would be if tax revenues were held constant. As it does not adjust for inflation, it creates a perception that the government is increasing its costs as opposed to raising revenues to maintain existing services.

2. Public Service Taxes

Municipalities and charter counties may levy by ordinance a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled and water service. The tax is levied only upon purchases within the municipalities or within the charter county's unincorporated area and cannot exceed 10% of the payments received by the seller of the taxable item. Services competitive with those listed above, as defined by ordinance, can be taxed on a comparable base at the same rates. However, the tax rate on fuel oil cannot exceed 4 cents per gallon. The tax proceeds are considered general revenue for the municipalities or charter counties.

The tax is collected by the seller of the taxable item from the purchaser at the time of payment. At the discretion of the local taxing authority, the tax may be levied on a physical unit basis. Using this basis, the tax is levied as follows: electricity, number of kilowatt hours purchased; metered or bottled gas, number of cubic feet purchased; fuel oil and kerosene, number of gallons purchased; and water service, number of gallons purchased. A number of tax exemptions are specified in law.

Public services taxes have historically been one of the largest sources of general government revenues. The tax is assessed and collected based upon the sales of electricity, water, gas, oil and liquefied petroleum, and there are few cities, if any, that do not levy the 10% maximum tax for these products.

3. Communications Services Tax

A county or municipality may authorize by ordinance the levy of a local communications services tax (CST). The local tax rates vary depending on the type of local government entity. For municipalities and charter counties that have not chosen to levy permit fees, the tax may be levied at a rate of up to 5.1%. For municipalities and charter counties that have chosen to levy permit fees, the tax may be levied at a rate of up to 4.98%. These maximum rates do not include add-ons of up to 0.12% for municipalities and charter counties or up to 0.24% for non-charter counties that have elected not to require and collect permit fees authorized pursuant to Section 337.401, Florida Statutes, nor do they supersede conversion or emergency rates authorized by Section 202.20, Florida Statutes, which are in excess of these maximum rates.

The CST applies to telecommunications, video, direct-to-home satellite and related services. The definition of communications services encompasses voice, data, audio, video, or any other information or signals transmitted by any medium. Examples of services subject to the tax include, but are not limited to, local, long distance and toll telephone; Voice Over Internet Protocol telephone; video services; video streaming; direct-to-home satellite; mobile communications; private line services; pager and beeper; telephone charges made at a hotel or motel; facsimiles; and telex, telegram, and teletype. The tax is imposed on retail sales of communications services that originate and terminate in the state or originate or terminate in the state and are billed to an address within the state.

The state also imposes a CST on the same services as listed above. These taxes are imposed under Chapter 203, Florida Statutes, and are composed of a state tax of 4.92% and a gross receipts tax of 2.52% for a combined total of 7.44%. The state Department of Revenue collects both the locally assessed and state assessed revenues. Locally assessed revenues are deposited into the Local Communications Services Tax Clearing Fund for distribution less an administration fee not to exceed 1% of the amount collected. The 4.92% tax is distributed in the same manner as the state sales tax, with a portion of it going to fund local revenue sharing.

4. Insurance Premium Taxes

Chapter 175, Florida Statutes, provides that each qualified municipality or special fire control district having a lawfully established fund providing pension benefits to firefighters may impose an excise tax of 1.85% 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 are distributed to the municipality or special fire control district according to the insured property's location. The tax proceeds are collected by the state and remitted annually on or before July 1 to the local government to be deposited into the firefighters' pension trust funds established by municipalities and special fire control districts.

Chapter 186, Florida Statutes, provides that each qualified municipality having a lawfully established fund providing retirement benefits to police officers may impose an excise tax amounting to 0.85% 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 tax is collected by the state and proceeds are remitted annually on or before July 1 to the local government to be deposited into the municipal police officers' retirement trust funds established by the municipalities.

The qualification to receive the funds and the specific use of these funds has been highly contested over the years by cities and police and fire employees and there have been several revisions to Florida Statutes, Attorney General Opinions and rulings by the Department of Management Services Division of Retirement. This is meant to be an introduction to this tax and not a full summary of the requirements or use.

B. FEES AND SERVICE CHARGES

There are a variety of fees and charges levied by a local government. Local governments under their home rule authority can levy such fees and charges for the delivery of services unless restricted or precluded by state statutes. They include charges for the sale and delivery of municipal utility services (water, gas, electricity, garbage, stormwater and sewer). Franchise fees, building permit fees, impact fees, zoning, boat slip rentals and a variety of other fees and service charges. In some cases, the fee can only be charged for the direct recovery of costs such as building fees. In other cases, governments charge fees that exceed the direct cost of delivering the service either as a recognition of the invested capital, a payment in lieu of taxes or to defer other general government costs (electric sales, gas sales and water sales. Lastly, governments may be limited to the fee they can charge by state statute including franchise fees for electric service.

1. Utility Charges

All local governments in Florida currently charge fees for traditional utilities including water, sewer, garage, gas and electric services. These fees are set to recover all costs including debt service payments. Often these fees are set not only to recover actual costs but to provide sufficient revenues to make a transfer to the local government. These are entrepreneurial activities, and in many cities, these services would be provided by a private entity that would pay property taxes. With these assets off the tax rolls, it results in taxes being higher than they otherwise would be had they been operated by a private corporation. Local governments set fees sufficient to pay all costs and to transfer an amount to the general fund to recognize the loss in revenues from public ownership.

Fees are generally established by classes recognizing that different classes of customers place different demands/costs on the utility. These fees often may have a flat customer charge recognizing the fixed costs of billing and variable costs associated with the actual service usage. The rate design should be one to create equity among and between customers. Enforcement of collection is enhanced since services can generally be terminated for failure to pay.

In recent years, cities have created non-traditional utilities or fees for what was historically a traditional governmental service. These include fire service fees and stormwater utility fees. Both of these services directly relate to real property. Ensuring that stormwater is properly collected, transmitted and treated allows a higher density of development since all water does not have to be retained and treated on site. It also mitigates flooding since stormwater ponds, drainage ditches and other stormwater treatment and other conveyance systems funnel water away from private property. Rates are normally based upon impervious service and assessed on a typical residential equivalent.

Fire protection also directly benefits property both by saving the property that is on fire and limiting the spread to adjacent properties. Generally, fire departments provide

both personal and property protection. They are first responders to accidents and may also be involved in the transport of individuals to hospitals or medical facilities. The cost of personal protection cannot be included in the fire service fee, and only the costs associated with property protection is recoverable through the fire service fee.

2. Franchise Fees
Local governments may exercise their Home Rule authority to impose a franchise fee upon a utility for the grant of a franchise and the privilege of using a local government's rights of way to conduct the utility business. The fee is considered fair rent for the use of such rights of way and consideration for the local government's agreement not to provide competing utility services during the term of the franchise agreement. The imposition of the fee requires the adoption of a franchise agreement, which grants a special privilege that is not available to the general public. Typically, the franchise fee is calculated as a percentage of the utility's gross revenues within a defined geographic area. A fee imposed by a municipality is based upon the gross revenues received from the incorporated areas while a fee imposed by a county is generally based upon the gross revenues received from the unincorporated areas.

3. Regulatory Fees
Examples of this type of fee are building inspection fees, zoning, usage permits and inspection fees. These fees are authorized by the local government under their Home Rule powers. The fees charged must not exceed the cost of providing for such services. They are almost universally charged by all cities but the fees will vary depending upon the level of regulation and the cost of such regulation. Cities are not required to recover all of their costs through the assessment of fees, but these are not the type of services that you would normally see being subsidized by general government taxes.

4. Impact Fees
Florida is a growth state where there is a continuing need to expand and enhance the physical infrastructure to support new growth. Most local governments believe that new growth should pay its fair share of the cost of providing them the roads, sewers, libraries, etc., they require. Impact fees are a financing vehicle to assess new construction and a pro-rata share of the costs so that there is little or no impairment of service quality on existing citizens. The fees charged are based upon a study of the cost of providing future infrastructure and cannot recover existing unmet needs.

Impact fees are levied under municipal Home Rule powers but are subject to restrictions imposed by Florida Statutes. Florida Statutes require a dual nexus test. The charge must have a rational nexus to the need for capital improvement and the expenditure of funds must be used to pay for such improvements. All funds collected must be used to acquire, purchase or construct new capital facilities for the benefit of new users. Local governments can issue bonds to provide the infrastructure for new growth prior to growth actually occurring and can use the impact fees to pay the principal and interest on the bonds. The new requirements took effect on July 1, 2019, and are likely to have a chilling effect on the assessment of impact fees.

C. OTHER CHARGES FOR SPECIFIC SERVICES

Cities generally recover the full costs for the provision of specific services that benefit an individual or business. For example, coastal cities may have docks and boat ramps that benefit boaters, so rates and charges are generally set to fully recover these fees. Likewise, individuals seeking to have their property rezoned where they are the benefited party are charged a fee that normally is set to recover the costs of the services provided.

D. INTERGOVERNMENTAL SHARED REVENUES

This section identifies the significant shared revenues with local governments. These shared revenues can be subdivided into three types: Federally-shared revenues, state-shared revenues and revenues authorized by the state but imposed locally by the county and shared with the municipality. Some county-shared revenues may be mandated or discretionary and may relate to which government(s) provides the service or services the revenues were designed to help fund. This section does not cover grant programs offered by the state or federal government.

1. Community Development Block Grants (CDBG)

The Community Block Grants program began in 1974 to assist municipal governments with a wide range of urban needs. It is a flexible program administered by the U. S. Department of Housing and Urban Development (HUD). There are two programs available to cities in Florida:

1. Entitlement programs are offered to entitlement communities composed of central cities of Metropolitan Statistical Areas (MSAs), metropolitan cities with populations of at least 50,000, and qualified urban counties with a population of 200,000 or more (excluding the populations of entitlement cities).
2. CDBG state program allows states to award grants to smaller units of general local government that develop and preserve decent affordable housing, to provide services to the most vulnerable in our communities and to create and retain jobs.

The CDBG entitlement program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses. CDBG is an important tool for helping local governments tackle serious challenges facing their communities. Cities must develop and follow a detailed plan that provides for and encourages citizen participation. This integral process emphasizes participation by persons of low or moderate income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. At least 70% of the funds must be dedicated to activities assisting low to moderate individuals.

The Department of Economic Opportunity administers the CDBG state program in Florida through the Small Cities Community Development Block Grant Program. This is a competitive grant program that awards funds to units of local government in small

urban and rural areas. Florida currently receives between $18-$26 million annually from HUD to award subgrants to eligible units of local government. The program provides an excellent opportunity for communities to obtain funds for projects that they cannot otherwise afford. CDBG funds can also provide administrative support for local governments that may not have the staffing resources necessary to administer their projects. CDBG-funded projects include the following:

- Water and sewer improvements.
- Rehabilitation of substandard housing.
- Street and sidewalk improvements.
- Economic development activities that create jobs for low- and moderate-income people.
- Downtown revitalization, including facade improvements, street scaping and underground utilities.
- Park facilities and community centers.
- Drainage/stormwater improvements.

Information about program and eligibility requirements, funding categories and other application processes can be found on the Florida Department of Economic Opportunity website at *floridajobs.org/*.

2. Municipal Revenue Sharing

The Florida Revenue Sharing Act of 1972, codified as Part II, 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 (1) created separate revenue-sharing trust funds for municipalities and counties, (2) identified appropriate revenue sources, (3) specified formulas for redistribution and (4) 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) 1.3409% of net sales and use tax collections, (2) the state-levied one-cent municipal gas tax collections and (3) 12.5% of the state alternative fuel user decal fee collections. (Additional gas tax revenues are discussed in the following sections.)

a. Eligibility

Sections 218.21 and 218.23, Florida Statutes, set forth the minimum requirements to participate, some of which include:

1. Financial reporting to the Department of Banking and Finance.
2. Provisions for audits of financial activity as required by rules of the auditor general.
3. Minimum assessment of ad valorem taxes, utility taxes or occupational taxes equal to the revenues that three mills of taxes would have collected in 1973.

4. Certification of law enforcement personnel as defined in Subsection 943.10(1), Florida Statutes.
5. Certification of fire personnel as defined in Subsection 633.301(1), Florida Statutes.
6. All dependent special districts have made provisions for post audits.
7. Certification to the Department of Revenue that the city has met the TRIM requirements of Section 200.065, Florida Statutes.

b. Guaranteed Entitlement

The state has guaranteed that local governments will not receive less than the revenues they received in 1971-1972. This amount is called the Guaranteed Entitlement. Local governments can issue debt pledging this revenue stream as security for such general government debt.

3. Sales Tax

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

The Local Government Half-Cent Sales Tax Program was 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 communication services tax revenue to eligible fiscally constrained counties. Allocation formulas serve as the basis for these separate distributions. The program's primary purpose was to reduce pressures on funding local government services from ad valorem and utility taxes. It also provided a relatively stable source of income for counties and municipalities that could also be used as a pledged source of revenue for bonding purposes.

The state-shared sales tax revenues are distributed under three different programs. First, the ordinary distribution to eligible county and municipal governments is possible due to the transfer of 8.814% of net sales tax proceeds to the Local Government Half-Cent Sales Tax Clearing Trust Fund (hereinafter called Trust Fund). The other two programs are only available to counties for emergency needs or for fiscally constrained counties as defined by statute. A county or municipality is authorized to pledge the proceeds for the payment of principal and interest on any capital project.

Sales tax revenues are collected and recorded specifically to a county. Those revenues in the Trust Fund will be disbursed between the city and the county using the following formula:

Calculation of Ordinary Distribution Factors for Counties and Municipalities
Distribution Factor = Municipal Population divided by [Total County Population + (2/3 x Incorporated Population)] Municipal Share = Distribution x Total Half-Cent Ordinary Factor for Each County

b. Optional Sales Tax

Nine separate local discretionary sales surtaxes, also known as local option sales taxes, are currently authorized in law and generally represent potential revenue sources for county governments. With particular surtax levies, municipal governments and school districts may receive all or some of the revenue proceeds. 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 authorized pursuant to Chapter 212, Florida Statutes, and communications services as defined for purposes of Chapter 202, Florida Statutes.

The total potential surtax rate varies from county to county depending on the particular surtaxes that can be levied 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 the state's sales and use tax. For a current list of sales tax surtaxes and distributions by county, please refer to the Local Government Financial Information Handbook from the Office of Economic and Demographic Research (EDR) at *edr.state.fl.us/Content*.

4. Mobile Home License Tax

Subsections 320.08(10) and (11), Florida Statutes, provide that an annual license tax can be levied on park trailers and mobile homes instead 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 Subsections 320.081(4) and (5), Florida Statutes, are located.

There are no specific state restrictions on the uses of this revenue. The proceeds shall be distributed in the following manner: (1) 50% of the proceeds to the district school board and (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.

5. 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 and the local county tax collector. Proceeds from the license tax fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund, which is

subject to the 7.3% General Revenue Service Charge. From the alcoholic beverage license tax proceeds collected within an incorporated municipality, 38% is returned to the appropriate municipal officer. County tax collectors receive 5% for their efforts in enforcing compliance with the license tax. Authorized use of the proceeds is not specified in the statutes.

6. Other Miscellaneous Revenues

The following revenues do not neatly fall in any of the prior categories. The list is not meant to be exhaustive but representative of the revenue streams found in most cities.

a. 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 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.

b. Special Assessments

Special assessments are a form of revenue levied by cities and counties 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 especially benefited by an improvement to defray some or all of the cost of capital improvement," and the assessment revenues can be used as a source of security to finance such projects. Special assessments can be either the provision of capital improvements, enhanced operating services or a combination of both. The types of capital improvements typically financed through special assessments are street paving, sidewalk, stormwater and street lighting. Operating special assessments include enhanced street lighting, enhanced police patrol or maintenance of a neighborhood park.

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 the property. When applied, this principle does not redistribute private wealth to the entire community but apportions the cost of a particular public improvement.

c. Investment Income

Revenues derived from the investment of cash receipts and idle funds can be an important source of revenue. Many local governments in Florida have significant cash/investment balances attributable to either prudent operating reserves or unexpended balances associated with unspent capital projects. Three-month Treasury bill interest rates peaked in 1981 at over 16% and declined almost continually until 2015 when they were as low as .02%. Interest rates are still low by historic standards but have risen to above 1% in 2017. Local governments saw total returns fall accordingly. As interest rates rise, this may again be a significant revenue source for local governments.

While there are no restrictions on how these funds are used, there are restrictions on what local governments invest in. The laws related to investment authority and restrictions are covered later in this chapter under "Investments."

d. Grants

Grants revenues vary greatly from city to city. Some cities are active in pursuing grants to fund programs (law enforcement), conduct studies (environmental issues) and acquire assets (land for parks, wetlands, land banking). These are generally one-time revenues that are not a long-term funding source to support ongoing costs but can be a significant source to revenue to supplement your city's budget. Grants agreements are contracts between the city and the grantor (mostly state or federal agencies) that require the city to comply to receive the funds. There are often audit requirements after the use of the funds. Failure to follow the grant requirements can result in the city making expenditures that are not reimbursed by the granting agency. Cities with large grant programs retain employees specifically to write grant applications and to monitor the grant to ensure compliance.

SECTION 3
Funding Accounting for Governments

Elected officials should have a basic understanding of the fund types used in governmental accounting, how they function and the specific funds used by their government. The Audited Annual Financial Report will be set up by fund type, and an understanding of how these funds function is required to fully understand and evaluate the financial condition of your government. This is meant to be an introduction to governmental accounting and elected officials are encouraged to meet with their financial staff to answer any specific questions they may have regarding governmental accounting and to fully understand which funds are used in their city.

A. FUND ACCOUNTING

Governments use fund accounting to group similar financial activities to demonstrate greater accountability over public resources. Fund accounting may also be required to be used by legislation or contractual requirements.

A fund accounting system enables a government to:

1. Demonstrate accountability over public resources to the public and other stakeholders.
2. Present financial activities in conformity with generally accepted accounting principles.
3. Demonstrate compliance with finance-related legal and contractual provisions.

1. Funds

A "fund" is the basic component in a fund accounting system. A fund:

1. Is a separate, fiscal and accounting entity used to record financial information related to a particular activity or function.
2. Contains its own separate, self-balancing set of accounts, including assets, liabilities, equity ("fund balance" or "net position"), revenues and expenses or expenditures.

A fund is similar to a business unit in private sector accounting. For example, take General Motors (GM).

GM is a "financial reporting entity" that issues its own financial statements and is accountable to its shareholders. GM created separate business units such as Chevrolets, Chevrolet and Buick to separately record the financial activity of each business unit, similar to using separate funds in a government. Separating each business unit's financial activities into separate sets of accounting records helps GM to monitor and evaluate each business unit's assets, liabilities, equity, sales, cost of sales and profits.

Similar to GM, a government is a financial reporting entity that issues its own financial statements and is accountable to its citizens and other stakeholders. Governments don't measure profits, but fund accounting enables governments to track related activities, similar to business units, which assists with demonstrating accountability, matching revenues with related expenses, evaluating accomplishments and making resource allocation decisions.

2. Number of Funds
Each government generally determines the types and the number of funds to use based on their desire or the requirement for accountability, absent specific legal, regulatory or contractual requirements to establish certain funds. Creating unnecessary funds is discouraged because using too many funds can cause confusion and hamper analysis. The minimum number of funds that can be used by a government is one. The total number of funds that should be used is the lowest number possible to achieve the desired or required level of accountability.

For example, a government might establish a fund to account for $1 million of fuel tax revenue that must be spent on road repairs and construction, by law. Externally, maintaining this fund would assist with demonstrating legal compliance with the expenditure requirement to the public. Internally, maintaining the fund would assist managers to identify currently available resources for road repair and construction. If annual fuel tax revenue were $10,000 instead of $1 million and there was no legal requirement to establish a separate fund, a separate fund would likely not be needed to demonstrate accountability.

3. Fund Categories
Funds fall into three broad categories based on the nature of related activities:

1. Governmental funds – used to account for general government activities
2. Proprietary funds – used to account for activities that are paid for with fees or charges
3. Fiduciary funds – used to account for resources that belong to other parties

Within each of the three broad categories, funds are further categorized into eleven fund types, as follows:

Governmental Funds (five types)	
Fund Type	**Description**
General	Main operating fund used to account for resources not accounted for and reported in another fund.
Special Revenue	Used to account for resources that must be expended for specified purposes other than for debt service or capital projects.

Capital Projects	Used to account for resources that must be expended for governmental (non-proprietary) capital outlays, including capital facilities and other capital assets.
Debt Service	Used to account for resources that must be expended for governmental (non-proprietary) principal and interest.
Permanent	Used to account for permanently restricted resources (non-spendable) when the related investment earnings are expended for the benefit of the government or its citizenry (non-proprietary).

General fund – A general fund is usually the largest fund and may account for more than half of a government's resources. Typical activities accounted for in the general fund include police, fire/EMS, library, recreation, parks and general government services, which are mostly paid for by taxes and other non-fee revenue. Unlike all other funds, a government may maintain only one general fund.

Special revenue funds – A special revenue fund is sometimes legally required, especially for grants or special tax levies. Otherwise, the use of special revenue funds is permitted rather than mandated.

Capital projects funds – A capital projects fund is sometimes legally required by debt covenants, grants, contracts, laws or regulations. Otherwise, the use of the capital project funds is permitted rather than mandated. It can be a valuable management tool for multi-year and/or multi-resource funded projects.

Debt service funds – A debt service fund is sometimes legally required by debt covenants or if resources are being accumulated for future principal and interest payments (voluntary or required). Otherwise, the use of debt service funds is permitted rather than mandated.

Permanent funds – A good example of the use of a permanent fund would be to account for a perpetual care endowment for a municipal cemetery (not proprietary).

Proprietary Funds (2 types)	
Fund Type	**Description**
Enterprise	Used to account for activities that provide goods or services primarily to external parties with the intent that all costs will be recovered through user fees or charges. The primary government itself may also be a customer, but it would not be the primary or only customer.
Internal Service	Used to account for activities that provide goods or services to other funds, departments or agencies of the primary government and its component units or other governments on a cost-reimbursement basis.

Enterprise funds – An activity must be accounted for in an enterprise fund if it meets one of these criteria:

- There is outstanding debt that is backed solely by fees and charges of the activity.
- Laws or regulations require that fees be set to recover an activity's costs, including capital costs.
- There is a pricing policy that fees be set to recover an activity's costs, including capital costs.

An enterprise fund is often mandatory for a utility, such as water service, wastewater service or garbage collection service, as bondholders want to ensure revenues related to the enterprise are first used to pay operating costs of such enterprises and then used to repay bondholders. A public transit system is an example of an activity that is often voluntarily accounted for in an enterprise fund even though less than half of its costs are typically generated by fees.

Internal service funds – Internal service funds can be a valuable management tool, and their use is always optional. Internal service funds are commonly used to account for the cost of providing internal services such as garages, printing services, information systems, purchasing and central stores. An internal service fund also may be used to account for all or a portion of a government's risk financing activities.
There are two limitations on the use of an internal service fund:

- The government must be the predominant participant (customer).
- The fund must function on a break-even basis over the long run.

Fiduciary Funds (4 types)	
Fund Type	**Description**
Pension & Other Employee Benefit Trusts	Used to account for resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, other post-employment benefit plans or other employee benefit plans.
Investment Trust	Used to account for the external portion of government investment pools.
Private-purpose Trust	Used to account for resources that can only be expended for the benefit of private individuals, private organizations or other governments.
Agency	Used to account for resources that are temporarily held by the reporting government in a purely custodial capacity.

Fiduciary funds account for resources that cannot be used to support the government's own activities. Trust funds require a degree of long-term management by the government. Agency funds only involve the receipt and eventual remittance of resources within a short time after receipt.

Pension and other employee benefit trust funds – Used to report resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, other post-employment benefit plans, or other employee benefit plans, over which the government has some managerial responsibility. For example, a government that sponsors a pension trust fund would hire professionals to manage the related pension investments and make benefit payments to retirees.

Investment trust funds – Used to account for resources from multiple governments that are "pooled" for investment purposes and are often called investment pools. The sponsor may also be a participant. These funds are only for governments that manage investments for other governments.

Private-purpose trust funds – Similar to a permanent fund (governmental fund), a private-purpose trust agreement may require the principal to remain intact. Unlike a permanent fund, amounts may only be spent on private purposes (not public).

Agency funds – Commonly used to account for taxes collected by one government (e.g. a county) on behalf of another government (e.g., a city), which are remitted in a relatively short time after receipt. These funds require no management activities, other than the receipt, safeguarding and remittance of resources.

Inter-fund activity – Activity can be conducted between two or more funds, which is called inter-fund activity. There are two broad categories of inter-fund activity each of which have two subcategories.

Inter-fund Activity		
Category	**Subcategory**	**Description**
Reciprocal ("exchange-like")	Loans	Borrowings and repayments
	Services	Fees for services provided
Non-reciprocal ("non-exchange-like")	Transfers	Reassignment of resources
	Reimbursements	Payments not related to borrowing

RESOURCE

The Government Finance Officers Association produces a series of Guides for Elected Officials that cover additional financial topics such as pensions, borrowing, auditing and financial reporting. For more information, visit the GFOA website at *gfoa.org*.

REFERENCES

- Stephen J. Gauthier. "Governmental Accounting, Auditing and Financial Reporting." Government Finance Officers Association. 2012.

SECTION 4
Auditing and Financial Reporting

Thomas Jefferson is quoted as saying, "The finances of government should be clear and intelligible ... so that every man should be able to comprehend them to investigate abuses and consequently to correct them." A local government's audits, budgets and other financial reports build credibility and confidence among the governed in their government. Financial reporting is designed to demonstrate accountability over the resources entrusted to the government by its citizens. Citizens should have confidence in the financial records identifying how much was collected in revenues or how it was spent. To the extent citizens have concerns, it should be in disagreement with policies and priorities, not on questions of the integrity of the financial reporting or the government. Democracy requires the support of the governed to be successful, and accurate and timely governmental financial reporting is an important component in building and maintaining that support.

A. ANNUAL AUDITS

An audit is an independent third party's examination of the financial statements of a city and attestation as to their accuracy. This examination is an objective evaluation of the statements, which results in an audit opinion on whether the statements have been presented fairly and in accordance with Generally Accepted Accounting Standards and comply with standards set forth by the Governmental Accounting Standard Board. This opinion greatly enhances the credibility of the financial statements with users such as lenders, creditors and investors.

Section 218.39, Florida Statutes, requires all municipalities with revenues and expenses over $250,000 to have an annual financial audit of its financial records prepared within nine months of the close of the fiscal year. Municipalities collecting revenues or expending funds between $100,000 and $250,000 shall have an audit every two years. The audits shall be prepared in compliance with the Rules of the Auditor General adopted pursuant to Section 11.45, Florida Statutes, and will produce a report as set forth in the rules. Such report shall be filed with the Auditor General within 45 days after delivery to the governing body.

The audit contains a management letter, and it shall be a part of the audit report. At the conclusion of the audit, the auditor will meet with the mayor, president of council or head of the auditing committee of the municipality and review all of the auditor's comments. The officer will file a statement of explanation or rebuttal concerning the auditor's findings including corrective action to be taken. Such report shall be filed with the auditor general within 30 days of the delivery of the auditor's findings. If an audit report is filed that indicates the entity has failed to implement corrective action in response to an auditor's recommendation that was included in the two preceding financial audits, the auditor general will notify the Legislative Auditing Committee. The Legislative Auditing Committee may require a written statement explaining why full corrective action was not taken or describing the action that will be taken and when it

will occur. The Legislative Auditing Committee will review the written statement and determine if further action is required. Failure to comply can result in the withholding of state-shared revenues to the municipality to the extent they are not pledged for the payment of principal and interest on outstanding debt.

The focus of the audit is to provide an independent review and opinion that the financial statements produced by the municipality are substantially accurate and in compliance with generally accepted accounting principles (GAAP). The local government's objective is to receive an unqualified opinion indicating that the financial statements fairly present the financial condition of the entity in all material respects. Receipt of a clean or unqualified opinion does not indicate that the government is in good financial health or that the overall financial condition is not declining. The audit opinion simply indicates that the financial statements are accurate and in conformance with GAAP.

Auditors perform certain tests before giving their opinion. They sample records (invoices, payrolls, receipts, billings, etc.) consistent with professional standards to assure themselves that the financial records are fairly presented. They also examine and test the entity's internal controls. These tests are designed around the materiality of an error. Thus larger transactions are more material than smaller transactions. Auditors are not performing a fraud or forensic audit, nor are they providing an opinion that the entity is efficient or effective in the delivery of services.

Auditors are selected pursuant to Section 218.391, Florida Statutes. Auditors must be selected pursuant to an advertised competitive selection process. The city's elected body shall establish an audit committee to solicit proposals, determine the factors that shall be used in the ranking process and rank and present the elected body with three firms for them to choose from to negotiate a contract. The city will enter into an engagement contract with the firm selected and such contract may have renewals and extension options.

B. ANNUAL COMPREHENSIVE FINANCIAL REPORT

The Annual Comprehensive Financial Report (ACFR) is a set of government financial statements comprising the financial report of a city that complies with the accounting requirements set forth by the Government Accounting Standards Board (GASB). There are three main sections to an ACFR. The introductory section sets forth the purpose, outlines what is in the report and has a letter of transmittal which is a brief overview of the city and some of the factors affecting the city's financial condition, such as population changes, changes in taxable values, building permits and other local economic factors.

The next major section is the financial section which includes:

1. Auditor's report and opinion.
2. Management's discussion and analyses.
3. Basic financial statements.
4. Other required supplemental information.

5. Combining and individual fund financial statements and schedules.
6. Narrative explanations.

The "Auditor's Report and Opinion" will cover the "Basic Financial Statements" and may be expanded to include the ACFR as a whole, but still generally excludes the statistical and "Required Supplemental Information" sections. The "Basic Financial Statements" sections are an aggregation of funds of the same fund type (e.g. Enterprise, Trust Funds, etc.). Most governments operate with many funds that are aggregated for the "Basic Financial Statements" sections. The "Combining and Individual Fund Financial Statements and Schedules" section may provide the user financial activity details at the fund level allowing the user to understand the entity's financial activities at a more granular level. The detailed information they are seeking as the aggregate statements may be too broad to be helpful.

The last major section in the ACFR is the statistical section which includes:

1. Financial trends.
2. Revenue capacity.
3. Debt capacity.
4. Demographic and economic information.
5. Operating information.

Individuals interested in doing an in-depth examination of an entity's financial health and future capacity will find the statistical section very helpful. Investors and rating agencies need the statistical section to gain an understanding of the ability of the government to support additional debt or raise additional revenues either to support future growth or to provide financial flexibility will find the information in this section useful.

1. Certificate of Achievement for Excellence in Financial Reporting Program
The GFOA established the Certificate of Achievement for Excellence in Financial Reporting Program (CAFR Program) in 1945 to encourage and assist state and local governments to go beyond the minimum requirements of GAAP to prepare comprehensive annual financial reports that evidence the spirit of transparency and full disclosure and then to recognize individual governments that succeed in achieving that goal.

The goal of the program is not to assess the financial health of participating governments, but rather to ensure that users of their financial statements have the information they need to do so themselves. While there is additional work for staff and a modest cost to apply, receiving the award makes a statement about the government's commitment to ensuring both its citizens and the financial markets have the information they need to assess the financial health of the city.

2. Annual Financial Report

Section 218.32, Florida Statutes, requires all cities to file an annual financial report with the Department of Management Services in a manner specified by the department. The department publishes and requires local governments to report on a standardized chart of accounts. This enables the standardized collection and comparison of local governments.

All units of local government are required no later than nine months following the end of their fiscal year to upload all of their revenue and expenditure data into the Local Government Electronic Reporting System (LOGIN). This data is then available to the general public to review and compare comparable governments.

C. POPULAR REPORTS

Given the intended audience for the ACFR, and the requirement to follow GASB Standards, it tends to be a large complex document that is hard for a layman to use and understand. It is a document that is designed to meet the needs of the external investor community along with other sophisticated users. Citizens with a limited financial background can be overwhelmed by the detail included and may find it not helpful. Popular reports were designed to extract information from the ACFR to produce reports for the general public and other interested parties who do not have a background in public finance.

The GFOA established the Popular Annual Financial Reporting Awards Program (PAFR) in 1991 to encourage and assist state and local governments in preparing high-quality reports to meet citizen needs. The GFOA has advocated the preparation and distribution of reports that allow citizens to understand their governments' finances and encourages local governments to participate.

D. INTERNAL AUDITS

The annual audits done by independent CPAs exist to ensure the financial reports being issued by governments are accurate. They were not designed to capture fraud, determine that programs or departments were operating efficiently, nor that the government was operating in compliance with established policies and procedures. While the auditors do inspections and testing for the above, the level of review is established to ensure that the financial statements are materially correct.

All large governments and most medium-size governments have created internal audit programs to provide both the elected body, management and the general public assurances that taxpayer resources are being used effectively. Some Florida governments have created inspector general programs to provide investigative authority and raise the visibility of the auditing process. The goal of an internal audit program or the inspector general is to serve as an independent and objective inspection, audit, and investigative body to promote effectiveness, efficiency and economy for the city and prevent and detect fraud, abuse, misconduct, mismanagement and waste.

Internal audits, to be effective, need to operate with independence from management. To achieve the degree of independence necessary to effectively carry out the responsibilities of the internal audit activity, the chief audit executive has direct and unrestricted access to senior management and the commission. This is sometimes achieved through a dual-reporting relationship. Threats to independence must be managed at the individual auditor, engagement, functional and organizational levels. Internal auditors provide an important function. Their presence serves as a deterrent to theft or non-compliance with policies since departments or activities never know when they may be the subject of an audit.

Most smaller governments cannot afford their own professional internal audit staff. However, smaller governments can contract with their external auditor or private firms for these services on an as-needed basis or can work cooperatively with neighboring governments to share internal auditing services.

"The greatest cost associated with fraud or theft in a city is not what they stole but the undermining of citizen confidence. The value of internal auditing cannot be solely measured in what they found and recovered, but in what they prevented or deterred."
– Notes from a local government audit

E. OTHER GOVERNMENTAL AUDITS

Cities are subject to a variety of audits from other governmental agencies. Some of them are checking to ensure that you comply with grants or other programs. The Internal Revenue Service can and does audit cities, namelya payroll activities, to ensure they are in compliance with federal standards. The Florida Department of Financial Management Division of Workers' Compensation routinely audits to ensure that the workers compensation fees paid are in compliance with statutes. The auditor general normally is not involved in auditing cities, but that office has the authority to and will perform audits at the direction of the Legislative Auditing Committee.

SECTION 5
Budgeting

The budget is far more than the preparation of a legal document that appropriates funds for a series of line item expenditures. It is the most important document a city commission will adopt. It is the document that (1) implements the organization's strategic vision, (2) creates linkages to broad organizational goals, (3) is focused on results and outcomes, and (4) implements the organization's financial policies.

The Florida Constitution requires all units of local government to adopt a balanced budget annually. Florida cities can adopt multi-year financial plans, but the adopted budget is a short-term, one-year document. Additionally, no funds can be disbursed from the municipal treasury without a budgetary appropriation. The budget is the transfer of authority from the elected body to staff to implement the council's visions and policies. It provides the resources to deliver the services needed and requested by your citizens. It is a financial plan that indicates how much money will go toward each of the activities/programs provided by the city. It also defines the degree of delegation the elected body is giving its staff.

A. OVERVIEW OF THE BUDGETING PROCESS

The mission of the budget process is to help decision-makers make informed choices about the provision of services and capital assets and to promote stakeholder participation in the process. There are four steps in a budget process:

1. Planning, development and approval of the budget.
2. Implementation.
3. Monitoring.
4. Evaluation.

As with any activity, if you don't get it right in the beginning, it is not likely to turn out well in the end. Therefore, the planning, development and approval steps are critical to a successful budget process. The quality of decisions resulting from a budget process and the level of acceptance depends on the characteristics of the budget process that is used. A budget process that is well integrated with other activities of government, such as the planning and management functions, will provide better financial and program decisions that lead to improved governmental operations. The process needs to engage all stakeholders including elected officials, governmental administrators, employees and their representatives, citizen groups and business leaders. Reaching out to all stakeholders and, to the extent possible, incorporating their needs and priorities will increase acceptance of the final product and enhance their overall understanding and impression of government.

The budget should be the centerpiece of a thoughtful, ongoing decision-making process for allocating resources and setting priorities and direction. It starts with the city council establishing broad goals that provide overall direction. Next, staff working with

the council should develop approaches to achieve those goals. These include specific policies, programs and management strategies. The budget is a financial plan moving toward the achievement of goals within the constraints of available resources. Lastly, the budget should be outcome-oriented, and programs and financial performance should be continually evaluated and adjustments made to encourage progress toward those goals.

The larger and more complex the government, the earlier the budget planning process begins. Management begins by soliciting input from its staff relative to needs and the commission/council relative to its priorities. It is important to remember that department managers spend their careers learning and operating their department and have a reasonably good idea as to what is required to both continue to provide services and maintain facilities. Council members may be unaware of leaking roofs or other deferred maintenance, new regulations that will impact operations and increasing expenses, or even changes in the environment affecting costs. Therefore, soliciting and considering staff input is critical to the long-term, effective functioning of the government.

Generally, early in the development process, management solicits input and priorities from the commission. Many cities annually schedule a visioning or goal-setting meeting. At that meeting, council members define for management their priorities and objectives. The meeting focus is on outcomes or service levels. Costs associated with achieving the outcomes or enhanced service is generally not available at that time. Often before the development of the budget, staff will review with the council members the goals they set and provide some guidance on the techniques or processes to accomplish the goals along with the costs of various implementation strategies. This input is used by the council and management and incorporated into the development of the budget. Management's proposed budget tries to balance a variety of competing demands (e.g., not raising taxes vs. enhancing services).

Democracy cannot exist without the support of the governed. Therefore, the city needs to identify opportunities to involve the public in the process. Citizens and other stakeholders need to begin with input into the development of the long-term vision and goals, so they understand how the budget seeks to achieve those goals. The process of adopting a budget is one of the best communication opportunities to engage your citizens. This cannot be overstated! Waiting until the final public hearing before adoption severely limits the city's ability to accept input and make meaningful changes in the final budget.

There is almost always a relationship between costs and level of service. In other words, you get what you pay for. It is the job of the council members to define the level of services they want the city to provide and what resources they are willing to raise. It is the job of management to provide the services at the defined level as efficiently and effectively as possible. The focus of most new council members is how to both increase services and simultaneously reduce costs. No organization operates with 100% efficiency, and there are always opportunities for improvement. However, if there were

simple easy solutions to increase productivity or reduce costs while maintaining service levels, they would have already been used. Management and the elected body should always look for opportunities to provide services more efficiently, but council members should enter the process with realistic expectations.

The number one axiom in budgeting is that wants and sometimes needs generally exceed available resources. The commission/council has the unenviable task of making hard choices. Throughout the budget process, the council should be asking the following questions:

1. What level of services are we providing, and at what costs?
2. If we want to reduce the level of services, what is the savings delta associated with the loss of the services?
3. What are the short- and long-term implications or impacts associated with a reduced level of service?
4. Are the resources currently available adequate to meet the needs/demands of the citizens, or do we need to increase those resources?

The council, through the budget process, is allocating limited resources among competing needs. In making these decisions, it is balancing how much to spend on direct services, maintenance, and capital projects. The commission should anticipate that different shareholder groups will have different priorities/objectives. Citizens will generally advocate for the services they want and use and not for maintenance projects unless they affect them directly (e.g. potholes, crumbling sidewalks, broken water mains). Staff will be the primary advocate for infrastructure maintenance as it may affect their ability to continue to deliver services efficiently. Staff is also aware that deferring maintenance of infrastructure may help balance the budget today, but in the long run, it will result in increasing costs to remedy deficiencies. Organizations should generally prioritize the maintenance of existing facilities before building additional facilities. If you can't maintain the facilities you have, how is it justifiable to build more?

Citizens generally want to pay fewer taxes and lower fees. Their primary solution is to cut out waste. It is important to remember, "One person's waste is another person's treasure." Most citizens don't use all of the services provided by a city. All citizens value those services they use from government and undervalue those services they don't use or need. Therefore, their idea of waste is to eliminate or reduce the services they don't use. The council's goal is to define those services and service levels it believes are important for the long-term health and welfare of its community and to help the city best achieve the commission's/council's goals and vision and goals.

B. BUDGET MONITORING

The day-to-day monitoring of revenues and expenditures that comprise the budget naturally falls to management. Staff is responsible for ensuring that the government continues to operate within the resources that have been allocated and available. The degree to which revenues need to be monitored directly relates to how much they vary.

Ad valorem tax revenues vary little as tax liens are sold for any unpaid taxes each year. On the other hand, water revenues may vary greatly depending upon rainfall and other economic and business activities.

Expenditures may vary based upon internal and external factors. Hurricanes can cause both a temporary disruption in revenues and result in increased demand for services causing the city to incur unanticipated expenditures. A budget is a plan requiring reasonable elasticity. Commissioners often review line-item budgets but adopt budgets at the department, division or fund level. This provides staff latitude to move budget expenditure authority to activities requiring additional expenditure authority and to move it from areas where demand has declined or the need is less. Any increase in expenditure that increases the aggregate budget or appropriates existing fund balances (or reserves) should be approved by the commission/council.

The commission should receive regular budget updates from management. The frequency of reporting and granularity of the information provided are determined by the council. There should be a clear understanding between management and the council regarding the staff's authority to make changes in the budget, and the information reported to the elected body to understand management actions needs to be readily determined during the budgeting process and established as fiduciary policies. The report needs to be detailed enough to meet the council's needs, but not so detailed that pertinent information is obscure.

C. BUDGET EVALUATION

The budget is allocating limited taxpayer resources to achieve desired results. The council should evaluate management not only for the ability to operate within fixed fiscal limits but to produce the outcomes outlined in the budget. Budgets should have performance measures assessing the efficiency and effectiveness of programs and activities and determine whether program goals are met. It can be difficult to judge whether the resource allocations included in the budget are sufficient to achieve the desired outcomes. Comparative benchmarks using comparable cities can often provide additional insight into a program's cost-effectiveness. A comparison of raw budget data between what would appear to be comparable cities can be misleading as there can be factors distorting the comparison. Some of the factors affecting budget comparisons are: comparing different levels of service, different demographic populations, and prior capital investment either reducing current operating costs or previously postponed maintenance, which increases expenses. No two cities are identical, and budgetary comparisons are one tool to begin your benchmarking.

D. CAPITAL BUDGETS

Governments should develop a capital improvement plan identifying priorities and time frames for undertaking capital projects and providing a financing plan for those projects. Unlike operating budgets that are short-term, one-year snapshots of activity and funding, capital improvement plans contemplate activities and funding at least three to five years into the future. Large capital projects often require funding over multiple years with some being financed through the sale of debt. A capital

improvement plan integrates projects, time frames and financing mechanisms. It allows staff to investigate funding opportunities such as grants and debt structures with analysis and for bondholders to know what to expect in terms of future debt issues.

Stakeholder approval is as important in the development of the capital improvement plan as it is in the operating budget. Businesses may make plans based upon new roads or road improvements, planning both for the period of disruption while the road is being built and for the benefit of the project. Other neighboring governments may also be affected, and building a five-year window allows for improved coordination between governing jurisdictions. Citizens seeking new or improved capital projects in their community can take comfort the city has gone through a deliberative process of identifying and prioritizing needs.

Florida limits the amount of debt a government can issue by restricting the sources of security being used to support debt. Cities should have a debt policy addressing total debt load and debt capacity (1) to analyze projects being considered are evaluated given limited financing capacity and (2) to ensure the overall level of debt is appropriate for revenues available.

An effective long-term capital improvement plan should be a planning document and not a wish list. It is easy during the deliberation process to suggest a project be added to the out years of a capital improvement plan without the elected body feeling committed to its acquisition/construction. Advocates for the project have a reasonable right to believe that inclusion of their project in the capital improvement plan will result in its construction or acquisition. Subsequently, elimination results in stakeholders losing confidence in the process and becoming frustrated. The capital improvement plan is as the title indicates – a plan, and plans are subject to change. Elimination, restructuring or deferring projects based on changing circumstances is to be expected and encouraged. Plans should not be "cast in stone," but plans need to be realistic and reflect the city's intent based on existing circumstances.

Each year the capital improvement plan moves forward and the current year becomes the capital budget for the current year and, when approved, is an authorization by the elected body for staff to move forward to implement. Issues related to entering into contracts to acquire assets supported by debt before being issued should be reviewed with legal and financial counsel and be evaluated by the elected body against the government's reserves and other uncommitted revenues.

SECTION 6
Other Financial Functions

A. INTRODUCTION

The finance functions in many local governments can be shared between several departments/divisions. Accounting may be integrated into the overall finance/budget department or may be a separate department/division. Similarly, the budget function may be a standalone department that includes other management functions such as organizational reviews, economic development and special reports/studies such as annexation and consolidation. Additionally, other financial activities, including debt management, pension administration and risk management, can be integrated into one or more financial departments/divisions.

This subchapter is meant to highlight some of the more important financial functions that elected officials should generally be knowledgeable about, and officials should examine them from a policy perspective. Governments vary greatly in size and sophistication. The sections that follow are meant to be a primer on these topics and not an in-depth review.

B. INVESTING AND CASH MANAGEMENT

Investing is a core responsibility of a city's finance/treasury department. The principal objectives of effective investing of public funds are to ensure that the safety of the principal is achieved and there is adequate liquidity to pay obligations as they come due. It is only after both of these objectives have been established that yield becomes important. Taxpayers rarely express concern about the appropriate rate of return on investments, but they know implicitly that they don't want to lose money. As Will Rogers said, "I'm more concerned about the return of my principal than the return on my principal."

While it is important that safety and liquidity be paramount, excess liquidity or being unduly cautious is inefficient and a waste of taxpayer resources and puts unnecessary pressure on other revenues. The yield on investment instruments with longer duration, with few exceptions, has a higher return than instruments with shorter maturities. So, an investment program that considers and attempts to match investment maturities with expenditures and other cash outflows will likely achieve a higher yield than investing solely in very short-term securities.

Chapter 218, Part IV, Florida Statutes, provides statutory guidance and restriction on local government investments. Recognizing the risk associated with investing, the state has identified certain investments that all units of government can use for investment purposes, mandates a minimum level of training each year for finance staff responsible for investment activity and lists the minimum topics that a local government investment policy must include. While all local governments invest surplus funds, the amount of such funds and expertise varies greatly from city to city.

1. Investment Policy
Section 218.7155, Florida Statutes, requires each unit of local government to adopt a written investment plan (herein referred to as Investment Policy) or, in the absence of such policy, limit their investment activities to the Local Government Surplus Trust Fund, money market funds, time deposits or direct obligations of the U.S. Treasury. Such a policy shall cover all funds invested by the local government except pension funds. It shall include investment objectives, performance measurement, prudence and ethical standards, a listing of the authorized investments, maturity and liquidity requirements, portfolio composition, risk and diversification, authorized dealers, custodial agreements, purchasing requirements, internal controls and continuing education and reporting. This policy must be adopted by the governing body.

2. City Investment Choices
Local governments have multiple choices of how to invest their surplus funds. In reviewing the options located herein, be aware that cities may choose to use several of these options for different parts of their portfolios to achieve needed liquidity/safety and to maximize returns. Also, using multiple strategies helps provide diversity and reduce risks.

The state has created the Local Government Surplus Funds Trust Fund with oversight provided by the State Board of Administration. The Trust Fund is a "money market-like" short-term investment pool that cities, counties and other units of local government can access. It provides good liquidity/safety as the instruments in the pool are highly liquid and highly rated. The average duration is around 100 days. As such, it is restricted to the short-end of the yield curve where interest rates are lowest and is a good choice for that portion of your investment portfolio that will be needed in the near term. Cities having surplus funds for reserves or other longer-term uses can achieve higher yields by selecting other investment options with longer maturities and higher yields.

Cities can also participate in pooled investment programs. These programs generally provide access to professional money management, oversight, accounting and – due to their size – good liquidity. Most of these programs invest in high-quality, low-risk instruments with maturities in the one- to three-year range and an average duration of 1.5 years. This allows participating governments access to longer-term securities and higher yields while also maintaining good liquidity and safety. The Florida League of Cities sponsors a pooled program called the Florida Municipal Investment Trust (FMIT) that provides for a board of directors selected from participating cities and an advisory committee composed of highly regarded finance officers from around the state that provides oversight and guidance.

Cities can make individual investments in the instruments listed in Chapter 218, Florida Statutes, or such other instruments as may be authorized by local government policy. Effectively managing your own portfolio requires a significant investment in developing staff expertise and in the use of staff time and resources. This option is generally used by only the largest cities with portfolios.

Lastly, cities can hire their own professional money managers and authorize them to invest as set forth in their investment policy. While there are costs associated with professional money, they may be fully offset by both higher returns from professional management and reducing staff costs involved in internal management.

3. Cash Management
Cash management generally refers to the selection and management of banking services, custodial services and the monitoring of cash flows. Local government revenues are not necessarily evenly distributed during the year. Cities collect ad valorem taxes beginning in early November and continuing through April. Expenditures during the early part of the year, prior to those collections, can put a strain on cash flow. Cities should have cash reserves sufficient to get them through this period as well as provide for unexpected expenditures (hurricanes, lawsuits, unusual and unexpected maintenance requirements) or declines in revenue. A city's finance/treasury department should monitor cash flows regularly to ensure adequate liquidity is available for expenditures.

Banking services are generally procured through a competitive selection process. Banking is becoming more specialized, and the banking needs of a city may exceed the resources of many small community banks. Many of the larger national and regional banks have made significant investments in technology to provide local governments enhanced services that save the city money and also protect the city from fraud.

C. INTERNAL CONTROLS
All entities exist to achieve some purpose. The purpose/goals of an organization are determined by its governing body. For cities, it is the mayor/commission. It is the role of management to provide the leadership needed for an entity to realize that purpose and achieve the goals set by the mayor/commission. Furthermore, management is not free simply to act in any way it might choose to achieve the organization's goals. Rather, management's options and actions are appropriately constrained by internal and external laws, rules, regulations and expectations, both implicit and explicit.

Management is principally responsible for establishing, maintaining and monitoring internal controls. The elected body seated as the board of directors for a municipal corporation is, therefore, not responsible for establishing or implementing effective controls. It is, however, responsible for evaluating whether or not management has implemented and is monitoring such controls. Properly done, internal controls help management and the mayor/commission accomplish the goals and objectives of the organization and ensure the organizational objectives are achieved efficiently and effectively.

What are Internal Controls?
Internal controls are a coordinated set of policies and procedures that reflects a comprehensive strategy for achieving the organization's goals/objectives. When internal controls are approached from this perspective, it is much easier to understand how

individual controls function and work together. The framework for such controls must focus on the following criteria:

1. **Effectiveness:** Is the organization achieving the goals and objectives set by the city commission? Effectiveness is a measure of results not effort. Controls need to be output-oriented and not solely on day-to-day activities.
2. **Efficiency:** Citizens have a rightful expectation that their dollars are being used as efficiently as possible. A program can be effective and still be inefficient. However, an ineffective program can never be efficient. An efficient program achieves the desired outcomes at the lowest price. A program can be too expensive to be effective and it is the responsibility of management to define the cost of effectiveness for the commission to consider in making resource allocation decisions.
3. **Compliance:** Citizens have a rightful expectation that their government will comply with all established rules, laws, regulations and policies. Rules and regulations tend to be stricter and more limiting than in the private sector. These restrictions and limitations directly affect operations and often affect both an organization's efficiency and effectiveness. Governments, by design, set the compliance/ethical standards for other entities. If the government acts like the laws and regulations do not apply in the public sector, then why would we expect private entities to operate to a higher ethical level?
4. **Financial Reporting:** Commissioners set the broad goals and objectives of the organization that are implemented principally but not exclusively through the adoption of the budget. Management and commissions need timely financial data to make and evaluate these decisions and to make adjustments to efficiently and effectively accomplish organizational goals. A regular flow of information should be provided to assist both management and the commission identify early problems or weaknesses.

Internal controls are much more than what many people believe to be just accounting restrictions. They are the tools to ensure the organization's long-term success. Internal controls are principally the responsibility of your finance staff and upper management. Management must create a corporate culture wherein the values of the organization are supported, enhanced and enforced by internal controls. A favorable culture/environment exists when management is knowledgeable about internal controls, demonstrates a commitment to establish and maintain controls, and communicates its support for internal controls to the staff at all levels. One of the tenets of good controls is the effective communication of information. Information needs to be available to the right individual at the right time and in the right format for them to use. With respect to the city commission, what reports/information you need to evaluate management is up to the commission to define and request.

An effective internal control program should be based on risk analysis. The greater the risk, the more controls or monitoring that must be in place. Risks are not static and change over time. Changes in personnel, organizational structure or changes in technology can change the risk profile and require changes in internal controls.

Once management has completed a risk assessment identifying and assessing potential risks, it is in a position to develop controls that compensate for these risks. Over time a variety of policies and procedures have been developed as tools for achieving this goal. These include segregation of incompatible duties, prior authorization for expenditures, surprise cash counts and verification of collections, security over assets, required supervisory/management sign-off on records and timely preparation of financial statements.

Lastly, developing and implementing internal controls is not a one-time process. It is a continual process of monitoring the effectiveness of control policies and procedures and the resolution of potential problems identified by the controls (systems, organizational structures and personnel changes). Therefore, it is important to continually review the policies and procedures in light of a changing organizational environment.

There is always a balance between implementing adequate controls that protect the organization and controls that are so onerous that the cost exceeds the benefits. There are almost always some costs associated with implementing good controls. The benefits of internal controls are often not as easily measured and are not limited to just dollar savings or the loss associated with preventing theft/fraud. When losses occur, the costs are not just financial but affect the public's confidence in their government. Good internal controls help build citizen confidence in the city's leadership and a recognition that their taxes are being carefully protected.

Internal controls have limitations. First, they can be subject to "management override." If policies are created by management, then they can be overridden by management. Additionally, they will generally not detect collusion. If one employee is to act as a check on another and together they collude, they can circumvent the controls and may go undetected for a while. There are certain controls that you can put into place, such as rotating employee responsibilities or ensuring that employees take annual leave so that other employees will do their job in their absence, that can help prevent or detect collusion.

As noted earlier, internal controls are management tools and management, not the auditors or accountants, are principally responsible for their effectiveness. Management both develops and maintains controls and as such is responsible for how well they function. The role of the mayor/commission is to provide oversight of the city; they are ultimately responsible for ensuring that management fulfills its responsibilities. Given the ability of management to override policies and even intimidate subordinate employees into not questioning management's actions, the commission must ensure that the corporate culture supports the highest ethical standards.

Auditors, as part of their audit engagement, assess the internal control framework. Sometimes management can mistakenly assume from the auditors' review that internal controls are adequate and functioning appropriately. The auditor's role is

to render an opinion as to whether the financial statements prepared by the city are materially correct. The auditor's role is to assess the risk for material errors. The standard of materiality with respect to the overall financial condition and financial statements is not sufficient to uncover many internal control weaknesses and may be too low a standard for most governments.

FLC appreciates the contributions of the Florida Government Finance Officers Association (FGFOA) Educational Programs Committee in the preparation of this chapter.

CHAPTER 8

Growth Management

SECTION 1
Planning and Growth Management in Florida

An essential element of the local elected officials' responsibilities is to address the policies, review applications for consistency with said policies, and determine approval/denial of such applications as they relate to planning, zoning and growth management of their respective jurisdictions.

Planning and growth management is fundamentally an exercise of sovereign responsibility (police power) grounded in public health, safety and welfare. All local governments in Florida have the responsibility and authority under their Home Rule power to plan for and manage the building of their community.

Over the last five decades, the state of Florida has developed a coordinated system for planning and growth management. The organization and structure of this program are mandated by state statute while placing the primary responsibility for its implementation with counties and municipalities.

This section tracks the evolution of this planning and growth management system leading to the Community Planning Act and other supporting statutes currently guiding the building of Florida communities.

A. HISTORY OF PLANNING AND GROWTH MANAGEMENT LAW IN FLORIDA

Legislation from 1972 to 1985
A 1985 statute, originally known as the Local Government Comprehensive Planning and Land Development Regulation Act and currently titled the Community Planning Act, is the basis for today's planning and growth management legislation. The timeline of how we arrive at the 1985 legislation has its origins in the 1970s. The year 1972 was a landmark year for planning and resource protection in Florida. Many statutes were enacted establishing statewide natural resource planning programs and requiring natural resources to be protected as part of the land development process.

1972: Environmental Land and Water Management Act – Chapter 380, Florida Statutes
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 required that the impacts of large developments affecting adjoining counties or cities, or significant state resources, be addressed.

Area of Critical State Concern – Section 380.05, Florida Statutes
This designation has been applied to places where more stringent regulations and state oversight were deemed necessary to protect resources of statewide significance. The 1972 legislation designated four 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).
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.

Developments of Regional Impact (DRI) – Section 380.06, Florida Statutes
DRIs are defined as having impacts on resources or facilities of regional or statewide significance. State rules establish thresholds for DRIs based on the types of development proposed and their location. DRIs are subject to review by the Regional Planning Council and the state. Approval authority rests with the local government jurisdiction where the project is located.

1972: Florida Water Resources Act – Chapter 373, Florida Statutes
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.

1972: Florida State Comprehensive Planning Act – Sections 186.001-186.031 and 186.801-186.901, Florida Statutes
This act mandated the preparation of a state comprehensive plan. Such a plan was prepared and submitted to the Legislature but was rejected. In 1978, the Legislature specified that the State Comprehensive Plan was advisory only.

1972: Florida Regional Planning Council Act – Sections 186.501-186.513, Florida Statutes
This act established the Regional Planning Councils and their roles and functions. They provide technical assistance to their member governments and review and comment on DRI development orders and plan amendments.

1975: Local Government Comprehensive Planning Act
This act required local governments to adopt and implement local comprehensive plans. Due to a lack of oversight and sanctions, very few local governments complied with this mandate.

A Mandate for Planning in the 1980s
In 1980, the Governor's Resource Management Task Force concluded that the mandates for local planning had not been widely supported, and the vague goals and constant amendment process made the implementation of local plans difficult.

An Environmental Land Management Study Committee convened In 1984 reached a similar conclusion regarding the effectiveness of planning In Florida. In response to these findings, the state of Florida developed an integrated planning system intended

to ensure the coordinated administration of policies that address the issues posed by the state's continued growth and development.

1984: State and Regional Planning Act – Chapter 187, Florida Statutes
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.

1985: Local Government Comprehensive Planning and Land Development Regulation Act – Chapter 163, Florida Statutes
The provisions of this act – in their interpretation and application – are declared to be the minimum requirements necessary to protect human, environmental, social and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in the state.

This statute is the basis for the current local comprehensive planning process. It differed from previous growth management efforts by establishing a much higher standard for local plans:

- Local plans are required to meet minimum standards established by state rules. Plans that are not "in compliance" with state requirements are subject to sanctions.
- Local governments must demonstrate that necessary infrastructure will be available concurrent with new development ("concurrency").
- Citizens have a role in challenging local governments' decisions regarding plan amendments, land development regulations and development orders.
- Local governments must adopt land development regulations to implement the plan.
- Comprehensive plans must be financially feasible.

Evolution of the Planning Process – 1985 through 2020
The planning process in Florida has been modified and updated, resulting in the current system being utilized today.

2005 Growth Management Act – Chapter 163, Florida Statutes
Twenty years after the adoption of the 1985 law, the Legislature made significant changes to Chapter 163, Florida Statutes, to reflect the philosophy that growth should pay for itself. Among the major issues addressed in the 2005 act:

- Definition of financial feasibility.
- School concurrency.
- Water supply planning.

Financial Feasibility: 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.

School Concurrency: Cities and counties did not previously provide for concurrency to support public schools in the comprehensive pans; it was optional. The 2005 legislation mandated school concurrency.

The statute required that:

- School boards and local governments update existing public school interlocal agreements and include concurrency service areas for schools.
- Local governments adopt a Public School Facilities Element as part of the comprehensive plan.
- The comprehensive plan contains level-of-service standards for schools.
- The capital improvements element of the comprehensive plan includes a financially feasible Public School Capital Facilities Program.

Water Supply Planning: Each of the water management districts in the state must evaluate whether their water supply is sufficient to meet the demand for the next 20 years and prepare a water supply plan to meet deficiencies.

The 2005 Act required that local governments within areas subject to water supply planning include in their comprehensive plan a 10-year work plan that identifies projects from the district's regional supply plan.

2009 Growth Management Reform
Urban areas are defined as "Dense Urban Land Areas" (DULA), meaning 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.

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.

2011 Community Planning Act
The Community Planning Act of 2011 made significant modifications to the way Florida manages growth.

This legislation:

- Makes concurrency for parks and recreation, schools, and transportation facilities optional for local governments.
- Deletes the requirement that comprehensive plans be financially feasible.
- Deletes the twice-a-year limitation on comprehensive plan amendments.
- Repeals Rule 9J-5 and codifies key elements of the rule.
- Modifies the DRI requirements and process.
- Streamlines the comprehensive plan amendment process.

SECTION 2
A Coordinated Planning System

The legislation cited in Section 1 describes the evolution of a coordinated system of planning and growth management for the state leading to the current system.

A. LEGISLATIVE FOUNDATION

The system currently in place is governed by three key legislative acts. Historically, the 1970s and 1980s included several studies and advisory reports, which culminated in legislation for county and municipal governments, as explained below.

Chapter 163, Part II, Florida Statutes, **Community Planning Act**: In its interpretation and application, this is declared to be the minimum requirements necessary to accomplish the stated intent, purposes and objectives of the act; to protect human, environmental, social and economic resources; and to maintain – through orderly growth and development – the character and stability of present and future land use and development in the state.

Chapter 186, Florida Statutes: State and Regional Planning provides direction for the integration of state, regional and local planning efforts and specifically requires the development of Strategic Regional Policy Plans.

Chapter 380, Florida Statutes: Environmental Land and Water Management Act directs the integration and coordination of land and water management activities.

Supporting legislation includes:

- Chapter 373, Florida Statutes: Florida Water Plan/Regional Water Supply Plans
- Chapter 120, Florida Statutes: Administrative Procedures Act
- Chapter 70, Florida Statutes: Relief from Burdens on Real Property Rights
- Chapter 1013, Florida Statutes: Educational Facilities Act

Consistency is a Cornerstone of Florida Planning

Florida's planning and growth management system is characterized as "top-down" and is based on a unifying concept often referred to as "consistency" or the "consistency doctrine." Under this concept, all plans must be consistent with the State Comprehensive Plan and with the other plans associated with it. For example, the Florida Transportation Plan must be "consistent" with the State Comprehensive Plan. A Strategic Regional Policy Plan is required to be consistent with the State Comprehensive Plan, the Florida Water Plan and the Florida Transportation Plan, respectively. The Local Comprehensive Plan is likewise required to be consistent with the Strategic Regional Policy Plan and, therefore, consistent with the state plans as well.

The Legislature has defined the term "consistency" to determine whether local comprehensive plans are consistent with the state plans and the appropriate regional policy plan. A local plan shall be consistent with such plans if the local plan is "compatible with" and "furthers" such plans. The term "compatible with" means that the local plan is "not in conflict with" the State Comprehensive Plan or appropriate regional policy plan. The term "furthers" means to take action in the direction of realizing goals or policies of the state or regional plan.

B. A COORDINATED SYSTEM

The Community Planning Act recognizes the authority and responsibility of local government to plan while envisioning a coordinated system of planning at the state and regional levels.

1. Local Level Planning

The Local Government Comprehensive Plan is the centerpiece of planning and growth management in Florida. The Community Planning Act mandates that all counties and municipalities adopt and maintain a comprehensive plan.

The comprehensive plan is a blueprint to guide economic growth, development of land and the provision of public services and facilities. The comprehensive plan implements the community vision through a series of "elements" that provide a framework for community building.

Each local government is required to adopt and enforce regulations to implement its comprehensive plan.

Each local government is required to maintain a timetable or schedule of future capital improvements necessary to support the growth contemplated by the comprehensive plan.

The governing body in every Florida city and county has final approval authority for local growth management decisions. In particular, these bodies must adopt and amend the comprehensive plan and the Land Development Code for their jurisdiction. The Evaluation and Appraisal Report (EAR) is the method for amending local plans.

The Local Planning Agency (LPA) plays a pivotal role as the "keeper of the comprehensive plan." The LPA is responsible for preparing and maintaining the comprehensive plan, as well as recommending the amendments to the governing body. Although the LPA can be the elected governing body, in most cases, this duty is assigned to an appointed "planning commission" or a "land use and zoning board."

2. State Level Planning

The governor is the chief planning official for the state, and the governor and cabinet serve as the Administration Commission. The Administration Commission is involved in matters following a challenge to a comprehensive plan.

The Florida Department of Economic Opportunity (FDEO) serves as the State Land Planning Agency. The secretary of FDEO advises the governor, the cabinet and the Legislature with respect to matters affecting community affairs and local government. FDEO is also responsible for state oversight within Areas of Critical State Concern.

The Florida Department of Transportation (FDOT) maintains the Florida Transportation Plan (FTP). The FTP establishes long-range goals that provide a framework for the expenditure of federal and state transportation funds.

The Florida Department of Environmental Protection (FDEP) is responsible for protecting the quality of Florida's drinking water and natural resources. FDEP provides a range of programs and activities collectively referred to as the Florida Water Plan.

The following state agencies participate in the planning process to ensure consistency with their respective programs and responsibilities:

- Department of State.
- Fish and Wildlife Conservation Commission.
- Department of Agriculture and Human Services.
- Department of Education.

3. Regional Level Planning

Regional Planning Councils (RPCs) are established to provide a regional planning perspective and to resolve issues transcending local government boundaries. Regional Planning Councils are specifically charged with the preparation of a Strategic Regional Policy Plan (SRPP) and the review of comprehensive plan amendments for impact on regional resources and facilities identified by the SRPP. These advisory bodies (with optional membership by counties and municipalities) also offer resources and assistance. RPCs also have a review responsibility of Developments of Regional Impact (DRIs) within their region.

Water Management Districts prepare regional and district Water Supply Plans and review local comprehensive plan amendments regarding water supply, stormwater management and other water-related issues.

Metropolitan Transportation Planning Organizations (MPOs) are responsible for long-range transportation planning. Local comprehensive plans must be coordinated with these plans.

SECTION 3
The Local Comprehensive Plan

The Local Comprehensive Plan is the only public document that describes the community as a whole in terms of its complex and mutually supporting networks. As a statement of long-term goals and objectives, it provides a broad perspective and a guide to short-term community policies and strategies.

The Local Comprehensive Plan is:

- A public guide to community decision-making.
- An assessment of community needs.
- A statement of community values, goals and objectives.
- A blueprint for the community's physical development.

Comprehensive planning is necessary so that local governments can:

- Preserve and enhance present advantages.
- Encourage the most appropriate use of land, water and resources, consistent with the public interest.
- Overcome present constraints.
- Deal effectively with future problems that may result from the use and development of land.

Through the process of comprehensive planning, it is intended that counties and municipalities can:

- Preserve, promote, protect and improve public health, safety, comfort, good order, appearance, convenience, law enforcement, fire prevention and general welfare.
- Facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing and other requirements and services.
- Conserve, develop, utilize and protect natural resources within their jurisdiction.

General Requirements of the Comprehensive Plan
The Local Comprehensive Plan is required to provide principles, guidelines, standards and strategies for the orderly and balanced future economic, social, physical, environmental and fiscal development of the community.

All elements of the comprehensive plan must be based on relevant and appropriate data and analysis by the local government. The several elements of the comprehensive plan are required to be internally consistent.

Legal Status of the Plan
Community planning must be conducted within a constitutional and legal framework. The decisions made in this process must meet established constitutional and legal standards of due process, fairness and equity for all participants in the planning process.

The local comprehensive plan was intended by the framers of Florida's 1985 Growth Management Act to be the centerpiece of planning and growth management in Florida. The courts have consistently upheld this legal structure, and the Community Planning Act enacted in 2011 retains this emphasis.

Each local government in Florida is required to adopt a comprehensive plan. Once this plan is adopted and found to be "in compliance" by the State Land Planning Agency (FDEO), all actions related to planning and growth management, including the regulation of land use and development, must be consistent with the adopted comprehensive plan.

Content of the Comprehensive Plan
State law mandates that the following elements be included in the comprehensive plan:

Future Land Use Element consists of a land use map or map series supplemented by goals, objectives, policies and standards that guide the future location, extent and intensity of residential, commercial, industrial, agricultural, recreational, conservation, educational and public land uses and facilities.

The element is based on:

- The amount of land required to accommodate anticipated growth.
- The availability of water supplies, public facilities and services and the discouragement of urban sprawl.
- The need for job creation, capital investment and economic development that will strengthen and diversify the community's economy.

The Future Land Use Element must include criteria to:

- Achieve the compatibility of lands near military installations and airports.
- Encourage the location of schools proximate to urban residential areas.
- Coordinate future land uses with the availability of facilities and services.
- Ensure the protection of natural and historic resources.
- Provide for the compatibility of adjacent land uses.
- Provide guidelines for the implementation of mixed-use development.

Transportation Element addresses a broad array of mobility issues and is intended to provide for a safe, convenient multimodal transportation system that is coordinated with the future land use map and designed to support all elements of

the comprehensive plan. The element must also be coordinated with the plans and programs of the Metropolitan Planning Organization (MPO), Florida Transportation Plan and the Department of Transportation's work program.

Each local government's transportation element is required to address traffic circulation including the types, locations and extent of existing and proposed major thoroughfares and transportation routes including bicycle and pedestrian ways. The element must also contain a map or map series that depicts the existing and proposed transportation network in coordination with and coordinated with the future land use map.

Local governments within a metropolitan planning area designated as an MPO must also address all alternative modes of transportation, including:

- Public transportation, pedestrian and bicycle travel.
- Rail, seaport facilities and intermodal terminals.
- Evacuation of coastal populations.
- Airports, projected airport and aviation development and land use compatibility around airports.
- The identification of land use densities and intensities and transportation management programs to promote public transportation systems in designated public transportation corridors.

If the local government is located outside of MPO boundaries, municipalities with populations greater than 50,000 and counties with populations greater than 75,000 must include mass transit provisions showing methods for the moving of people, rights-of-way, terminals and related facilities.

General Sanitary Sewer, Solid Waste, Drainage, Potable Water and Natural Groundwater Aquifer Recharge Element provides for future potable water, drainage, sanitary sewer, solid waste and aquifer recharge protection requirements for the community. The element is correlated to the Future Land Use Map and must specifically address water supply by demonstrating consistency with the regional water supply plan.

Conservation Element addresses the identification and protection of important natural resources such as wetlands, floodplains, wildlife and marine habitats, and habitats for threatened or endangered species or species of special concern.

Coastal Management Element is required for coastal counties and municipalities within their boundaries. The element must establish policies that:

- Maintain, restore and enhance the overall quality of the coastal zone environment.
- Reserve the continued existence of viable populations of all species of wildlife and marine life.

- Protect the orderly and balanced utilization and preservation of all living and nonliving coastal zone resources.
- Avoid irreversible and irretrievable loss of coastal zone resources.
- Use ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.

Recreation and Open Space Element provides a comprehensive system of public and private sites for recreation and the maintenance of open space.

Capital Improvement Element considers the need for and the location of public facilities. The element:

- Outlines principles for construction, extension, or increase in capacity of public facilities and for correcting deficiencies.
- Estimates public facility costs, if and when facilities will be needed and revenue sources to fund the facilities.
- Provides strategies to ensure the availability and adequacy of public facilities to meet established acceptable levels of service.
- Provides a schedule of capital improvements which includes any publicly funded projects of federal, state or local government. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program.

Intergovernmental Coordination Element establishes relationships, principles and guidelines to be used in coordinating with the plans of school boards, regional water supply authorities, and with the plans of adjacent municipalities, the adjacent counties, or the region.

Optional Elements
Comprehensive plans may contain optional elements in addition to or as a supplement to the mandatory elements. Some examples include:

Community Design Element consisting of design standards and guidelines for development and redevelopment.

Public Safety Element for the protection of residents and property from fire, hurricane or manmade or natural catastrophe

Public Schools Facilities Element establishing a school planning and school concurrency program. If utilized, this element must be adopted by each local government within a school district (all Florida school districts coincide with county boundaries) in a manner that is consistent with those adopted by the other local governments within the county.

Economic Element establishing guidelines for the commercial and industrial development and for promotion of a balanced and stable economic base.

Areas of Special Emphasis
Certain issues and subjects merit high priority and emphasis for planning and growth management in Florida.

School Coordination
School coordination has been the focus of legislative change in recent years due to the impact of development and growth on schools and the challenges of maintaining a quality public education system. The 2005 Florida Legislature enacted sweeping changes most notably mandating "school concurrency." While the Community Planning Act of 2011 reversed the concurrency mandate, school planning is now well established as an important component of comprehensive planning.

School concurrency is now optional. If school concurrency is to be retained, the county and municipalities representing at least 80% of the county population must participate, and the comprehensive plan must**:**

- Demonstrate that the adopted level
- s of service can be reasonably met.
- Provide principles, guidelines, standards and strategies for the establishment of a concurrency management system.
- Provide the means for development to proceed by the mitigation of deficiencies including the payment of a proportionate share contribution.

The Public School Facilities Element (PSFE) is now optional for local governments. If a local government elects to repeal its PSFE, the following actions are mandated:

The Future Land Use Element must:

- Clearly identify the land use categories in which public schools are an allowable use.
- Allocate sufficient land proximate to residential development to meet projected needs.
- Encourage the location of schools proximate to urban areas.
- Require that local governments seek to collocate public facilities with schools.
- Encourage the use of elementary schools as focal points for neighborhoods.

The Intergovernmental Coordination Element must establish principles and guidelines for coordinating the adopted comprehensive plan with the plans of school boards and describe joint processes for collaborative planning and decision-making.

The county and municipalities located within the geographic area of a school district must enter into an interlocal agreement with the district school board that jointly establishes how plans and processes are to be coordinated.

Urban Sprawl
In 1994, the administrative rules governing the comprehensive planning process were amended to provide criteria for reviewing local comprehensive plans and plan amendments for adequacy in discouraging the proliferation of urban sprawl.

The Community Planning Act of 2011 repealed Rule 9J-5 but codified the guidelines pertaining to sprawl.

Urban Infill and Redevelopment
The "Growth Policy Act" (Chapter 163.2511, Florida Statutes) declares that:

- Fiscally strong urban centers are beneficial to regional and state economies and resources and for the reduction of future urban sprawl.
- Healthy and vibrant urban cores benefit their respective regions while, conversely, the deterioration of those urban cores negatively impacts the surrounding area.
- Governments should work in partnership with communities and the private sector to revitalize urban centers.
- State urban policies should guide in preserving and redeveloping existing urban cores and promoting the adequate provision of infrastructure, human services, safe neighborhoods, educational facilities and economic development to sustain these cores through an integrated and coordinated community effort.

Local government comprehensive plans and implementation of land development regulations must include strategies that maximize the use of existing facilities and services through redevelopment, urban infill development and other strategies for urban revitalization.

A local government may designate a geographic area or areas within its jurisdiction as an urban infill and redevelopment area to target economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation and land use incentives to encourage urban infill and redevelopment within the urban core. Such a designation requires an amendment to the Local Comprehensive Plan.

Water Supply
Adequate water supply is critical to all Floridians. Growth places enormous demands on the state's water resources and the management of these resources is receiving considerable statewide attention.

The 2005 Florida Legislature coupled growth management reform with water resource protection and sustainability to ensure that**:**

- Potable water provisions of local comprehensive plans are linked with the regional water supply plans maintained by the water management districts.
- Local comprehensive plans include a work plan for building public, private and regional water supply facilities to meet projected needs.

- Local comprehensive plans identify alternative water supply projects, necessary to meet the water needs identified within the local government's jurisdiction.
- Funding alternative water supply development is a shared responsibility between local water providers, users, the water management districts and the state.
- Proposed uses of the same source by more than one local government are identified.
- A confirmed source of raw water is identified to meet the needs of the community.

Select Area Plans
The comprehensive plan may include directives and standards for select geographic areas within their jurisdiction. Neighborhood plans, downtown revitalization plans, corridor plans and activity center plans are examples.

Select Area Plans typically amplify and enhance comprehensive plan policies to reflect the unique characteristics of the designated area and may enable area-specific regulations, guidelines, capital investment and implementing actions.

Functional Plans
The comprehensive plan may include or enable functional plans that address technical components of the planning process. Examples include:

- Long-range transportation plan.
- Watershed management plan.
- Water supply master plan.
- Wastewater management master plan.
- Parks and recreation master plan.

Urban Service Areas
Areas in and around existing communities that are deemed most suitable for urban development and capable of being provided with a full range of urban services such as water and sewerage may be so designated by the comprehensive plan.

The urban service area boundaries represent the outer limits of planned urban growth over the long-term planning period and include enough land to accommodate anticipated growth. The application of land development regulations and investments in infrastructure are guided by the urban service boundary.

Clustering / Density Transfer
Clustering or "density transfer" relocates development away from a particularly sensitive portion of the site to a location more capable of accommodating development impacts. When clustering is applied, development is placed on that portion of the land parcel that can be developed with the least disturbance. Developers often realize significant savings because shorter roads and utility extensions are required to serve the clustered homes.

The comprehensive plan may empower and direct the application of "clustering" through the land development regulations and incentives available to interested development parties.

Rural Land Stewardship
Rural land stewardship areas are designed to establish a long-term, incentive-based strategy to guide the allocation of land in a manner that protects the natural environment, stimulates economic growth and encourages the retention of agriculture and other rural land uses.

Economic and regulatory incentives are provided to landowners outside of established urban areas to conserve and manage vast areas of land (no less than 10,000 acres) while maintaining and enhancing the asset value of land holdings.

The process is initiated by written request of landowners or a private-sector initiated amendment to the local government. As an alternative, the local government may propose a future land use overlay to designate a rural land use stewardship area. The plan amendment designating a rural land stewardship area is subject to the state-coordinated plan review process and must provide criteria for the designation of receiving areas, a process for the implementation of planning and development strategies that provide for a functional mix of land uses and a mix of densities and intensities that would not be characterized as urban sprawl.

Upon the adoption of a plan amendment creating a rural stewardship area, the local government must establish a rural land stewardship overlay zoning district which shall provide the methodology for the creation, conveyance, and use of stewardship credits.

Sector Plans
The Sector Plan process was established as an alternative to the Development of Regional Impact (DRI) process. The Sector Plan is based on the long-range conceptual master plan for a designated area. Sector plans are intended for substantial geographic areas including at least 15,000 acres of one or more and are intended to emphasize urban form and protection of regionally significant resources and facilities.

Sector planning encompasses two levels:

1. A conceptual long-term master plan within the comprehensive plan.
2. Detailed specific area plans that implement the conceptual long-term master plan and authorize the issuance of development orders.

The long-term master plan and detailed specific area plans may be based on planning periods longer than the planning period in the local comprehensive plan and are not required to demonstrate land use need through the planning periods.

Local development orders approving detailed specific area plans must be submitted to the state. The development order for a detailed specific area plan establishes a date by which the local government agrees not to downzone the property or to reduce the density or intensity of development.

Amending the Comprehensive Plan
The Community Planning Act establishes three distinct procedures for amending the local comprehensive plan.

1. State coordinated review.
2. Expedited state review.
3. Small scale amendment.

State Coordinated Review
State coordinated review is required for amendments pertaining to:

- Areas of critical state concern.
- Rural land stewardship.
- Sector plans.
- Comprehensive plans based on evaluation and appraisal reports.
- A new plan for newly incorporated municipalities.

STATE COORDINATED REVIEW REQUIRES THE FOLLOWING STEPS:

Step 1. Local Planning Agency (LPA) Stage – The LPA conducts at least one public hearing on the comprehensive plan amendment in accordance with the public notice requirements established by statute.

Step 2. Transmittal Stage – The governing body considers the transmittal of the proposed amendment at a public hearing in accordance with the notice requirements established by statute.

Step 3. **Proposed Amendment Package** – The local government prepares the Proposed Amendment Package and submits the package to the State Land Planning Agency and to the state, regional agencies and local agencies identified by the statutes. The transmittal letter must indicate that the amendment is subject to the state-coordinated review process.

Step 4. Review and Comment Stage – The State Land Planning Agency must notify the local government and the reviewing agencies that the amendment has been received. Within 30 days of receipt, the reviewing agencies send their comments to the State Land Planning Agency.

Step 5. State Land Planning Agency Review – Upon receipt and review of the complete amendment, the State Land Planning Agency issues its Objections, Recommendations and Comments Report (ORC) to the local government.

Step 6. Adoption Stage – The local government (governing body) holds its second public hearing upon receipt of agency comments. If adopted (by ordinance), the local government transmits the adopted amendment package to the State Land Planning Agency with a copy to any other agency or local government that provided comments.

Step 7. Challenge Stage – Any "affected party" has 30 days from the date the adopted amendment package is deemed complete to file a petition challenging the amendment.

Step 8. Effective Date – Within 45 days of receipt of a complete adopted plan amendment, the State Land Planning Agency issues a Notice of Intent to find the plan "in compliance" or "not in compliance." The plan amendment goes into effect if the State Land Planning Agency finds the amendment "in compliance" and no challenge is filed by an affected party.

Expedited State Review
The Expedited State Review process applies to all amendments not requiring a State Coordinated Review or otherwise qualifying as a Small Scale Amendment. Most comprehensive plan amendments will follow this process:

Step 1. Local Planning Agency (LPA) Stage – The LPA conducts at least one public hearing on the comprehensive plan amendment in accordance with the public notice requirements established by statute.

Step 2. Transmittal Stage – The governing body considers the transmittal of the proposed amendment at a public hearing in accordance with the notice requirements established by statute.

Step 3. Proposed Amendment Package – The local government prepares the Proposed Amendment Package and submits the package to the State Land Planning Agency and the state, regional agencies and local agencies identified by the statutes.

Step 4. Review and Comment Stage – The State Land Planning Agency and the review agencies send comments directly to the local government. Comments must be received by the local government within 30 days.

Step 5. Adoption Stage – The local government (governing body) holds its second public hearing upon receipt of agency comments. If adopted (by ordinance), the local government transmits the adopted amendment package to the State Land Planning Agency.

Step 6. Challenge Stage – Any "affected party" has 30 days from the date the adopted amendment package is deemed complete to file a petition challenging the amendment.

Step 7. Effective Date – The 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.

Small-Scale Amendments
Local governments may adopt small-scale amendments under the following conditions:

- The proposed amendment involves the use of 10 acres or fewer.
- The cumulative annual effect of the acreage for all small-scale development amendments adopted by the local government does not exceed a maximum of 120 acres in a calendar year.
- The proposed amendment does not involve a text change to the goals, policies and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small-scale development activity. Text changes that relate directly to, and are adopted simultaneously with, the small-scale future land use map amendment are permissible.

Step 1. Local Planning Agency (LPA) Stage – The LPA conducts at least one public hearing on the comprehensive plan amendment in accordance with the public notice requirements established by statute.

Step 2. Adoption Stage – The local government (governing body) holds a public hearing to consider the small-scale amendment in accordance with the notice requirements prescribed by statute.

Step 3. Effective Date – The plan amendment goes into effect upon adoption (by ordinance) by the governing body.

The local government is invited (but not required) to transmit a copy of the small-scale amendment to the State Land Planning Agency.

Evaluating the Comprehensive Plan
Each local government shall determine at least every seven years whether plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and notify the State Planning Agency by letter on its determination. The State Planning Agency publishes a schedule indicating for each local government when such determination should be made.

If the local government determines that such amendments are necessary, then the plan amendments will be prepared and transmitted within one year of the determination. Such amendments, as previously noted, are done through the Evaluation and Appraisal Report (EAR)

If the local government fails to either timely notify DEO of its determination to update the comprehensive plan or to transmit such update amendments, it may not amend its comprehensive plan until it complies with these requirements.

Amendments submitted to update comprehensive plans are reviewed through the state-coordinated review process.

SECTION 4
Implementing the Comprehensive Plan

It is the intent of the Legislature that local government comprehensive plans are to be implemented.

The sections of the comprehensive plan containing goals, objectives, and policies shall describe how the local government's programs, activities, and land development regulations will be initiated, modified or continued to implement the comprehensive plan consistently.

"It is not the intent [of the Legislature] to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out." (Chapter 163, Section 3177, Florida Statutes)

Required Land Development Regulations
Each local government in Florida is required to adopt and enforce land development regulations that are consistent with the comprehensive plan.

"The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations." (Chapter 163, Section 3177, Florida Statutes)

Local land development regulations must contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan including as a minimum:

- **Subdivision of land** ... must meet the requirements of Chapter 177, Part I, Florida Statutes, and include review procedures, design and development standards, provisions for adequate public facilities, mitigation of development impacts, land dedications, fees and administrative provisions.

- **Use of land and water** ... the implementation of the land use categories in the Future Land Use Element consistent with the future land use map and goals, objectives and policies, including provisions for ensuring appropriate densities and intensities, compatible adjacent land uses and providing for open spaces.

- **Protection of potable water wellfields** ... the control of land uses and activities that may affect potable water wells and wellfields to protect the potable water supply.

- **Seasonal and periodic flooding** ... the control of areas subject to seasonal and periodic flooding which may include the type, location, density and intensity of

land uses located within these areas, to provide for drainage and storm-water management and mitigate the impacts of floods, including loss of life and property damage.

- **Protection of environmentally sensitive lands** ... from development impacts, including ensuring the protection of soils, groundwater, surface water, shorelines, fisheries, vegetative communities and wildlife habitat.

- **Signage** ... the regulation of signage, including but not limited to type, location, size, number and maintenance.

- **Public facilities and services** ... that meet or exceed the standards established in the capital improvements element ... and are available when needed to support development (concurrency).

- **Safe and convenient onsite traffic flow** ... the number and sizes of on-site parking spaces and the design and control of onsite vehicular and pedestrian traffic to provide for public safety and convenience

Consistency with the Comprehensive Plan
The Land Development Regulations must be "consistent" with the comprehensive plan.

A determination of consistency of a land development regulation with the comprehensive plan will be based upon the following:

- Characteristics of land use and development allowed by the regulation in comparison to the land use and development proposed in the comprehensive plan.
- Whether the land development regulations are compatible with the comprehensive plan, further the comprehensive plan, and implement the comprehensive plan. The term "compatible" means that the land development regulations are not in conflict with the comprehensive plan. The term "further" means that the land development regulations act in the direction of realizing the goals and objectives of the comprehensive plan.
- Whether the land development regulations include provisions that implement the goals and objectives of the comprehensive plan that require implementing regulations to be realized, including the requirement that public facilities and services needed to support development be available concurrent with the impacts of such development.

Elements of the Land Development Regulation
The Land Development Regulation typically contains the following elements:

- **Title, Authority and Purpose.** The specific state enabling provision that empowers the locality to adopt land development regulations. It also spells out, in a "statement of purposes," the community's reasons for adopting the ordinance.

- **General Provisions.** The over-riding rules that apply to all land uses and all parcels throughout the community (rather than a single district) "

- **Zoning Districts and Allowed Uses.** Text and maps indicating permitted uses and area, height and bulk standards.

- **Subdivision Regulations.** Standards and procedures governing the subdivision of land.

- **Design Standards and Improvement Requirements.** Standards for the design and improvements to be satisfied by new development.

- **Adequate Public Facilities Requirements** (Concurrency). Levels of service and procedures for determining the adequacy of public facilities available to support new development.

- **Administration and Procedures.** The assignment of administrative responsibilities and the establishment of procedures and guidelines for the administration of the land development regulation.

- **Interpretations, Exceptions, Equitable Relief and Enforcement.** Procedures and criteria for variances, interpretations and enforcement.

- **Definitions**. Definitions are especially important because the general public, as well as the courts, must be able to attach specific meaning to the words and concepts appearing in the ordinance.

Regulatory Tools
The Community Planning Act encourages the use of innovative land development regulations, such as:

Zoning
Zoning is defined as the division of a jurisdiction into districts (zones) within which permissible uses are prescribed and restrictions on building height, bulk, layout and other requirements are defined.

- **Zoning Text:** The zoning text explains the rules that apply to each district. These rules typically establish a list of land uses and standards that govern lot size, the height of a building, required yards and setbacks, lot coverage, etc.

- **Zoning Map:** The zoning map illustrates how the entire area of a community is classified and divided upeinto distinct zoning districts. Every parcel of land within the community must have an assigned "zone."

Subdivision Regulations
The regulation of subdivisions is based on state-enabling legislation. While the enabling legislation is usually stated in general terms, local jurisdictions are authorized to provide detailed and extensive rules and procedures for regulating subdivisions.

"Subdivision" means the division of land into three or more lots, parcels, tracts, tiers, blocks, sites, units or any other division of land and includes the establishment of new streets and alleys.

Subdivision regulations provide standards and a set of procedures for dividing land into separate parcels. By regulating the subdivision of land, regulations provide a method for assuring minimum public safety and amenity standards. Subdivision regulations govern the conversion of vacant land into urban uses such as residential neighborhoods, shopping centers and industrial parks.

The purpose of subdivision regulations is to protect future owners or occupants of newly developed land from unhealthy, unsafe, inadequate developments and to prevent current residents from footing the entire bill.

The original function of subdivision regulations was to accurately and legally define each parcel of land to permit the transfer of the lots from one owner to another, and to allow each owner to be very clear about and have a legal claim to exactly what is owned.

From this original purpose, subdivision regulations have come to serve many other purposes. In addition to clearly defining parcels of land, subdivision regulations have an expanded purpose which includes:

- Ensuring that the land within the municipality or county is developed in a manner consistent with the Comprehensive Plan.
- Ensuring that the internal infrastructure of any new subdivision is built to minimum standards of health and safety. Also, they ensure the provision of essential public services and functions with minimal long-term maintenance problems.
- Ensuring that developments are appropriately related to their surroundings, both by linking them to existing public facilities and by reducing their negative environmental impact.

Subdivision regulations typically require an accurate drawing of new property lines on a document called a "plat," which is subsequently recorded at a county recorder of deeds office.

Design Standards and Improvement Requirements
The Land Development Regulation establishes design standards and improvement requirements for development. The following components are typically included:

- Density and intensity of land development.
- Height and bulk regulation.
- Infrastructure design and improvement standards.
- Transportation system standards.
- Stormwater management/floodplain protection.
- Protection of environmentally sensitive lands.
- Wellfield protection.
- Signs.
- Landscaping.
- Architectural and design guidelines.
- Supplemental standards for special uses.

Planned Unit Development (PD)
Planned development provisions – typically referred to as "planned unit developments" or simply "planned developments" or PD – are intended to encourage more creative and imaginative design than generally is possible under conventional land development regulations. The procedure allows a specific plan to serve as the basis for the land development regulations pertaining to that property. For example, the planned development restrictions substitute for the conventional standards.

The advantages of this approach are substantial. The developer has significantly greater flexibility, especially for larger properties and projects that involve multiple uses and utilize clustering to preserve open space and environmental lands. Planned developments can also more effectively accommodate special conditions such as the buffering of adjoining neighborhoods or the phasing of infrastructure improvements.

The designation of a property as a "PD" is an amendment to the zoning map either as a "rezoning" or as an "overlay" to an underlying district. PDs also involve a "zoning text" amendment by the inclusion of regulations specific to the property and that implement the specific plan.

Form-Based Codes
Many land development codes now contain regulations that emphasize form and design. Unlike conventional zoning and subdivision regulation, these regulations typically require that:

1. Uses be mixed rather than segregated.
2. The street system be interconnected.
3. Buildings especially within and near commercial areas be placed close to the street.
4. Parks and open space be open and accessible to the public.

Such ordinances will rely less on zoning "by use" in favor of zoning "by building type." An emphasis is also placed on design in particular the massing and scale of buildings and their relationship to the street and public spaces.

Traditional Neighborhood Development
In recent years, Traditional Neighborhood Development has emerged in response to the practices of land segregation and auto-dependent design inherent in the conventional aspects of land development regulation. This form of development encourages mixed-use, compact development, walkability and interconnected street systems with residences, shopping, employment and recreational uses within close proximity to each other.

Traditional Neighborhood Development may be incorporated into land development codes in a variety of ways. In some cases, they may take the form of zoning districts (a downtown main street or historic district) and in other cases, be offered as an option to conventional development through a planned development approach.

Administration and Procedures
The Land Development Regulation must describe the administrative procedures to be applied and establish the roles and responsibilities of planning officials - both elected and appointed – and the roles and responsibilities of administrative personnel such as the city/county manager, planning director, zoning administrator and others. The Land Development Regulation:

- Details the work or job of the key actors in the development review process.
- Outlines the exact steps that must be taken in carrying out the work.
- Clarifies the criteria that staff, planning commissioners, zoning board members, zoning administrators and elected officials must use in making development decisions.

The administration of the land development regulation typically involves decision-making at three levels. All are quasi-judicial and must follow prescribed procedures to ensure a fair hearing and legal sufficiency

Most land development decisions are ministerial and are made by administrative personnel such as the zoning administrator and other qualified professional staff. These duties involve the direct application of the provisions of the LDR to development applications normally in the form of permits or the review of technical plans Typically, these decisions allow very little discretion or involve professional discretion within the reviewer's field of expertise (the extent of a wetland, compliance with an engineering standard, etc).

The delegation of approval authority to appointed bodies such as a planning commission, zoning board, development review committee or board of adjustment is a common practice. The land development regulation must specifically define the scope of this authority and the standards and procedures that govern its application. Such

agencies also frequently serve in an advisory capacity to the elected body regarding rezoning and other decisions made by the governing body.

Rezoning
The amendment of the zoning map – generally referred to as "rezoning" – is the most common land use decision before elected and appointed planning officials. Rezoning represents an amendment of the land development regulation and may only be approved by the elected body.

In Florida, the courts have declared "rezoning" to be "quasi-judicial" rather than "legislative." In applying the law, the following criteria must be met:

1. The burden is on the petitioner to demonstrate that the requested amendment is consistent with the comprehensive plan.
2. If consistent, the burden shifts to the local government to show that retaining the existing zoning accomplishes a legitimate public purpose and is not arbitrary, discriminatory or unreasonable.
3. The decision is based on substantial competent evidence.

The Land Development Regulation will prescribe the procedures to be followed in processing a "rezoning." This process will normally include the following steps:

1. A pre-application meeting with the staff.
2. A formal petition for rezoning by the landowner.
3. Notice to the public and affected property owners.
4. A professional review and recommendation.
5. A public hearing and recommendation by the zoning board (or hearing officer).
6. A public hearing and action by the governing body.

Subdivision/Site Plan Review
The subdivision or site plan review process typically includes the following three steps:

1. Pre-application conference.
2. Preliminary plat/plan submission.
3. Final plat/plan submission.

Although most jurisdictions utilize these three steps in some form, the review and approval process can vary widely. The only absolute requirement is that the governing body accepts the final plat/plan that involves the dedication of roadways, water and sewer systems and other public facilities. Other aspects of the review may be delegated to professional staff and/or to an appointed body. Planning commissions have traditionally played an important role in subdivision review.

The subdivision process results in the recording of a final plat – defined as the map of the development identifying the location and boundaries of streets' rights-of-way, individual lots or parcels and other site information.

A distinction may be made between "minor" and "major" subdivisions/site plans based on the number of parcels or other established criteria, in which case a streamlined process is allowed.

Adequate Public Facilities
Every growing community must be concerned about how it will pay for the roads, water and sewer systems, drainage systems, recreation facilities, fire and police stations, schools and public facilities it will need to support its growth.

To address this universal need, the statutes require a Capital Improvements Element (as previously described) and the establishment, application and maintenance of fiscal management programs and tools. The key components of this fiscal management program include:

- The Capital Improvements Element
- The Capital Improvements Schedule
- The Capital Improvements Program
- Concurrency Management
- Proportionate Share Mitigation
- Fiscal Tools

Capital Improvements Element
The Capital Improvements Element (CIE) must:

- Outline principles for construction, extension or increase in the capacity of public facilities.
- Estimate public facility costs.
- Establish standards to ensure the availability and adequacy of public facilities to meet established levels of service.

Capital Improvements Schedule
The Capital Improvements Schedule must include a schedule of all improvements (public and private) required to maintain adopted levels of service. Projects necessary to maintain levels of service for a five-year period must be identified as either funded or unfunded and given a level of priority for funding.

The schedule must be reviewed annually. Modifications to update the five-year capital improvement schedule may be accomplished by ordinance and not deemed to be an amendment to the local comprehensive plan.

Capital Improvements Program
The Capital Improvements Program (CIP) is the multi-year scheduling of public infrastructure. The scheduling is based on assessments of need and community priorities for specific improvements to be constructed for a period of five or six years into the future. The CIP is typically accompanied by a capital improvements budget

including facilities to be constructed in the next fiscal year. These documents are normally adopted by a local government as part of their budget process.

Major transportation improvements normally have their genesis at the Metropolitan Planning Organization (MPO) level in the form of a Transportation Improvement Program (TIP). MPOs offer a regional perspective and exist to plan and coordinate a regional approach to mobility. Local government CIPs will generally reflect the TIP with regard to transportation. Of course, those portions of the state outside of MPO boundaries work with the state Department of Transportation (DOT) and their respective counties on mobility goals.

Concurrency Management
Florida law requires that adequate public facilities must be in place at the time development occurs. This provision is referred to as "concurrency." The comprehensive plan must include principles, guidelines, standards and strategies for the establishment of a concurrency management system.

Development orders may not be issued unless public facilities and services which meet or exceed the adopted level of service standards are available concurrent with the impacts of the development. If adequate public facilities and services are not available at the time the development permit is issued, development orders must be specifically conditioned upon the availability of the public facilities and services necessary to serve the proposed development.

Sanitary sewer, solid waste, drainage and potable water are subject to the concurrency requirement on a statewide basis. If concurrency is applied to other public facilities, the comprehensive plan must provide the principles, guidelines, standards and strategies, including adopted levels of service, to guide its application.

Transportation concurrency is now optional for local governments. Those communities desiring to maintain transportation concurrency must meet an array of requirements related to the complexity of multi-modal systems and coordination with multiple jurisdictions and agencies.

School concurrency is not optional. If concurrency is applied to public educational facilities, all local governments within a county (school district) must include principles, guidelines, standards and strategies in their comprehensive plan and interlocal agreements. Local governments and school boards imposing school concurrency must jointly establish a level of service standards that apply districtwide to all schools of the same type.

Proportionate Share Mitigation
The concept of "proportionate share" in Florida is closely associated with the provision of adequate facilities concurrent with new development. New development creates a one-time demand for the infrastructure required to support each increment of new growth.

Proportionate share contributions are commonly used to supplement other means of funding capital facility improvements. In Florida, both the courts and the Florida Statutes acknowledge local government authority to impose equitable fees. Such fees are not taxes and are governed by a standard known as the "dual rational nexus test." Implied in this test is that a development fee or exaction cannot exceed a pro rata or proportionate share of the anticipated costs of providing new developments with capital facilities.

Florida Statutes require that standards and methodologies for proportionate share mitigation be established regarding the application of transportation concurrency and school concurrency. As a matter of sound fiscal policy, it is recommended that such standards and methodologies be applied to all exactions and fees imposed upon new development.

Development Impact Fees
Development impact fees are scheduled charges applied to new development to generate revenue for the construction or expansion of capital facilities located outside the boundaries of the new development (off-site) that benefit the contributing development. As such, they fall within the general system of land development regulation as contrasted with revenue-raising (taxation) programs. The objective of impact fees is not to raise money. Rather the objective is to ensure adequate capital facilities.

In Florida, development impact fees are widely used. They are closely linked with "concurrency" and are assessed for a variety of capital facilities including roads, water and sewer, parks and recreation, fire, EMS, law enforcement, public buildings and schools.

Development Agreements
A local government may enter into development agreements with landowners or developers for the provision of infrastructure or other actions of public benefit related to land development. These agreements are typically associated with large-scale development and are created during the development review process.

The local government must establish procedures and requirements for development agreements before this technique may be applied. At a minimum, the development agreement must include the following:

- The duration of the agreement.
- The development uses permitted.
- The public facilities to be provided.
- The lands to be dedicated or reserved for public use.
- A listing of permits approved and/or needed.
- A finding of consistency with the comprehensive plan.
- A description of terms and conditions of a phasing plan.

The development agreement has several advantages. For the community, the public improvements, land dedications and conditions associated with a large development can be contractually committed. This approach supplements the regulatory requirements and is generally easier to enforce and manage. The developer gets certainty and is vested against changes in regulations for the duration of the agreement.

SECTION 5
Regional Planning Councils

Regional Planning Councils (RPCs) are created by Chapter 186, Florida Statutes, to address problems and plan solutions that are of "greater-than-local" concern or scope.

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:

- Local elected officials (city and county commission).
- Officials appointed by the governor.
- Ex-officio non-voting members appointed by the governor.

Establishment of RPC Boundaries
There are 10 RPCs in the State of Florida (one for each comprehensive planning district of the state):

- Emerald Coast RPC, Pensacola.
- Apalachee RPC, Tallahassee.
- North Central Florida RPC, Gainesville.
- Northeast Florida RPC, Jacksonville.
- East Central Florida RPC, Orlando.
- Central Florida RPC, Bartow.
- Tampa Bay RPC, Tampa.
- Southwest Florida RPC, Fort Myers.
- Treasure Coast RPC, Stuart.
- South Florida RPC, Miami.

Products
Regional Planning Councils are expressly empowered to perform certain duties. Those duties include:

Strategic Regional Policy Plans
Regional Planning Councils are required to prepare and maintain a Strategic Regional Policy Plan (SRPP) that addresses:

- Affordable housing.
- Economic development.
- Emergency preparedness.
- Natural resources.
- Regional transportation.

In preparing the SRPP, RPCs are required to seek the cooperation and assistance of local governments to develop a coordinated program of regional actions directed at resolving the identified problems and needs.

Standards included in a Strategic Regional Policy Plan may be used for planning purposes only and not for permitting or regulatory purposes. Additionally, an RPC may not, through its SRPP (or by any other means), establish binding levels of service for public facilities and services provided or regulated by local governments.

Strategic Regional Policy Plans must be consistent with the State Comprehensive Plan.

Comprehensive Plan Review
Regional Planning Councils are required to review local government comprehensive plan amendments (such as DRI's) for consistency with the Strategic Regional Policy Plan and other regional programs and policies.

Technical Assistance to Local Governments
Regional Planning Councils are authorized to provide advisory support and technical assistance to local governments regarding planning and growth management matters.

With regard to transportation-related issues, RPCs are empowered to provide technical assistance to local governments and coordinate land development and transportation policies in a manner that fosters region-wide transportation systems.

Dispute Resolution
Each Regional Planning Council is required to establish a dispute resolution process to reconcile differences on planning and growth management issues between local governments, regional agencies and private interests.

Additional information and contact for each RPC may be found at their collective association's website: *flregionalcouncils.org*.

FLC appreciates the contributions of the Florida Government Finance Officers Association (FGFOA) Educational Programs Committee in the preparation of this chapter.

RESOURCES

Throughout this manual, there have been references to governmental agencies, statewide associations and other resources. A few key websites are provided here for easy access. Please contact the Florida League of Cities (*flcities.com*) for assistance with finding information.

STATE AGENCIES:

- State of Florida Executive Branch: *flgov.com*.
- State Legislature: *leg.state.fl.us/Welcome/index.cfm*.
- House of Representatives: *myfloridahouse.gov*.
- Florida Senate: *flsenate.gov*.
- Supreme Court: *floridasupremecourt.org*.
- Attorney General: *myfloridalegal.com*.

ASSOCIATIONS FOR MUNICIPAL STAFF:

- American Planning Association, Florida Chapter: *floridaplanning.org*.
- American Public Works Association, Florida Chapter: *florida.apwa.net/*.
- American Water Works Association, Florida Section: *fsawwa.org*.
- Florida Association of Business Tax Officials: *fabto.org*.
- Florida Association of City Clerks: *floridaclerks.org*.
- Florida Association for Code Enforcement: *face-online.org*.
- Florida City/County Management Association: *fccma.org*.
- Florida Government Finance Officers Association: *fgfoa.org*.
- Florida Local Government Information Services Association: *flgisa.org*.
- Florida Municipal Attorneys Association: *members.flcities.com/fmaa/*.
- Florida Municipal Communicators Association: *fmcaonline.com*.
- Florida Recreation and Park Association: *frpa.org*.
- Florida Public Human Resources Association: *fphra.org*.
- Florida Public Employer Labor Relations Association: *fpelra.org/*.
- The Florida Redevelopment Association: *redevelopment.net*.

ASSOCIATIONS FOR OTHER LOCAL GOVERNMENTS:

- Florida Association of Counties: *fl-counties.com*.
- Florida Association of Special Districts: *fasd.com/*.
- Florida School Boards Association: *fsba.org*.