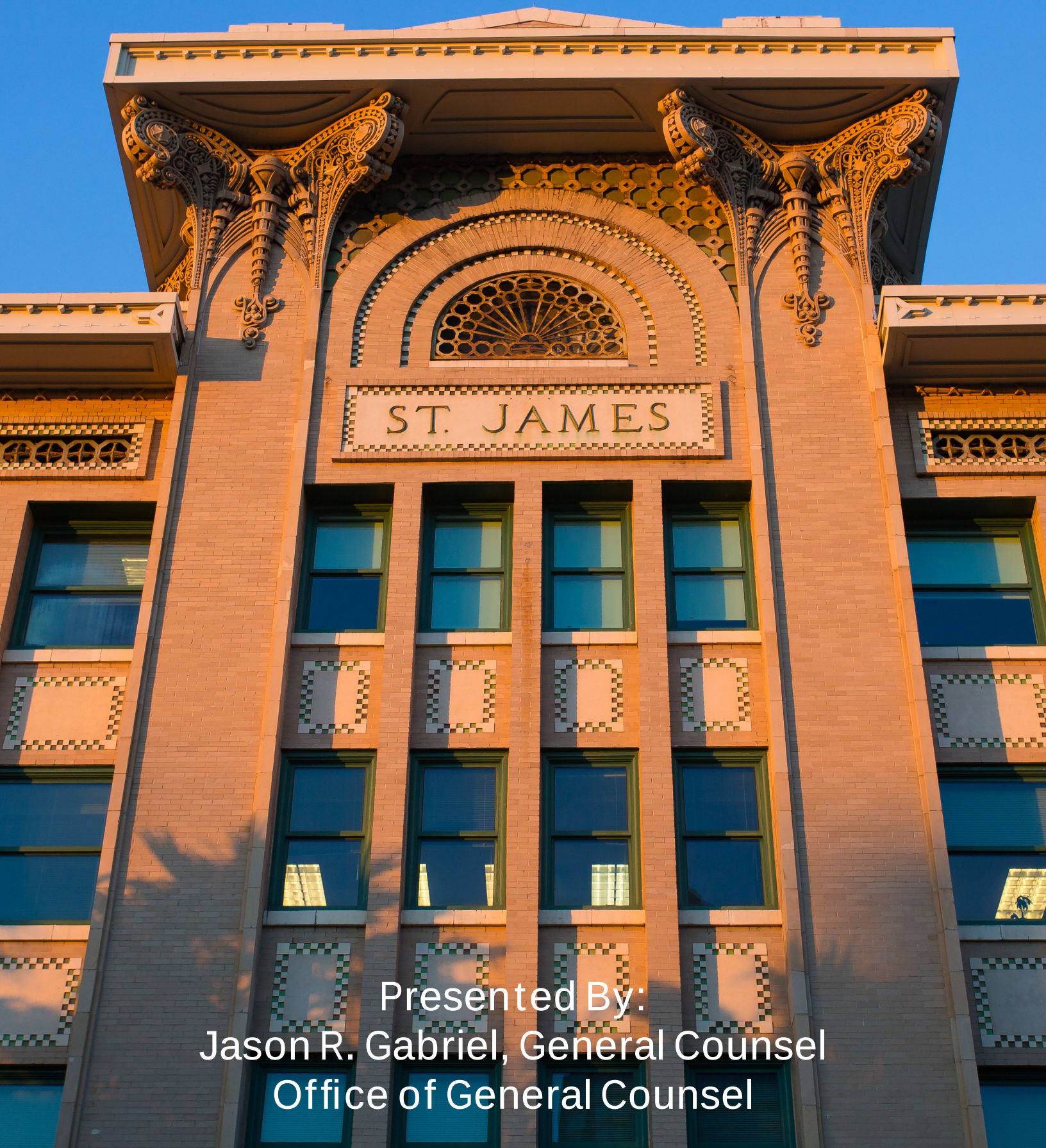
2019 City of Jacksonville Orientation Program Volume 3

2019

City of Jacksonville Orientation Program

Presented by:
Jason R. Gabriel, General Counsel
Office of General Counsel

City of Jacksonville
2019 Orientation Program



Presented By:
Jason R. Gabriel, General Counsel
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***BOARD CERTIFIED CITY, COUNTY AND LOCAL GOVERNMENT LAW**

June 1, 2019

Dear Elected Officials:

Congratulations on your recent election and welcome to the 2019 City of Jacksonville Orientation Program.

Since its formation more than 50 years ago, Jacksonville's consolidated government has provided opportunities and advantages to its citizens and elected officials not found in traditional city and county governments around the state. Jacksonville is the only true consolidated form of local government in Florida. Even Miami and Miami-Dade County operate under a two-tier government program. Our goal is to give you a deeper understanding of Jacksonville's governmental structure and your role in making it work. This program includes presentations and materials on Jacksonville's consolidated government, budget and appropriation processes, municipal finance, economic development, procurement, labor and employment law, code enforcement, land use and quasi-judicial proceedings, and sovereign immunity.

The City of Jacksonville has also been a pioneer in its adoption of a comprehensive Ethics Code. I am pleased to have the Office of General Counsel provide, as required by our City Charter, training in this very important area in conjunction with the Office of Ethics, Compliance and Oversight. Topics in this area include Sunshine Law, Public Records Law, Jacksonville's Ethics Code, and State Ethics Laws including financial and gift disclosure requirements, voting conflicts and prohibited relationships.

Enclosed are extensive written materials on the various topics covered during the program. We hope you will find these materials to be informative and useful throughout your term in office. Of course, questions will arise which are not fully answered by today's program and written materials. When they do, we welcome the opportunity to be of further assistance to you. The Office of General Counsel is your law firm and we are here to answer your legal questions.

Sincerely,

Jason R. Gabriel
General Counsel

City of Jacksonville
2019 Orientation Program

Program Moderator:
Jason R. Gabriel, General Counsel
City of Jacksonville

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Jason R. Gabriel
General Counsel
Office of General Counsel

Jason R. Gabriel is the General Counsel. Mr. Gabriel joined the Office of General Counsel in March 2010. Prior to joining the Office of General Counsel, Mr. Gabriel specialized in the areas of Land Use, Zoning, and Local Government Law, Real Estate and Financial Transactions, Development and Preservation initiatives, with the law firm of Edwards Cohen. Mr. Gabriel represented and counseled clients in obtaining various Land Use, Zoning and entitlement approvals, permitting and navigating through the various regulatory processes, as well as negotiating, drafting and managing complex commercial and real estate transactions and closings.

Mr. Gabriel currently provides counsel in the areas of City, County and Local Government law including Constitutional Law, Elections Law, Land Use and Zoning Law, Planning and Development, Community Redevelopment, Economic Development, Ethics, Procurement, Legislative Affairs, Labor and Employment and General Litigation.

Mr. Gabriel received a Bachelor of Arts Degree, Cum Laude, from the University of Florida in 1998 with a major in Philosophy, and a Juris Doctorate Degree, from the University of Florida in 2001.

While in law school Mr. Gabriel clerked for the Honorable Toby S. Monaco in the 8th Judicial Circuit of Florida, and served as a Legal Research & Writing and Appellate Advocacy Teaching Assistant.

Mr. Gabriel is a member of the Florida Bar, a member of the City County and Local Government Law Section of the Florida Bar, and a member of the U.S. Middle District Court of Florida. Mr. Gabriel also serves as the State Chair of Florida for the International Municipal Lawyers Association ("IMLA") and is an active member of the Florida Association of County Attorneys ("FACA").

Mr. Gabriel has been recognized as a Legal Elite™ attorney by *Florida Trend Magazine* and has received an AV Preeminent® Peer Review Rating™ by Martindale-Hubbell®. Mr. Gabriel is a Board Certified Specialist in City, County & Local Government Law, as designated by the Florida Bar.

Margaret M. Sidman
Deputy General Counsel
Office of General Counsel

Margaret M. Sidman joined the General Counsel's Office in April 2003, was promoted to Chief of the Legislative Services Department in 2009, promoted to Deputy Legislative Affairs in 2012 and Managing Deputy in 2013. Prior to joining the General Counsel's Office, Ms. Sidman was corporate counsel for Bombardier Capital, Inc. Ms. Sidman was an associate with Stutsman & Thames before joining Bombardier Capital where she handled commercial litigation involving general contract disputes, real estate and secured transactions. Before joining Stutsman & Thames, Ms. Sidman was an associate with Rogers, Towers, P.A., where she administered insurance defense, commercial litigation and contract disputes.

Prior to her legal career, Ms. Sidman served as a legislative aide to State Senator Bill Bankhead where she honed her skills in legislative drafting and budget review.

Ms. Sidman graduated summa cum laude from the University of Florida in 1987, and is a proud graduate of the Washington College of Law at American University. During her college career, Ms. Sidman received the highly competitive International Rotary Scholarship for study in Bamberg, Germany.

Ms. Sidman served on the City of Jacksonville Historic Preservation Commission, and was appointed by Mayor Delaney to serve on the Mayor's Commission on the Status of Women. Ms. Sidman has served as President of Riverside Avondale Preservation, and held leadership positions on the boards of Community Connections, Inc. and the Catholic Lawyers Guild. Ms. Sidman is the recipient of the 2008 President's Volunteer Service Award for exceeding 100 volunteer hours with Catholic Charities as part of the City of Jacksonville Mentor Program and is an active member in St. Matthews Catholic Church.

Stephen M. Durden
Chief Assistant
Office of General Counsel

Stephen M. Durden rejoined the Office of General Counsel in September 2013. Prior to joining the Office of General Counsel, Mr. Durden was a tenured Professor of Law at Florida Coastal School of Law, teaching at the school for nearly 17 years. Mr. Durden taught numerous courses including Constitutional Law, First Amendment, Florida Constitutional Law, Land Use and Zoning, etc., and published more than a dozen law review articles on topics, ranging from constitutional interpretation to the rule of law, from Freedom of Speech and Religion to the Takings Clause.

Mr. Durden previously worked for the Office of General Counsel from 1988 to 1996. He represented the City, at the trial and appellate levels, in federal and state court, in cases challenging the constitutionality and validity of City ordinances and decisions.

Mr. Durden received a Bachelor of Arts Degree, from the University of Virginia in 1981. He obtained a Juris Doctor Degree from the University of Florida, College of Law in 1984.

Mr. Durden is a member of the Florida Bar.

Jon R. Philips
Deputy General Counsel
Office of General Counsel

Jon R. Phillips joined the General Counsel's Office in May 2002. He is the Deputy for the General Litigation Department. He has also served as the Division Chief for the Personal Injury and Civil Rights Department, and as Ethics Counsel for the City.

Prior to joining the General Counsel's Office, Mr. Phillips was in private practice at the Law Offices of Fred Tromberg where he specialized in tort litigation. Before that Mr. Phillips was an Assistant State Attorney in Jacksonville from April 1987 to February 2001. His positions included Director of Circuit Court, Director of County Court, Director of Special Prosecutions, Deputy Director of Repeat Offender Court and Division Chief of Public Corruption and Special Operations. He also specialized in prosecution of both capital and non-capital homicide cases. While employed at the State Attorney's Office, Mr. Phillips was an adjunct professor at the Criminal Clinic at Florida Coastal School of Law. Before moving to Jacksonville in 1987, he was a prosecutor in Gainesville and Lake Butler for three years after having been in private practice in Gainesville from 1979 to 1984.

Mr. Phillips was a member of the Florida Bar Criminal Standard Jury Instruction Committee from 1995 until February 2003. He was also a member of the Florida Prosecuting Attorney Association Education Committee from 1997 to February 2001. During that period of time, he lectured numerous times to prosecutors statewide on a variety of subjects, including trial technique and cross-examination of expert witnesses. Mr. Phillips was a member of the 4th Judicial Circuit Grievance Committee "C" from 1989 to 1992, chairing that Committee in 1992. He was a member of the Mayor's Sexual Assault Advisory Council, for which he was Secretary in 2004 until the end of his term on the Council in 2005. Mr. Phillips was a member of (and Chair) for the Florida Bar Unlicensed Practice of Law Committee for the 4th Judicial Circuit, serving from 2005 to 2011.

Lawsikia J. Hodges
Deputy General Counsel
Office of General Counsel

Lawsikia J. Hodges is the Deputy General Counsel of the Government Operations Department. Ms. Hodges is a Florida Bar Board Certified City, County & Local Government Attorney. Ms. Hodges provides legal counsel to the Mayor's Office, 19-member City Council, Executive Department Directors and Chiefs, Constitutional Officers, independent authorities and boards and commissions on day-to-day government operations and transactional matters. Her government practice includes real estate and public finance transactions, government procurement, budgets, economic incentives and community redevelopment, federal and local grants, employment contract, sovereign immunity, sunshine law, public records and ethics. Ms. Hodges has served as lead counsel to the Downtown Investment Authority, Tourist Development Council, Police and Fire Pension Fund, Jacksonville Housing Authority, Jacksonville Housing Finance Authority, Public Service Grant Council, Jacksonville Children's Commission, Kids Hope Alliance, JEA, Jacksonville Housing and Community Development Commission, Northwest Economic Development Trust Fund, Jax Journey Oversight Council and Mayor's Commission on the Status of Women.

Prior to joining the office, Ms. Hodges was an associate at Foley & Lardner LLP's Jacksonville Office. Ms. Hodges was a member of the firm's Business Law Department and Real Estate and Finance Practice Groups. During her tenure at Foley, Ms. Hodges represented various private lenders and developers in complex commercial real estate and finance transactions, which included the acquisition and sale of multi-family housing, commercial and condominium developments, shopping center complexes, and master planned communities.

Ms. Hodges earned her law degree with honors from the University of Florida's Levin College of Law in 2002. During her graduate career she was a member of the prestigious Moot Court Team, an intern in the United States House of Representatives and a Professor's Assistant in Legal Research and Writing. Ms. Hodges received her undergraduate degree cum laude from the University of North Florida in 1998. She majored in political science and minored in history.

Ms. Hodges is a member of the Florida Bar Association and its City, County and Local Government and Real Property, Probate and Trust Law Sections. She is also a member of the Jacksonville Bar Association, the D.W. Perkins Bar, and a former Board Member (2006-2012) of Pace Center for Girls, Inc. (Jacksonville), a non-profit organization dedicated to providing education, training, and counseling to at-risk young girls. Ms. Hodges is an active member of church and enjoys spending time with her family.

Jason R. Teal
Deputy General Counsel
Regulatory and Constitutional Law Department
Office of General Counsel

Jason R. Teal joined the General Counsel's Office in October 2000. He is the Deputy of the Regulatory and Constitutional Law Department and specializes in Regulatory, Constitutional and Administrative Law, Environmental Litigation and Land Use matters. He supervises seven attorneys within the Department, which is responsible for prosecuting various enforcement matters for the City's Executive Branch agencies, assisting the Council with drafting and defending legislation concerning regulatory and constitutional matters, representing the Council committee and regulatory boards and commissions in Land Use, Historic Preservation and Environmental matters. Additionally, Mr. Teal represents the Supervisor of Elections and the Duval County Canvassing Board, interacts with the City Council on various Municipal Ordinance Code matters, and is the staff attorney responsible for reviewing Downtown design, rezoning, waiver and variance application and legislation in his role as counsel to the Downtown Development Review Board. Recently, Mr. Teal has been extensively involved in the issues surrounding challenges to the City's Human Rights Ordinance, Foreclosure Registry Ordinance and the pension financing referendum and legislation; and drafting and assisting with legislation concerning Short –Term Vacation Rentals, prohibition of Simulated Gambling Devices and design standards for Wireless Communication Facilities.

Mr. Teal is a member of the Local Government section of the Florida Bar.

Sean B. Granat
Deputy General Counsel Tort & Employment Law
Office of General Counsel

Sean B. Granat joined the General Counsel's Office in June 2004. He supervises the Tort and Employment Law Department and his primary areas of practice are personal injury, police liability, and federal civil rights litigation. Prior to joining the General Counsel's Office, Mr. Granat worked as an attorney at a law firm that served as general counsel for Jacksonville's local Fraternal Order of Police, where he defended police officers in federal litigation and disciplinary actions. Prior to that, Mr. Granat was General Counsel and Director of Human Resources for a local manufacturing company in Jacksonville. Prior to representing the manufacturing company, Mr. Granat served as an Assistant State Attorney with the Fourth Judicial Circuit, where he prosecuted both misdemeanor and felony cases.

Mr. Granat received his Bachelor's and Juris Doctorate degrees, both with honors, from the University of Florida. He is a member of the Florida Bar, and the Florida Defense Lawyers Association. In addition to the Florida Bar, Mr. Granat is admitted to practice before the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Middle District of Florida.

John C. Sawyer, Jr.
Chief, Government Operations
Office of General Counsel

John C. Sawyer, Jr. joined the office in August 2012. Prior to joining the Office of General Counsel, Mr. Sawyer worked most recently for Reznicsek, Fraser, Hastings, White & Shaffer, P.A. as a transactional attorney handling commercial real estate, secured financial transactions and real estate acquisition, development and disposition. Mr. Sawyer previously for Edwards & Cohen, P.A. in the area of transactional law with an emphasis on commercial real estate, zoning and land use development. He also worked at the State Attorney's Office prosecuting misdemeanor and felony cases in the Fourth Judicial Circuit.

Mr. Sawyer received a Bachelor of Arts Degree, from the Emory University in 1988. He obtained a Juris Doctor Degree from Stetson University College of Law in 1994, where he was a member of the Stetson Trial Team. His client's include the Downtown Investment Authority, the Office of Economic Development, the Sports and Entertainment Office, and the General Employees Plan Pension Board of Trustees.

Mr. Sawyer is member of the Jacksonville Bar Association, the Florida Bar, and the Order of Barristers.

Paige H. Johnston
Chief, Legislative Affairs
Office of General Counsel

Paige Hobbs Johnston joined the Office of the General Counsel in July 2012. Prior to joining the Office of the General Counsel, Ms. Johnston worked for Rogers Towers. While at Rogers Towers she focused in the areas of land use, real estate, regulatory and governmental law.

Ms. Johnston received a Bachelor of Arts Degree, cum laude, from the University of Central Florida in 1996. She received her Juris Doctor degree from the University of Florida Fredric G. Levin College of Law and concurrently earned a Masters of Arts Degree (Political Science with a concentration in Public Administration and Policy) in 2000.

Ms Johnston is a member of the Florida Bar Environmental and Land Use Law Section and City, County and Local Government Law Section, the Florida Association of County Attorneys, and the Jacksonville Bar Association. She has an AV Preminent Rating from Martindale Hubbell, the highest possible rating in both legal ability and ethical standards, and was named by Florida Super Lawyers a "Rising Star" (Land Use/Zoning, Category), in 2009.

Shannon K. Eller
Chief, Land Use
Office of General Counsel

Shannon K. Eller joined the Office of General Counsel in July 2018, returning after previously serving in the Office of General Counsel from 2001 to 2010. Prior to returning to the Office of General Counsel, Ms. Eller served as an Assistant County Attorney for Volusia County for five years in the Real Estate and Land Development Department, where her practice included land use, zoning, transportation, land development, real estate and eminent domain law, as well as representation of various local government departments, boards and commissions. Prior to joining Volusia County, Ms. Eller served as an economic development advisor and lobbyist for local Jacksonville firm Infinity Global Solutions (IGS) and has additional experience as an Associate with Rogers Towers, P.A., and as a Regional Planner for the Northeast Florida Regional Council.

Ms. Eller represents the Land Use and Zoning Committee of the City Council, and practices in all areas of land use, zoning, planning & development, transportation, and environmental law.

Lenae Voellmecke
Duval Legislative Delegation Coordinator

Lenae Voellmecke is the Coordinator for the Duval Legislative Delegation. The Coordinator heads the Delegation Office. The Coordinator's duties include serving as a liaison between the City of Jacksonville and the 8 members of the Delegation, as well as liaison between the Delegation and the councils, committees and agencies of the State of Florida. The Coordinator facilitates all meetings of the Duval Legislative Delegation and maintaining all public records of those meetings as well as all other Delegation public records. Finally, the Coordinator assists each of the Delegation Members in planning events with community leaders and community organizations.

Prior to joining the Delegation, Mrs. Voellmecke worked as a legal secretary with the State Attorney's Office in Pensacola and as a marketing and public relations specialist with the Pensacola Little Theatre.

Mrs. Voellmecke attended The Ohio State University where she studied at the John Glenn School of Public Affairs with a focus in public health policy. While in school, she was chosen to be a John Glenn Scholar and interned in Washington D.C. working on suicide prevention policy with The American Foundation for Suicide Prevention. After graduation, Lenae worked for the Ohio House of Representatives beginning as a Legislative Page, and graduating to Constituent Aide, and then Legislative Aide.

2019
City of Jacksonville
Orientation Program

THE CITY OF JACKSONVILLE CONSOLIDATED GOVERNMENT & CHARTER

Materials Prepared and Assembled By:

Jason R. Gabriel, General Counsel

June 2019

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JACKSONVILLE'S CONSOLIDATED GOVERNMENT & THE CHARTER OF THE CITY OF JACKSONVILLE

I. BACKGROUND TO THE ADOPTION OF THE CITY CHARTER

Prior to consolidation, the governmental structure of Duval County and the City of Jacksonville remained largely unchanged since the early 20th century.[1] The City was governed by a nine-member City Council and a five-member City commission, consisting of the Mayor, and the heads of the various City departments. In addition, Duval County was governed similarly, with: (1) a five-member County Commission, (2) a five-member budget commission, and (3) five elected constitutional officers. Because of this dual structure, the two governments frequently duplicated governmental services.

In addition to the duplicated governmental structures, several other factors played into the initiation of the consolidation debate. Among these factors were the lack of storage and treatment for the county and city sewage; 75-80 percent of the sewage was ultimately dumped into the St. John's River. Furthermore, the Florida Supreme Court upheld the trial court judge order finding that the county property appraiser had failed to adequately assess property values which affected the funding of Duval County schools. By 1964, the Southern Association of Colleges and Schools disaccredited the County's fifteen high schools due to poor facilities funding. Finally, amidst these factors were allegations of malfeasance on the part of several public officials, whom, after the consolidation movement was in full swing, were ultimately indicted by a county grand jury.

In January 1965, a group of Jacksonville business and civic leaders met and produced the "Yates Manifesto," asking the County's legislative delegation to sponsor an enabling act to allow the citizens of Duval County to vote on the consolidation of Duval County with the City of Jacksonville, pursuant to Article VIII, section 9 of the Florida Constitution (1885). In April of 1965, the Florida Legislature approved a Local Government Study Commission which, in 1966, produced a report titled "Blueprint for Improvement." This report contained a recommendation to consolidate the county and city governments and devised a framework which, after some deliberation and changes, became the foundation for the City of Jacksonville's Municipal Charter. The Florida Legislature approved this bill and the framework and scheduled a referendum. On August 8, 1967, the electorate of Jacksonville and Duval County voted in favor of consolidation and the Consolidated City of Jacksonville officially began operating on October 1, 1968.[2]

II. COUNTIES AND MUNICIPALITIES

In general, there are two types of local governmental units in the State of Florida: counties and municipalities.[3] A county is defined as a political subdivision of the state, established pursuant to Article VIII, section 1, Florida Constitution (1968). A municipality on the other hand, is defined as a legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes.[4] The main differences between a county and a municipality are:

- A county is a political subdivision of the state established pursuant to Article VIII section I, Florida Constitution (1968), while a municipality is created pursuant to general or special law authorized or recognized by Article VIII section (2) or (6), Florida Constitution (1968).[5]
- In a traditional county/city governmental arrangement, municipal powers may be superseded or preempted by county powers[6] in a charter county. However, in a non-charter county, under most circumstances, a county ordinance will not apply to a municipality located within the county to the extent that there is a conflict with a municipal ordinance.

A unique form of governmental unit is the city-county consolidated government. This type of government unit occurs when the government of a county and the government of one or more municipalities located therein consolidate into a single government.[7] As of February 2012, there were 3,069 county governments in the United States, of which there were 40 consolidated governments.[8] In the case of the City of Jacksonville, consolidation of the City and County governments was authorized by a 1934 amendment to the 1885 Florida Constitution, which amendment was held over in the 1968 Florida Constitution. There are 67 counties in the State of Florida,[9] and only two consolidated governments: Miami-Dade County and the City of Jacksonville. The City of Jacksonville and Miami-Dade County contrast in that, unlike Miami- Dade County which retained its county government, the Jacksonville-Duval County consolidation eliminated two governments and replaced them with one municipal corporation, known as the City of Jacksonville.[10]

III. TWO SOURCES OF LOCAL LAW: THE CITY CHARTER AND THE ORDINANCE CODE

In addition to the laws of the United States and the laws of the State of Florida, the City of Jacksonville is guided by two sources of local law: the Charter of the City of Jacksonville and the Jacksonville Ordinance Code. The Charter contains the general organic principles by which the City must function, including the City's foundation and general framework. The City's Ordinance Code, on the other hand, contains the official laws of the City.[11] The City's ordinances provide the enabling mechanisms to carry out the general principles and framework of the Charter as well as the policies of the City.

IV. ANALYSIS OF THE JACKSONVILLE CITY CHARTER

A. Home Rule

Home rule is defined as a "[s]tate constitutional provision or type of legislative action which results in apportioning power between state and local governments by providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation."[12] More simply put, home rule is the right of self-government as to local affairs.[13] In a typical county, there are at least two governments in power: the county government and the governments of the municipalities located therein. Each of these governmental entities can exercise separate local government home rule powers. In the case of

a consolidated government, the government of a county and the government of one or more municipalities located therein consolidate into a single government with special home rule powers of a county and a municipality.[14]

Jacksonville, as a consolidated government in the State of Florida, has, in essence, a legal arrangement with the State of Florida whereby Jacksonville's Charter, as approved by the Florida Legislature and electors of Duval County, together with the Municipal Home Rule Powers Act, provide the local government certain discretion and flexibility in carrying out local functions. Such home rule powers provide that the consolidated government, as a municipal corporation can exercise any power for municipal purposes except as otherwise provided by law.[15] Limitations on the City's home rule powers are found generally in the Municipal Home Rule Powers Act and in the City Charter. Accordingly, under its broad home rule powers, the City of Jacksonville can exercise any power that may be exercised by the State of Florida not expressly prohibited by the Constitution or the general laws of the state as authorized in the Municipal Home Rule Powers Act.[16]

Under that Act and by virtue of the City Charter, the City Council is authorized to enact legislation on any subject upon which the state legislature can act, ***except***:

a) annexation, merger, extraterritoriality;[17]
b) any subject expressly prohibited by the Constitution;[18]
c) any subject expressly preempted to the state or county by general or special law;[19] and
d) any subject affecting the power, rights, duties and abilities of Jacksonville Beach, Atlantic Beach and Neptune Beach or the Town of Baldwin.[20]

Because Jacksonville is a municipal corporation, and, therefore, has no county charter, the first three limitations govern home rule actions by the City. Furthermore, because the City is consolidated, its home rule allows the City of Jacksonville to have the powers conferred to both counties and municipalities as set forth by the Florida Constitution and Florida Statutes.[21]

It is important to note that the other cities and towns in Duval County, those of Jacksonville Beach, Atlantic Beach, Neptune Beach, and the Town of Baldwin voted to retain their independent governments when Duval County and Jacksonville consolidated. Today, the City of Jacksonville stands in the relationship similar to that of a county government to them, and they continue to function as municipal governments exercising their own municipal home rule powers.[22]

B. Non-Charter and Charter Counties

Without a charter, a county only has the powers as prescribed to it by the Florida Legislature through general and special laws.[23] These non-charter counties are permitted to do anything that is not prohibited by state law.[24] A charter county, on the other hand, has all of the powers of local self-government as defined in the charter and not inconsistent with general or special laws.[25] Charter counties generally have greater freedoms from state intervention then non-chartered ones, and do not have to seek state approval for many issues related to local government, especially in areas such as organization, taxation, and salary setting.[26]

Twenty of the 67 counties located in Florida have adopted charters.[27]

C. The City Charter: In General

The Charter of the City of Jacksonville was originally created in Chapter 67-1320, Laws of Florida. Presently, it is found in Chapter 92-341, Laws of Florida, re-adopted by the Florida Legislature in 1992.[28] The Charter conforms to the traditional notions of local government. The following is a description of some of the articles and independent agencies found in the City of Jacksonville's Charter.

1. Article 1: Government and Ethics

This Article explains the consolidation of the former city and county governments into a single body politic and corporate pursuant to the power granted by former s.9 of Article VIII of the Florida Constitution of 1885, as amended, which section was continued by and remains in full force and effect under s. 6 of Article VIII of the Florida Constitution. It also specifies the autonomy of the three beach cities and the Town of Baldwin from the consolidation process. This Article was amended in 2010 (via Ordinance 2010-616-E) and modified subsequently thereafter to include a chapter on ethics with pronounced oversight and compliance processes and procedures.

2. Article 2: General and Urban Services Districts

This Article explains that the territory of the former Duval County is presently called a general services district (GSD). Within that general services district are five urban services districts (USD). USD 1 consists of the city limits of the former City of Jacksonville as it existed immediately prior to consolidation. USD 2 encompasses the City of Jacksonville Beach. USD 3 encompasses the City of Atlantic Beach. USD 4 encompasses the City of Neptune Beach. USD 5 encompasses the Town of Baldwin. This Article also specifies what governmental and proprietary services are performed throughout the GSD and USDs.

3. Article 3: Powers of the Consolidated Government

This Article specifies that the City of Jacksonville has local home rule powers not inconsistent with the general law conferred upon both charter and non-charter counties and municipalities. It specifies how charter amendments can be made under home rule. It defines the type of governmental power the City can exercise in the Beaches and Baldwin communities.

4. Article 4: Division of Powers

Article 4 provides that the powers of the consolidated government shall be divided into three separate branches: the legislative, the executive, and the judicial branches. All powers and duties which are legislative in nature are to be exercised and performed by the City Council. All powers and duties that are administrative or executive in nature are to be

exercised or performed by the Mayor, or his or her designee. Lastly, all powers and duties considered judicial in nature are to be exercised and performed by the court of appropriate jurisdiction. Because there are instances where the nature of the power or duty is uncertain, the duty should be assigned to the appropriate branch of government. Pursuant to General Counsel Opinion 68-121, that responsibility resides with the General Counsel.

5. Article 5: The Council

Among other things, Article 5 sets forth the make-up, terms, compensation, and certain procedures of the City Council, i.e., 19 members, 14 council districts, and 5 at-large residence areas, serving four year terms. It also provides for a method of reapportioning the council districts, within eight months after publication of the federal census of the City of Jacksonville, in order to ensure equal representation of all residence areas. Section 5.05 of the Article further provides that Council members are elected constitutional officers, and, pursuant to section 5.07, may exercise not only all legislative powers of the consolidated government, but also perform budgetary reviews and monetary appropriations for the City and for some of its independent agencies. The Council is further charged with the responsibility of setting the salaries of the Property Appraiser, the Tax Collector, the Sheriff, the Supervisor of Elections, and the Clerk of the Circuit and County Courts for Duval County.

- **Prohibition Against Dual Office Holding and Employment**

Members of the City Council cannot hold any other office or public employment except as a notary public.[29] Furthermore, members of the City Council cannot be an employee of the City or its independent agencies, except for certificated employees of the Duval County School Board. Thus, City Council members cannot be members of any other federal, state, or local board. They cannot be employed by the City, JEA, JPA, JAA, JTA, or the Police and Fire Pension Board. This prohibition against dual office holding and employment is a somewhat stricter version of the prohibition against dual office holding found in Article II, section 5, of the Florida Constitution.

6. Article 6: The Mayor

Similar to Article 5, this article sets forth the qualifications, term of office, powers and duties, and the compensation of the Mayor. Included in those granted powers is the Mayor's ability to veto any ordinance or resolution adopted by the City Council with a few exceptions. Those exceptions include: consolidation of the urban services districts, appointments to the Zoning Board and the Building Codes Adjustment Board, zoning exceptions and variances, the Auditor, the Secretary of the Council or other employees of the Council, internal affairs of the Council, investigations by the Council or any duly appointed committee thereof, and quasi-judicial decisions made by the City Council. Section 6.02 of the Article further provides that the Mayor is considered an elected constitutional officer for purposes of section 8, Article II, of the Florida Constitution.

7. Article 7: Office of General Counsel

Article 7 of the Charter is divided into separate sections concerning the Office of the General Counsel and the Duval County Legislative Delegation. The Office of General Counsel section sets forth the responsibilities, qualifications and selection procedures of the General Counsel and assistant general counsels. The section also establishes the Duval County Legislative Delegation with all of its functions; an activity which is housed within the Office of General Counsel.

- **The Office of General Counsel**

Article 7 establishes the Office of General Counsel. Within the Office of General Counsel is the General Counsel who is the chief legal officer for the entire consolidated government. The Office of General Counsel is responsible for furnishing legal services to the City and its independent agencies. Along with providing legal services, the General Counsel issues binding legal opinions which constitute the final authority for the resolution or interpretation of any legal issue relative to the entire consolidated government. These opinions are considered valid and binding in their application unless and until it is overruled by a court or by an opinion of the Florida Attorney General.[30]

With more than 40 attorneys, the General Counsel's office is one of the largest law firms in Jacksonville. Because of the unique nature of the consolidated City of Jacksonville, the Office of General Counsel offers a diverse civil law practice, including practice areas such as litigation, real estate, land use, environmental law, labor and employment law, personal injury, bankruptcy, eminent domain, municipal finance, contract negotiation and drafting, and a variety of economic development and transactional areas. These various specialties are divided among the Office's five departments: general litigation; tort and employment; regulatory and constitutional law; governmental operations; and legislative affairs.

From the time of the adoption of the City's Charter, the Office has managed to eliminate the inter-governmental litigation of the pre-consolidation era. Furthermore, in recent years, the Office of General Counsel has reduced the need for outside counsel while continuing to meet the demands of its various clients, including the Mayor, the City Council, the Sheriff's Office, the Tax Collector, the Clerk of the Court, the Supervisor of Elections, the Property Appraiser, the Duval County School Board, and all of the independent agencies.

D. The Constitutional Offices in the City Charter

A constitutional office is an office created by the Constitution.[31] Pursuant to Article VIII, § 1(d) of the Florida Constitution, the City of Jacksonville (like all counties) has five constitutional offices, including the Sheriff, the Supervisor of Elections, the Property Appraiser, the Tax Collector, and the Clerk of the Courts. With consolidation, all pre-existing county offices became offices of the City. The duties and qualifications of each of these officers are found in the City Charter, articles 8 through 12 and each of these officers is elected to a four- year term with a two-term limit. In addition, these City offices must comply

with the responsibilities set forth in Florida Statutes for such offices.

1. Article 8: Sheriff

The sheriff is responsible for the management, operation, and control of law enforcement and traffic safety in the City of Jacksonville. The sheriff is also charged with administering the prison farm and jails, as well as for service of civil process. The sheriff must be a qualified elector and resident of Duval County before qualifying to run for this office. Each sheriff is required to devote his or her entire time to the performance of the duties of the office and cannot hold any other public office or public employment with the exception of military membership and a notary public.

2. Article 9: Supervisor of Elections

The supervisor of elections is responsible for maintaining rolls of qualified voters of the consolidated government and for the conduct of all elections. The supervisor of elections must be a qualified elector and resident of Duval County. This constitutional officer is limited to the duties of the office and cannot hold any other public office or public employment.

3. Article 10: Property Appraiser

The property appraiser is responsible for assessing all real and personal property in Duval County. Like the other constitutional officers, the property appraiser must be a qualified elector and resident of Duval County. The property appraiser cannot hold any other public office or public employment.

4. Article 11: Tax Collector

The tax collector is responsible for the collection of all taxes, fees, service charges, and all other revenues of any type due the consolidated government except as the council may otherwise provide with respect to the collection of charges for water and sewer services and any public service tax on the purchase of such services. It is the tax collector's duty to collect and receive all real, personal, and intangible property taxes due to the consolidated government in accordance with such ordinances as the council may from time to time enact. The tax collector performs all duties which are imposed by general or special laws on the tax collector of Duval County.

5. Article 12: Judiciary (Clerk of the Court §12.06)

The clerk of the circuit and county courts is responsible for all judicial filings, pleadings, marriage certificates, clerical work, recording and the administrative work of the courts within Duval County.

E. Independent Agencies

An independent agency, as contemplated by the Charter, is not defined, except to identify the particular entities that are independent agencies. These include the Duval County School Board, Jacksonville Port Authority, Jacksonville Transportation Authority, JEA, the Jacksonville Police and Fire Pension Board of Trustees, and the Jacksonville Housing Authority. [32] For purposes of the Charter, based upon the identity and framework of the various referenced authorities, an independent agency is a separate body politic and corporate that has its own executive and policy making branch from the City. However, based upon the legislative creation of the specified independent agencies, there is a relationship to the City that typically involves use of city central services and/or budgetary review and approval by the City Council.

1. Article 13, Charter: Duval County School Board (DCSB)

The DCSB framework is found in Article 13 of the City of Jacksonville Charter.[33] A body corporate, the DCSB is responsible for the public school system in Duval County. The Board consists of seven members elected in a non-partisan district election from one of the seven school board districts. The members must be electors and residents of the school board district in which they are elected. The DCSB must designate a superintendent of schools who becomes the chief administrative employee of the board.

2. Article 21, Charter: JEA

The Charter of JEA is in Article 21 of the City's Charter. JEA is a body politic and corporate with the authority to own, manage, and operate a utilities system within and outside the City of Jacksonville. JEA is created for the express purpose of acquiring, constructing, operating, financing and otherwise having plenary authority with respect to electric, water, sewer, natural gas and such other utility systems as may be under its control now or in the future. JEA can issue revenue bonds, with the approval of the City Council through an ordinance, and is authorized to set utility rates and review purchase projects.

The governing body of JEA consists of seven members, appointed by the Mayor and confirmed by the City Council for four-year terms on a staggered basis. Each JEA board member must have been an elector and resident of the City of Jacksonville for at least six months prior to appointment. JEA board members are not compensated for their services on the JEA board.

Prior to September 25, 1998, JEA was known as the Jacksonville Electric Authority. However, because of the extension of its powers over the water/sewer utility system, its name was formally changed to JEA.

3. Article 22, Charter: Jacksonville Police and Fire Pension Board of Trustees

The framework for the Jacksonville Police and Fire Pension Board of Trustees is found in Article 22 of the City of Jacksonville's Charter. A body politic and corporate, the Pension Board is solely responsible for the administration of the Police and Fire Pension fund. The membership of the Pension Board consists of five members, of whom two must be legal residents of the City of Jacksonville appointed by the City Council, one must be a police officer elected by a majority of the police officers who are members of the pension fund, one must be a firefighter elected by a majority of the firefighters who are members of the pension fund, and the final member is chosen by a majority of the other four members.

4. Article 4, Part B, Charter: Jacksonville Aviation Authority (JAA)

As of October 1, 2001, the JAA was separated from the former Jacksonville Port Authority pursuant to 2001-319, Laws of Florida, and established as a body politic and corporate. The JAA's framework is found in Article 4, Part B, City of Jacksonville Charter. The JAA operates, manages, and controls all of the publicly owned airports and ancillary facilities located within Duval County. The JAA owns and operates the Jacksonville International Airport, JaxEx at Craig Airport, Herlong Recreational Airport, and Cecil Airport.

The governing body for the Jacksonville Aviation Authority consists of seven members, three of whom shall be appointed by the Mayor of the City of Jacksonville with the confirmation of the council of the City of Jacksonville, and four of whom shall be appointed by the Governor of Florida with the confirmation of the Senate.

The governing body of JAA consists of seven unpaid members, three of whom are appointed by the Mayor of the City of Jacksonville with the confirmation of City Council, and four of whom are appointed by the Governor of Florida with the confirmation of the Senate. Board members serve staggered four-year terms and may be appointed to one additional term. See Laws of Florida, Chapter 2004-464.

5. Article 5, Part B, Charter: Jacksonville Port Authority (JPA)

Created by a special act of the Florida Legislature in 1963, the JPA is a local, public and independent authority of the City of Jacksonville.[34] JPA's framework is found in Article 5, Part B, City of Jacksonville Charter. This body politic and corporate has the authority to operate, manage, and control the publicly owned seaport and ancillary facilities located within Duval County. The JPA owns and operates three cargo terminals and one passenger cruise terminal along the St. Johns River including the Blount Island Marine Terminal, Dames Point Marine Terminal, Talleyrand Marine Terminal and the JAXPORT Cruise Terminal.

The governing body of JPA consists of seven unpaid members, four of whom are appointed by the Mayor of the City of Jacksonville with the confirmation of City Council, and

three of whom are appointed by the Governor of Florida with the confirmation of the Senate. Board members serve staggered four-year terms and may be appointed to one additional term.

6. Chapter 51A, Ordinance Code: Jacksonville Housing Authority (JHA)

Created pursuant to the authority of Part I, Chapter 421, Florida Statutes, and established pursuant to Chapter 51A, Ordinance Code, the JHA is a public body corporate and politic whose mission is to provide quality housing and housing related services to Duval County's low and moderate income individuals and families.[35] The operation and management of the JHA program is not for profit.

The JHA is overseen by seven unpaid voting commissioners appointed by the Mayor and confirmed by the City Council. The Commission employs a Housing Authority President/CEO responsible for the operation of business and implementation of Authority policies.

7. Chapter 349, F.S.: Jacksonville Transportation Authority (JTA)

The JTA was formed by the State Legislature in 1971. The framework of the JTA is found in Chapter 349, Florida Statutes[36] which provides the authority for this state agency, as a body politic and corporate, to build roads and bridges that are a part of Duval County's expressway system. The JTA may sell bonds for financing projects, and is supported by revenues from a half-cent sales tax. The JTA may purchase, operate, and lease buses and bus systems and design and operate mass transit for Duval County.

The JTA board consists of seven members serving four-year terms on a staggered basis. Three of the board members are appointed by the Governor of Florida and confirmed by the Senate and three are appointed by the Mayor of the City of Jacksonville subject to the confirmation of the City Council. The final board member is the District Secretary of the Department of Transportation serving the district that contains Jacksonville. All members of the governing board must be residents and qualified voters of the City of Jacksonville, with the exception of the Department of Transportation District Secretary.

8. Related Laws

Part B of the Charter contains laws related to the City of Jacksonville that are derived from special acts of the Legislature and general laws and constitutional provisions pertaining to the City.[37] They are referred to in the Charter as "Related Laws." Most of the related laws concern the independent agencies of the City that have been created by the Legislature through general and special acts and not as part of the City Charter.[38] The fourteen articles referenced in the Charter as Related Laws, are not an exclusive list of all laws relating to the City of Jacksonville; these articles only contain those laws deemed most closely related to the structure of the City of Jacksonville.[39]

F. Amending the City Charter

Though not a regular occurrence, amendments to the Charter may be accomplished by one of four different methods: (1) ordinance by the City Council, (2) ordinance approved by referendum, (3) special act of the Florida Legislature and (4) a voter initiative approved by referendum. The enactment of an ordinance by the City Council is done pursuant its home rule power. As previously mentioned, home rule power is broad, but it is not absolute. Section 3.01 of the City Charter provides that such home rule Charter amendatory power may be exercised with the exception of the following matters:

1. Municipal annexation of unincorporated territory, merger of municipalities and exercise of extraterritorial powers by municipalities;
2. Any subject expressly prohibited by the Constitution;
3. Any subject expressly preempted to state government by the Constitution or by general law; and
4. Any subject affecting the power, rights, duties and abilities of Jacksonville Beach, Atlantic Beach and Neptune Beach, or the Town of Baldwin.[40]

The second method of amendment provided by section 3.01 of the Charter is by ordinance approved by referendum as provided in Section 166.031, Florida Statutes. The types of Charter amendments contemplated by this method include legislation that affects:

1. The creation or existence of a municipality,
2. The terms and manner of elections of elected officials,
3. The distribution of powers among elected officials,
4. Matters involving Charter provisions relative to appointive boards,
5. Matters involving the Offices of General Counsel and Council Auditor,
6. The form of government, or
7. Any matter affecting the rights of municipal employees.

The third method by which the Charter may be amended is the enactment of a special act by the State Legislature. Under the Jacksonville Consolidation Amendment in Article VIII, section 9 Florida Constitution (1885), as held over, the State Legislature retains jurisdiction to amend or extend the Charter without referendum. Such retention of authority allows the Legislature, by special act, to consider and enact amendments that cannot be enacted under home rule or which can be enacted by ordinance but which also require a referendum to approve the ordinance. Typically, such elections are expensive. Use of the legislative amendment is less expensive and less complicated. Such legislative

amendments take the form of special legislative acts known as "J-Bills" because they relate to the City of Jacksonville. J- Bills are drafted by interested persons, considered by the Council in the Rules Committee and before the Full Council, and are either approved or disapproved. They are then presented to the Duval County Legislative Delegation for approval and ultimate filing in the State Legislature. The Duval County Legislative Delegation can follow the recommendation of the City Council or it can ignore it and approve or disapprove J-Bills on its own.

The fourth method by which the Charter may be amended is a referendum approving a proposed amendment placed on the ballot by petition.

G. The Charter Revision Commission

Chapter 17 of the Ordinance Code provides for the creation of a Charter Revision Commission. The Commission consists of between 11 and 15 members recommended by the City Council President and appointed by the Council. The Charter Revision Commission is responsible for making recommendations to the Council and members of the Florida Legislature representing Duval County on matters concerning provisions of the Charter and special acts of the Legislature affecting Duval County.[41] In making recommendations, the Commission considers all factors deemed relevant to the establishment of a relationship between the state and local units of government in Duval County and all ideas that are best calculated to fulfill the needs of the citizens of Duval County.

V. CONCLUSION

The organic structure and powers of city government are found in the City Charter. The Ordinance Code implements matters pertaining to the City Charter and created City policy. The Council also works in conjunction with the State Legislature to provide for Charter amendments and the enactment of other local laws not embraced under broad home rule authority.

The Charter is the framework for the consolidated government in Jacksonville. The legislative responsibilities delegated to local government are accomplished by the City Council through the passage of ordinances and resolutions. This legislative act must not conflict with any state or federal law and is authorized under our broad home rule power. There are extraordinary and exciting challenges facing the governing body of a consolidated city/county government.

The City Council, acting in its representative, legislative or quasi-judicial role can expect the cooperation and assistance of the Office of General Counsel in order to navigate through the complex and expansive mandates of federal, state and local law.

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NOTES

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[2] Consolidated Jacksonville – Twenty-five Years of Progress, Public Information Office, City of Jacksonville, 1993.

[3] 12A Fla. Jur. 2d *Counties and Municipal Corporations* § 1 (2015) and Fla. Stat. § 165.031

[4] Black's Law Dictionary (10th ed. 2014)

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[7] Fla. Stat. Ann. Const. Art. VIII § 3 (West 2015)

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[17] Fla. Stat. § 166.021(3)(a); Jacksonville Charter Art. III, § 3.01(e)(1)(i)

[18] *Id*. at § (3)(b); Jacksonville Charter Art. III, § 3.01(e)(1)(ii)

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[25] Fla. Stat. Ann. Const. Art. VIII § 1 (g) (West 2015)

[26] Sherwood et al, *supra* note 10

[27] Florida Association of Counties (2015):
http://www.fl-counties.com/about-floridas-counties/charter-county-information

[28] 1992 Fla. Laws Ch. 341

[29] Jacksonville Charter art. V, § 5.04

[30] Jacksonville Charter art. VII, § 7.02

[31] *Thomas v. State*, 58 So. 2d 173 (1952); 9 Fla. Jur. 2d Civil Servants § 9 (2015)

[32] Jacksonville Charter art. XVIII, § 18.07. Note that the JHA is not included in § 18.07;

however, the legal attributes of the JHA are almost identical to the five listed independent agencies

[33] Jacksonville Charter Art. XIII (2015)

[34] 1963 Fla. Laws Ch. 1447, *amended by* 1967 Fla. Laws Ch. 1533; Laws of Florida, Chapter 2004-465

[35] Fla. Stat. Ann. § 421 (2015); Jacksonville Ordinance Code Ch. 51A (2015)

[36] Fla. Stat. Ann. § 349.03 (West 2015)

[37] Jacksonville Charter commentary to Part B (2015)

[38] *Id.*

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[40] Jacksonville Charter Art. III, § 3.01

[41] Jacksonville Ordinance Code, Chapter 17

2019
City of Jacksonville
Orientation Program

CONSOLIDATED GOVERNMENT AND INDEPENDENT AGENCY BUDGETARY PROCESS OPINIONS (COMPILED AND UPDATED)

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BUDGET PROCESS INTRODUCTION

The Office of General Counsel has previously issued dozens of opinions relating to the budgetary process of the City and its independent agencies. The General Counsel has issued many of the opinions making them binding legal opinions. Various Assistant General Counsels have issued dozens more. Some of these opinions were issued in the first days of consolidation. Others have been issued in the past few years. The Charter has been amended more than 100 times. In the first year after Consolidation took effect, the State adopted a new Constitution. Both federal and state laws (statutory, constitutional and common law) have significantly changed in the nearly five decades since consolidation. On the other hand, many primary principles of the Charter, governmental law, and constitutional law have not changed. The budget and the budget process are far more complex than in the 1960s. In the interest of assisting all officials involved in the local government budgetary process and in order to assemble all such related concepts in one orderly document, this opinion compiles and organizes the most significant previous budget opinions, with such modifications as are necessary in the light of the current status of the law. Below is a list of the General Counsel opinions most relevant to the budget[1]. This memorandum summarizes those opinions, and in particular OGC Opinions 69-283 and 71-7:

68-101	Finances - Carryover Budget Funds
68-106	Relationship of Clerk of Criminal Court of Record to Consolidated Government
68-118	Raises Granted City Employees Prior to 10/1/68
68-141	Increase of Occupational License Taxes During Fiscal Year
69-164	Single Government
69-207	City's Liability for Services Rendered by Zoning Consultants
69-208	Guidelines for Tighter Budgetary Control
69-170	Appeal of Decision of Firemen's Suit
69-237	Independent Agency Budgets
69-239	Use of Municipal Revenues
69-255	Interim Budget Expenditures of the Duval County School Board and the Jacksonville Port Authority Between 7/1 and Final Adoption of Their Respective Budgets by the Council
69-266	Jacksonville Port Authority Budget

[1] Some of these opinions concern entities that no longer exist or concern the transfer of governmental powers from the former governments to the (then) new Consolidated Government. Consequently, portions of these opinions have little relevance to today's operation of Consolidated Government.

69-283 Consolidated Government Budgetary Process

69-304 Subjection of the Judiciary to Appropriation and Budget Control

69-317 Meaning of Terms "City" and "City of Jacksonville"

70-13 Mayor's Veto Power over Council Salaries

70-342 Duties of Treasurer

70-349 Use of Budgeted Reserve Funds

71-7 Consolidated Government and Independent Agency Budgetary Process Opinions Compiled and Updated

71-13 Mayor's Veto Power Over Council Salaries

71-16 Appropriation by the City Council of Municipal and County Funds to the Florida Junior College at Jacksonville

73-6 Current School Board Budget and School Tax Levy Procedures as Affected by House Bill 1208

73-9 Effect of Elimination of Council Review of School Board Budget on the Applicability to the Board of the Provisions of the City Charter Pertaining to the Personnel Department and Collective Bargaining

75-5 Overexpenditure on Imeson Boulevard - Phase 1

91-0 Tax Cap Charter Amendment by Referendum Unlawful

92-1 Council Budgetary Control over the Jacksonville Port Authority for Travel Expense Reimbursement

05-01 Mayoral Authority to Transfer Funds Under the Charter of the City of Jacksonville

13-2 Issues relating to the reporting of millage and adoption of the annual budget

* * *

I. CONSOLIDATED GOVERNMENT

A. Philosophy of Budgetary Process.

Budgetary laws grew out of a necessity to require governmental entities to live within their income and conduct their affairs with system and dispatch, and the purpose of an annual budget is to limit the power of a City with reference to raising and expending public funds. State ex rel. Cole v. Keller, 176 So. 176 (Fla. 1937). In each government, policy-making authority inherently exists, authority to fix goals, determine what services will be offered, establish

the amounts of funds to be spent to furnish the services, and establish overall fiscal policy consistent with the governing law. Chiles v. Children A, B, C, D, E, 589 So. 2d 260 (Fla. 1991). Separate authority exists to execute the day-to-day operations necessary to achieve the goals, furnish the services, spend, as required, the funds authorized to furnish the services, and implement the overall fiscal policy. Citizens for Reform v. Citizens for Open Government, Inc., 931 So. 2d 977 (Fla. 3rd DCA 2006); OGC Opinions 69-283 and 71-7.

In the consolidated government, the City Council, as the legislative body, makes policy and the Mayor, assisted by the executive branch, executes that policy. Section 4.01 of the Charter expressly establishes this principle of separation of powers:

> "The powers of the consolidated government shall be divided among the legislative, executive, and judicial branches of the consolidated government. No power belonging to one branch of the government shall be exercised by either of the other branches, except as expressly provided in this charter."

This separation-of-powers principle applies to all provisions of the Charter, including those pertaining to the budget. *See, e.g.*, OGC Opinion 70-13 concluding that separation of powers principles prohibited the Mayor from vetoing ordinances fixing salaries of the Council Auditor, the Council Secretary, and other employees of the City Council.

The Council generally exercises its fiscal responsibilities, i.e., sets policy by adopting an *annual* budget. Annual budgeting ensures a periodic fiscal review and encourages orderly planning. Zingale v. Powell, 885 So. 2d 277 (Fla. 2004). The Mayor, as chief executive compiles and submits a budget to the Council. Section 6.04 of the Charter. This *proposed* budget will necessarily include the Mayor's recommendations of goals for the government and services which should be furnished. Once the Council adopts the budget, the Mayor ensures that the funds are spent as and when necessary for the purposes authorized by the Council. The Mayor's power and responsibility to execute the budget includes the power to transfer funds within a division during the budget year as deemed necessary to carry on day to day operations, within the purposes authorized by the Council.

The legislative and executive functions have equal dignity, and the separate powers and responsibilities of the legislative and executive branches of the government must be recognized by the other. *See, e.g.,* In the Matter of Supreme Court License Fees, 251 Ark. 800 (1972). While the Charter itself expresses these broad principles, this summary seeks to furnish general guidance to all officials involved in the budgetary process.

B. Applicable Laws.

1. *City Charter*

The key Charter provisions related to the budget include: (1) the requirement that the Mayor submit an annual budget to the Council (*Section 6.04,* Charter); (2) the requirement that the Council adopt an annual budget (*Section 5.07,* Charter); (3) the authority of the Mayor to "disapprove the sum of money appropriated by any one or more items, or parts of items, in any ordinance appropriating money for the use of the consolidated government or any independent

agency" (*Section 6.05*, Charter); and (4) the power of the Council to override such veto (*Section 6.05*, Charter).

These Charter provisions can and must be read together and construed to give effect and meaning to each. The Council may not adopt a budget that impairs or destroys the Mayor's transfer power under Charter Section 14.03 or veto power under Charter Section 6.04. The Mayor, of course, cannot prevent the Council from altering the budget submitted by the Mayor.

2. Ordinance Code

Chapter 106, Ordinance Code provides budget and accounting requirements.

3. Florida Statutes

Chapter 129 and Chapter 200 provide state budget and accounting requirements.

C. Alternatives for Implementation.

Since the Charter budgetary provisions furnish only broad guidelines for a budgetary process, the Council and the Mayor have discretion in implementing the budget. The City must also abide by state law including but not limited to the provisions of Chapter 129 and 200, Florida Statutes. The Council, as the governing body of the City and the authority which adopts the annual budget, determines the final form of the budget. Under the Charter and traditionally, Council may create at least three different forms of budget subject to statutory limitations provided by State Law. OGC Opinions 69-283 and 71-7.

1. Major Object Budget

The Council could divide the budget along organizational lines, with separate classifications for each department, board and office, and sub-classifications for divisions and further sub-classifications for activities within divisions, where applicable. The budget could cross-classify major object classes, representing broad purposes of expenditures for such purposes as personnel services, supplies, central services, other services and charges, and capital outlay. The budget could subdivide major object classes into narrower categories in varying degrees of detail, and establish nondepartmental accounts. *See, e.g.,* Matter of Arthur v. Griffin, 157 Misc. 2d 271, 596 N.Y.S.2d 310 (1993).

The Council may elect to adopt a budget specifying appropriations for major object classes of accounts within each activity, division, department, board and office, together with appropriations for each of the desired non-departmental accounts. After the budget is adopted, the Mayor would have the duty and responsibility to establish adequate controls to ensure that all funds are expended for the purposes for which they were appropriated. The Mayor would have the corresponding authority to establish allocations and allotments of funds within each major object class, to make allocations or allotments on a periodic basis, and to otherwise establish and implement policies and procedures to control the expenditure of funds. *See, e.g.,* Honorable Mark R. Shedd, 1977 WL 36337 (Conn. A.G. 1977) (discussing major object categories).

At the outset of the budget year, the Mayor would have the discretion to:

> (a) determine the number of employees to be assigned to each activity, division, board and office, the distribution of the employees among the various job classifications established by the Civil Service Board, and the salary to be paid each employee, subject to two limitations.
>
> (1) The total salaries paid from each total appropriation for personnel services cannot exceed the sum appropriated,
>
> (2) The total salary paid to each employee must conform with the job pay plan established by the Personnel Department for the classification assigned by the Civil Service Board to the employee, and to the salary fixed for each non-civil service officer and employee by the salary fixing authority.
>
> (b) determine and control the allocation and allotment of appropriations for each supplies, other services and charges, capital outlay and other major object class account.

Under Section 14.03 of the Charter, the Mayor has the additional authority to adjust the amounts appropriated within a division, as deemed necessary by him from time to time during the year. *See* Detroit City Council v. Stecher, 421 N.W. 2d 544 (Mich. 1988) (noting that separation of powers and the city charter control the budget powers of the mayor and council).

2. Line Item Budget

The Council may exercise greater control over the purposes for which funds will be spent by adopting a Line Item Budget. *See, e.g.*, Colo. Gen. Assembly v. Owens, 136 P.3d 262, 265 (Colo. 2006) (en banc). A Line Item Budget exercises the greatest degree of budgetary control permissible under the Charter, it is here that the budgetary power might collide with, and so must be consistent with, other Charter provisions under the doctrine of separation of powers. *See, e.g.*, Advisory Opinion In Re Separation of Powers, 295 S.E.2d 589 (N.C. 1982).

With respect to personnel services, the appropriating of funds for a detailed salary purpose for a single employee or officer collides with and must yield to the salary fixing power whenever the salary fixing power is vested in a body or official other than the Council. The fixing of salaries for civil service employees is a mixed function of the executive branch and the Civil Service Board. The Charter does not permit the Council a role in the salary fixing function for civil service employees, and the General Counsel, in the past, concluded that the line item budget power may not be exercised in such a way as to infringe upon it.

Previous General Counsels have concluded, however, that the Council may limit the number of employees which may be paid from each division's personnel services appropriation and control the amount of each division's personnel services

appropriation. Neither of these actions collides with the function of fixing salaries or of assigning job classifications to civil service employees. Thus, the budget can restrict the total number of employee positions in a division and can restrict the total amount appropriated to a division for all purposes. The Council cannot, however, prevent the transfer of other sums within the division to such the personnel services account by the Mayor. A budget limiting the number of employees or the amount of a division's personnel services appropriation, or limiting both, permits the Council significant control over the costs of personnel.

Where the Council has the power to fix salaries, as for example, the salaries of certain elected officials, department directors, division chiefs, and a variety of other non-civil service employees, individual salaries must be fixed by Council ordinance and may be a line item in the budget. Where the salary-fixing power is not vested in the Council, the Council may request and consider all detailed employee classifications and salary data as background information in support of personnel services appropriations and limitations on the number of employees. If such data is included in the budget, it must be for information purposes only.

With respect to line-item appropriations for supplies and other services and charges purposes, the Charter is silent on the degree of detail which may be specified in the budget. General Law, therefore, applies and imposes a rule of reasonableness and practicability. What is a reasonable and practical degree of detail for a small town budget may not be reasonable and practical for Jacksonville's billion dollar budget. Previous General Counsels have concluded that a reasonable and practical limit on the degree of detail would be one classification level below the major object accounts established for accounting, reporting and management information purposes. Under supplies, for example, such classes might be fixed as office supplies, operation supplies, repair and maintenance supplies, and so forth. Further, the Mayor is given the responsibility by Charter Section 6.03 to "administer, supervise and control all departments and divisions. . ." As the earlier General Counsels have concluded, specifying appropriations in any greater detail than these minor classes may very well violate the separation-of-power doctrine. OGC Opinions 69-283 and 71-7.

3. Lump Sum Budget

At a minimum, the Council's adopted budget must specify the broad purposes of its appropriations, because the legal requirement to adopt a balanced budget requires that the citizens and taxpayers of the City are entitled to know at least the general purposes for which their elected legislative body has authorized public money to be spent. Early General Counsel opinions stated that in the absence of any specific Charter provisions requiring a particular degree of detail, general law requires that the Council must at least specify in its appropriation ordinance the sums appropriated for each division, office and board of the City, although the sums so appropriated may then be expended as the Mayor determines for personnel services, supplies and other services and charges. Capital outlay appropriations must at least identify the general project or projects authorized and for which the appropriated funds may be expended. *See, e.g.,* Ariz. Ass'n of Providers for Persons with Disabilities v. State, 219 P.3d 216, 227 (Ariz. 2009).

The Charter authorizes the Council to alter the Mayor's proposed budget on a

total basis, if the Council so elects. Under the lump sum concept, if the Mayor submitted a proposed line item or major object budget, the Council could appropriate funds at the division level of detail, together with such non-departmental appropriations for particular purposes as it deemed appropriate and with a total sum for generally identified capital outlay projects. The Council could appropriate the same lump sums as the Mayor requested, or greater or lesser lump sums.

If the Council appropriates the same or greater lump sums than the Mayor requests, the Mayor would have the authority and responsibility to allocate and allot the lump sum appropriations within the divisions of the budget for more detailed purposes as he deems appropriate, consistent with his responsibility to ensure adequate controls over expenditures and proper efficiency of operation.

If the Council appropriates lesser lump sums than the Mayor requests, the Mayor would have, in addition to the authority and responsibility described above, the further authority and responsibility to reduce or eliminate the line items he requested in his proposed budget, in those divisions which were reduced, in order to ensure the expenditure of only the reduced lump sums appropriated. The Mayor's authority would include the authority to establish authorized position classifications for employees and the authority to abolish previously authorized position classifications within any division or department, in accordance with the principles enunciated herein.

When the Council approves the budget in total, under the lump sum concept, the Council may also authorize the Mayor to make transfers between divisions, departments or other offices and boards in the Mayor's budget so long as no additional purposes amounting in law to an appropriation, are added. *See*, *e.g.*, Goldston v. State, 683 S.E.2d 237, 247 (N.C. Ct. App. 2009).

4. Budget Alternative Summary

In the more than four decades since the first General Counsel's discussed budget alternatives, the City Council has elected to adopt line-item budgets. The discussion of the other two alternatives gives insight into the respective roles of the City Council and the Mayor with regard to both adoption and implementation of the annual budget. So while the Council is unlikely to adopt a lump-sum budget, the discussion of that budget is a reminder of the authority the Mayor has to implement any budget adopted by the Council.

D. Capital Outlay Items.

Special considerations apply to appropriations for capital outlay projects. From the beginning of consolidation the annual budgets have listed most of the major capital outlay appropriations in a single schedule in the budget, the Capital Improvement Project Schedule. This schedule of capital projects and the budget therefore, is separate from the operating budget of the divisions that have responsibility to oversee such capital projects. For example, an early General Counsel opinion noted that the Southside Borrow Pit fell within the responsibilities of Streets and Highways even though it was not listed within the Streets and Highways budget in the 1970-71 Budget. The now repealed Charter Section 15.02 once required this separation of operating and capital budgets:

> "To the extent practicable, the Director of Finance shall divide the proposed budget between capital improvement funds and general operating funds."

Nevertheless, even when the Charter required this separation the General Counsel opined that the Mayor's transfer power, now enumerated in Charter Section 14.03, extended to those capital outlay projects which relate to and fall within the responsibilities of only one division. OGC Opinion 71-7. The General Counsel noted that the purpose of the quoted portion of the now-repealed Section 15.02 is to facilitate proper budgetary planning, not to limit the transfer power within divisions. Consequently, the General Counsel concluded that the Mayor may transfer funds appropriated by the Council to the Streets and Highways Division for general operating purposes to supplement the capital outlay appropriation for the Southside Borrow Pit project. Similarly, the Mayor had the authority to transfer the Southside Borrow Pit appropriation to the operating budget of the Streets and Highways Division.

"It is fundamental that ordinances of the Council are subordinate to Charter provisions and must be given effect consistent with Charter provisions." OGC Opinion 71-7. This fundamental principle applies even with regard to ordinances related to the budget process. In OGC Opinion 71-7, the General Counsel considered the impact of then Section 128.102, Ordinance Code, which prohibited supplementing of specific capital outlay projects from general capital outlay appropriations of the same class, noting that it applied on its face to all capital outlay appropriations. If it were applied to strictly divisional capital outlay items as outlined, the General Counsel opined, the ordinance would restrict the Mayor's transfer power under then- Section 15.08 (now Section 14.03) of the Charter in that area, and, therefore, construed it as inapplicable to these items.

Sections 125.74(1)(d); 125.85(2); 125.86(4) and 129.02(4), Florida Statutes, taken together, require counties to adopt an annual capital improvement budget.

E. Non-Departmental Appropriations.

Under any forms of budget, the Council may appropriate funds for three basic types of non-departmental line-item purposes:

1. funds for a common purpose throughout the general government, such as overtime pay and payroll costs such as pension contributions. The Council could authorize the Mayor to allot these funds to organizational units, or control expenditures for these purposes as common funds, without regard to organizational units. In a year in which the Council approves a common purpose within a fiscal year, the Mayor may further supplement such allotment by transfer of other unencumbered funds as long as the transfer remained within transfer authority granted by the Charter.

2. funds set aside for general government purposes, such as miscellaneous appropriations for civic, educational or charitable organizations.

3. funds set aside as a reasonable reserve for operations or capital outlay, to be transferred for expenditure for unforeseen purposes during the fiscal year.

F. Reserve Funds.

Uncommitted reserve funds in the budget are non-divisional and non-departmental funds, consequently, the Mayor's transfer power does not extend to uncommitted reserve funds. Therefore, the Mayor, under Section 14.03 of the Charter, does not have the power to transfer operating or capital outlay reserve funds for other budgeted purposes unless authorized by the Council. The Mayor may request, and pursuant to such request, the Council may transfer, such reserve funds to specific purposes during the budget year.

With regard to the size of budgeted reserve funds, a fundamental principle of municipal law, which is consistent with Jacksonville's budgetary Charter provisions, is that a budget containing large reserve funds is subject to attack by a citizen and taxpayer on the ground that an annual budget must disclose the purposes for which the City will spend its funds during the fiscal year.

The primary purpose of an annual budget is to require the City to make all of its reasonably foreseeable financial plans and incorporate them in one document once each year and to permit the citizens and taxpayers who provide the funds to see and comment on all of these plans at one time, based on an examination of one basic document. Large reserve funds which permit the financing of many new projects not planned for in the annual budget subvert this purpose. OGC Opinions 70-349 and 71-7.

This principle does not prohibit the City from setting aside some funds for ***unforeseen*** contingencies. However, reserve funds cannot be employed as a substitute for annual budgetary planning, and to the extent that reserve funds exceed a sum which is reasonable for truly unforeseeable needs, it is the opinion of early General Counsels that the budget may be subjected to legal attack.

Section 129.01(1)I, Florida Statutes, permits and regulates annual reserves for counties and allows for provision to be made for the following reserves:

1. A reserve for contingencies may be provided which does not exceed 10 percent of the total appropriations.

2. A reserve for cash balance to be carried over may be provided for the purpose of paying expenses from October 1 of the next fiscal year until the revenues for that year are expected to be available. This reserve may not be more than 20 percent of the total appropriations.

This does not prohibit reserves from being in a variety of separate accounts, but it does restrict the amount.

Effectively, this section allows counties to have reserves for two major purposes. One, a county may create a *contingency* reserve. Black's Law Dictionary (10th ed. 2014) defines *contingency* as follows:

> An event that may or may not occur in the future; a possibility . . .
> The condition of being dependent on chance; uncertainty.

This reserve, then, exists in order to have funds for events that may not occur or may be dependent on chance. For example, a contingency reserve may be created to have funds available to respond to an event such as a hurricane. Contingency does not embrace the idea of a lack of planning or foresight or a change of plans (such as, for example, deciding that public policy requires the purchase of seven cars for the motor pool rather than six).

Second, the other type of reserve is the *carry-over* reserve, i.e., the money necessary to have in the bank at the beginning of the fiscal year in order to assure that the City can operate until it begins collecting ad valorem taxes in November of each year.

G. Fund Transfers.

Generally speaking, the major functions and responsibilities of the Council with respect to the budget are fulfilled when the budget is adopted each year. After adoption, the Mayor has the responsibility to implement the budget through the day-to-day operations of the government. Under Section 14.03, Charter, the Mayor may transfer funds within a division.

Thus, for example, the Mayor may transfer funds from one purpose to another within the total appropriations to an advisory or regulatory board, or within the office of a department division, or within the Mayor's own office.

II. INDEPENDENT AGENCY AND CONSTITUTIONAL OFFICER BUDGETS

A. General Budget Review and Approval Authority.

The City Council has the authority and responsibility to review the budgets and to appropriate money to the consolidated government, including its Constitutional Officers (i.e., the Sheriff, Property Appraiser, Tax Collector, Supervisor of Elections and the Clerk of the Court) and to any Independent Agencies requesting appropriations from the City. Article 5 of the Charter provides in pertinent part:

> **Section 5.07 Powers.** *** The council shall review the budgets and appropriate money to the consolidated government and any independent agencies which request appropriations from the consolidated government and shall also levy taxes as required to meet the budgets approved by it.

In addition, Article 14 of the Charter provides for the adoption of budgets as follows:

> **Section 14.01. Proposed budgets of Independent Agencies.**
> Each independent agency entitled to receive appropriations from the council shall also prepare and submit a proposed budget for its operations for its fiscal year to the council.
>
> **Section 14.02. Adoption of budgets**.
> After the conclusion of the public hearings, the council shall adopt and approve the budgets submitted to it, with such changes as the council may deem appropriate, subject to the following: The proposed consolidated government budget may be altered by the council on a line-by-line basis or on a total basis, as the council may elect. The council may increase or decrease the appropriation requested by any independent agency on a line-by-line basis or on a total basis.

OGC Opinion No. 71-7 discussed City Council power over various budgets. In pertinent part:

> Some of the independent agencies operate almost exclusively from funds appropriated from general City sources; others generate substantial revenues from their own operations, but receive some City funds; and one, the Jacksonville Electric Authority, operates solely from its own revenues and returns substantial revenues to the City for its use. In all of these varying circumstances, each budget is required to be approved, as a whole, by the Council, under Section 15.03 and 15.05 of the Charter. Each agency may only spend funds which are appropriated, and the only unit of local government authorized to make appropriations is the City Council. This would apply to the Jacksonville Transportation Authority only as to funds requested from the City by them.
>
> As the Council is also authorized to increase or decrease appropriations to independent agencies on a total basis or on a line-by—line basis, the same general principles of implementation of the budget process apply as outlined previously with respect to the City budget; that is, the Council may adopt a major object budget, line item budget, or lump sum budget for each independent agency.
>
> The same principles also apply with respect to line item appropriations for personal services. Each independent agency has the power to employ and fix the compensation of its own officers and employees (subject to the civil service system in some instances). Since the power to fix salaries does not lie in the Council, the line item appropriations for personal services should be limited to specifying the number of employees authorized in an organizational unit and specifying the total funds appropriated to such unit for personal services.

There have been no material changes to the language of the Charter provisions relied upon in OGC Opinion 71-7. The following provides a summary of the respective Independent Agencies and Constitutional Officers, relevant budgeting, and the interlocal agreements and other existing restrictions that effect their budgets.

B. Budget Review and Approval of the Independent Agencies.

1. Jacksonville Aviation Authority (JAA)

In addition to Article 14 of the Charter, the City Council's authority to alter the JAA's budget is derived from the terms of its implementing legislation:

2004-464, Laws of Florida. Section 5. Budget and finance.
The fiscal year of the authority shall commence on October 1 of each year and end on the following September 30. The authority shall prepare and submit its budget to the council of the City of Jacksonville on or before July 1 for the ensuing fiscal year. The council, consistent with the provisions of the Charter of the City of Jacksonville, may increase or decrease the appropriation (budget) requested by the authority on a total basis or a line-by-line basis; however, the appropriation for construction, reconstruction, enlargement, expansion, improvement, or development of any project or projects authorized to be undertaken by the former Jacksonville Port Authority and the authority shall not be reduced below the amount required

under the terms and provisions of any outstanding bonds.

Generally, none of the funds in the JAA budget are appropriated from the City. The City Council cannot appropriate any revenues of the JAA to the City. As a matter of federal law, all of the fees received by the JAA are encumbered for aviation purposes.

2. Jacksonville Port Authority (JPA)

In addition to Article 14 of the Charter, the City Council approves the JPA's budget according to its implementing legislation, which reads:

2004-465, Laws of Florida. Section 5. Budget and finance.
The fiscal year of the authority shall commence on October 1 of each year and end on the following September 30. The authority shall prepare and submit its budget to the council of the City of Jacksonville on or before July 1 for the ensuing fiscal year. The council, consistent with the provisions of the Charter of the City of Jacksonville, may increase or decrease the appropriation (budget) requested by the authority on a total basis or a line-by-line basis; however, the appropriation for construction, reconstruction, enlargement, expansion, improvement, or development of any project or projects authorized to be undertaken by the former Jacksonville Port Authority and the authority shall not be reduced below $800,000 for each year that the bonds to which the $800,000 is pledged remain outstanding.

Section 106.218, Ordinance Code, requires the City to appropriate to the JPA an amount calculated from the JEA's contributions to the City, for use in land acquisition, marine terminal and capital construction and improvement projects, etc. The Council's reduction of this appropriation would require an amendment to the Ordinance Code.

3. Police & Fire Pension Fund Board of Trustees – Charter, Article 22

There is no specific budget discussion in Article 22; therefore, the provisions of Articles 5 and 14 above control.

The implementing provisions of Article 22 require the Police and Fire Pension Board to operate the pension fund.

There are two primary components of the City's appropriation to the Fund: 1) the cost of the pensions, which is governed by rules, obligations, and uniquely-applicable laws and 2) the administration of the Fund.

See OGC Opinion 69-324, regarding the authority of the Council to amend the Board budget as to administrative expenses, and Fla. AG Opinion 92-69, regarding the same.

4. Jacksonville Transportation Authority (JTA)

The City Council has the discretion to appropriate funds to JTA. Section 349.041, Florida Statutes. The JTA operates transportation services such as bus systems, park and ride facilities, and builds and maintains roads. Funding sources include federal or state funds as well as local option gas taxes (as authorized pursuant to Section 336.025 Florida Statutes) and a ½ cent

sales tax. Interlocal agreements and other agreements help create a working financial relationship between the JTA and the City. In the budget process, the Council reviews the JTA's revenues and expenditures in light of these specific agreements. The City provides General Fund money for the Community Transportation Coordinator and a Park and Ride contract; it also provides local option gas tax money through an interlocal agreement whereby JTA has agreed to build Better Jacksonville Plan (BJP) projects with JTA's dedicated ½ cent sales tax. Section 212.055(1)(d)(2), Florida Statutes. The funds derived from this particular source are authorized for specified uses including bus operations and roadways by a county transportation authority.

5. JEA – Charter, Article 21

In addition to Article 14 of the Charter, the City Council has review and approval authority over JEA's budget and may make line by line changes in accordance JEA's implementing language:

Section 21.07. Fiscal and budgetary functions.
******** (b) JEA shall prepare and submit its budget for the ensuing year to the city on or before July 1 of each year, setting forth its estimated gross revenues and other available funds, and estimated requirements for operations and maintenance expenses, capital outlay, debt service, and depreciation and reserve account. The council and the mayor shall approve or disapprove such budget in the manner provided in article 14 for budgets of independent agencies.

Section 21.07(c) of the Charter creates a variety of formula for calculation of payments between the City and JEA.

6. Jacksonville Housing Authority (JHA)

The JHA is established pursuant to the statutory authority found in Chapter 421, Florida Statutes, and as implemented by the City Council in Chapter 51A, Ordinance Code. The JHA is to be operated as a not-for-profit and is not to be used as a revenue source for the City. §421.09, Florida Statutes; Section 51A.107, Ord. Code. The Council approves the JHA budget but is constrained by state and federal law governing the provision of public housing. Therefore, specific questions regarding the budget should be asked in advance.

7. Duval County School Board (DCSB) – Charter, Article 13

Article 13 of the Charter specifically exempts the DCSB from the City Council's budgetary process:

Section 13.10. School board budget.
The Duval County School Board shall be exempt from the budgetary requirements of article 14. However, the Duval County School Board shall include in its budget sufficient funds to pay the City of Jacksonville for such central services of the city as the board shall be required to use and shall use, on a cost accounted basis.

C. Budget Review and Approval of the County Constitutional Officers.

County Constitutional officers derive their funding from various sources. Pursuant to

Article 5 of the Charter, the City Council sets the salaries of all of the county Constitutional Officers; however, no salary set by the Council may be reduced during the term of office of the elected county constitutional officer receiving that salary. Section 5.07, Charter.

The City Council has, with varying limitations within State Law, authority to modify in whole or in part the budgets of the Constitutional Officers.

1. Tax Collector – Article 11, Charter.

The Council approves and may modify the budget of the Tax Collector pursuant to Article 14 of the Charter to the extent such funds come from the general fund and are not otherwise limited by State Law. Although Chapter 195, Florida Statutes, contains a similar budget provision for tax collectors as is provided for property appraisers, the section does not apply to the City. §195.087(2), Florida Statutes. Of course, the City has a duty to reasonably fund the Tax Collector so as to allow him to perform his duties.

2. Supervisor of Elections (SOE) – Article 9, Charter.

The Council reviews and approves the SOE budget and may modify the budget pursuant to Article 14 of the Charter, to the extent such funds come from the general fund and are not otherwise limited by State Law, subject to the SOE's obligation to fund elections and perform his or her responsibilities.

3. Sheriff – Article 8, Charter.

The Council reviews and approves the Sheriff's budget and may modify the budget pursuant to Article 14 of the Charter to the extent such funds come from the general fund and are not otherwise limited by State Law.

4. Property Appraiser – Article 10, Charter.

The Property Appraiser is required by Florida Statutes to submit a budget to the Department of Revenue (DOR) for approval. Nonetheless, the Council still reviews and approves the budget. Any disagreement between the Property Appraiser and the City as to the budget is appealed to and decided by the Governor and Cabinet. Section 195.087(1), Florida Statutes. The Ordinance Code acknowledges the Chapter 195 budget process, treating the Property Appraiser's budget as a lump sum appropriation and the line items as informational only:

> **Sec. 106.310. Appropriations to Property Appraiser's Office.**
> Although there are set forth in the budget ordinance and other appropriation ordinances detailed line item appropriations for the Property Appraiser's Office, such detailed line items shall be deemed to be set forth for information only, and the totals of such items shall be construed as a lump sum appropriation for that office pursuant to F.S. Ch. 195. The Mayor is authorized to provide the services of the executive departments to the Property Appraiser on a mutually agreeable basis.

5. Clerk of Court – Article 12, Charter.

Pursuant to an amendment to Article V of the Florida Constitution, there is now established by state statute a budget procedure for the court-related functions of the Clerk. Therefore, those portions of the Clerk's operations that are funded by the state are not submitted to the Council for approval. Section 28.36, Florida Statutes. The Council approves the Clerk's budget for county-related functions and also those portions of the Clerk's budget for court-related functions that are funded by the City pursuant to statutes. The Council may modify the budget pursuant to Article 14 of the Charter for those items funded by the City, or that otherwise involve county revenues, subject to statutory funding obligations for court-related functions. Section 29.008(4)(a), Florida Statutes.

2019
City of Jacksonville
Orientation Program

MUNICIPAL FINANCE

Materials Prepared and Assembled By:

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MUNICIPAL FINANCE

I. INTRODUCTION

Jacksonville, as a municipality and as a political subdivision of the State, raises money through a variety of methodologies. Taxes provide the bulk of the City's revenue. Other sources include fees and grants. While the City may use ad valorem (property) taxes for almost any governmental purpose, the City's use of other fund sources is often restricted.

II. TAXATION

Jacksonville derives its power to tax from its existence as a municipality and as a political subdivision of the State. Whether acting as a municipality or a county, Jacksonville's power to tax is more constrained than that of the State of Florida. Pursuant to the Florida Constitution, the City has the inherent power to impose ad valorem taxes. As for all other taxes, the City may impose other taxes if, but only if, authorized to impose such taxes via state statute. The City has inherent power to impose fees, but common law (based on interpretation of the Florida Constitution) restricts both the imposition as well as the expenditure of fees. Consequently, if the City imposes or expends fees in contravention of constitutional limits, a court may prohibit the continued collection of the fees and may also require repayment of the previously collected fees.

A. Property Taxes

As a consolidated government, the City has the power to impose up to 20 mils of taxes upon the value of property, i.e., 2% of value, each year. The City imposes different rate of taxes in the Beaches and in Baldwin, and the rates in these areas is different from the rate in the rest of the City. A variety of laws impact the City's power to raise these taxes. In particular, the Florida Constitution limits the increase in taxes upon any particular parcel of homesteaded property. The value of homesteaded property, for tax purposes, may not increase by more than 3% in any one year, so long as the owner remains the same and remains living on the parcel. Other restrictions include a variety of exemptions for homesteaded property. So, while the City has inherent power to impose ad valorem taxes, it does not have unrestricted power to impose such taxes. Finally, the Florida Legislature has extensively regulated the procedure for imposing ad valorem taxes.

B. Sales Taxes

Sales taxes are imposed through the authority of the State of Florida, with revenue going to both the State and the City. The State has provided that the City may impose its own sales tax surtaxes, following set procedural requirements such as a referendum. For example, the City held a referendum in 1988 to ask residents whether they would prefer funding transportation with a 1/2 cent sales tax which could be used to eliminate tolls. That sales tax must be applied to roadway construction and bus operations, and must be paid directly to the JTA upon receipt by the City. In the year 2000, the voters approved a

second ½ cent sales surtax in order to fund the Better Jacksonville Plan. This tax was authorized for 30 years. In 2016, the voters authorized an extension of this second ½ cent sales tax; again for up to 30 years. The extension of this ½ cent sales surtax will be used to eliminate the City's underfunded liability for its now closed three pension plans. The City may impose surtaxes totaling up to 2 1/2%. Each sales surtax imposed and all the other authorized sales surtaxes have limitations on the purposes for which the money raised may be expended. So, while the City may raise significant funds through these taxes, these taxes are not authorized for the payment of any and all City expenses.

C. Gas Taxes

The federal, state, and City are each given portions of the gas taxes collected. These taxes must be used in accordance with the constraints imposed by the governing entity.

III. MUNICIPAL BONDS

The City may issue bonds if they serve a valid, legally-recognized public purpose. Generally, the City may not grant a mortgage on City property, nor may the City assume debts for entities outside of Duval County. Bonds, generally, are issued to support the construction or acquisition of significant capital improvements. Federal law governs the issuance of bonds, regulating both the sale of the bonds and the disclosure requirements related to the sale of bonds. Accordingly, the issuance of bonds results in significant costs of issuance including, but not limited to, the costs of the underwriters, financial advisors, and lawyers. With each bond issue, however, whether the bonds are general obligation bonds or revenue bonds, as discussed below, the issuer must consider the time and costs incurred in obtaining the bonds compared with the practicality of constructing the project from available funds.

A. General Obligation Bonds

1. General Obligation Bonds are secured by the full faith and credit of the City; a term which means that the City pledges its taxing power to the payment of the bonds. Such bonds are issued pledging money raised through ad valorem taxation. Pursuant to Article VII, Section 12 of the Florida Constitution, such bonds must be longer than 12 months in term, and can only be issued to support the construction of capital improvements, i.e., buildings, roadways, and similar structures. One of the key elements to general obligation bonds is the requirement that such bonds may be issued only after approval by the voters, which is done by way of referendum.

2. The need for a referendum increases significantly the cost of issuing such bonds.

3. In order to pledge the City's taxing power, the City must meet the strict constitutional requirements set forth above.

B. Other Bonds: Revenue Bonds

1. Revenue bonds must be paid out of the proceeds of a non-ad valorem revenue source. Typical revenue bonds include gas tax bonds, and bonds issued based upon revenues generated by a particular project such as a toll road. See e.g. County of Volusia v. State, 417 So.2d 968 (Fla. 1982).

2. Ad Valorem taxes may be pledged to support bonds or debt for a period of time shorter than twelve months, such as with the issuance of tax anticipation notes.

3. Typical revenue bonds include gas tax bonds or sales tax bonds, and a commonly known issue called certificates of participation. In these, Jacksonville would enter into a lease agreement with a not-for-profit corporation and shares in the lease are sold as a payment mechanism. The lease may be paid with ad valorem or other taxes or revenues if it is structured as an annual lease subject to annual termination.

4. JEA issues revenue bonds based upon its revenues and, since assuming the water and sewer business of the City, has issued and consolidated water and sewer bonds.

5. Industrial Development or Private Activity Bonds. These bonds include entities such as the YWCA, which statutorily, are provided with the right to enter into lease agreements with the City, with the lease payments being pledged to the repayment of the bond issue. Typically, the City would have no risk on such bond matters.

6. Community Redevelopment Bonds are bonds that are payable from tax increments, which are increases in the taxable value of projects constructed in redevelopment zones.

7. Special Assessment Bonds are bonds payable from special assessments. For example, the City may require property owners in a specific area to pay for the cost of new sidewalks or water and sewer lines. The City might choose to require the property owners to pay for the improvement over time but wish to quickly obtain the entire funds necessary for the cost of the improvement. The City would issue the special improvement bonds and promise to pay the bonds through collection of the special assessment.

III. FEES

The City may also impose fees by ordinance. Generally, local government fees fall into two categories: (1) regulatory fees imposed by local government under the police power in the exercise of a sovereign function; and (2) proprietary fees imposed by local government in the

assertion of a proprietary power. Regulatory fees require fee proceeds to be applied to provide the cost of the regulatory activity. Examples of City regulatory fees include building permit fees and inspection fees. Proprietary fees are imposed by the City may generate a profit available for general governmental expenditures as long as the profit generated by the fee is reasonable. Examples of City proprietary fees include franchise fees and user fees.

IV. FEDERAL AND STATE GRANTS

The City is adept at increasing its purchasing power by matching federal or state funds. With those funds come significant legal obligations. For example, with federal funds of any magnitude, there are likely to be restrictions regarding the need for a competitive procurement process; with construction funds, the use of the Davis Bacon Act mandating wage rates, anti-lobbying provisions, and limitations on the items for which the federal funding may be spent. For state grants, there is likely to be an administrative process for review. Non-litigation disclosures and official certifications are required, creating potential liability. Accordingly, whenever federal or state funding is included in a project, legal counsel should be called upon to address the additional legal requirements imposed.

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ECONOMIC DEVELOPMENT AND SPORTS AND ENTERTAINMENT FACILITIES

Materials Prepared and Assembled By:

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ECONOMIC DEVELOPMENT AND SPORTS AND ENTERTAINMENT FACILITIES

I. ECONOMIC DEVELOPMENT

A. Background

Today's economy and workforce is one of rapid technological changes; Changes which profoundly impact the economy, changing the way businesses deliver services and products and the way employees provide their services to businesses. These changes impact every aspect of business and employment. The private sector environment is more dynamic than it has ever been and the demand for skilled talent has never been greater.

Many people believe in order for the City of Jacksonville to be competitive with other jurisdictions while achieving an appropriate return on investment, the City must be responsive to private sector needs in such a dynamic economy.

In 2011, the City Council created, the Office of Economic Development ("OED"). At the same time, the Council abolished the semi-independent Jacksonville Economic Development Commission ("JEDC"), which previously had responsibility for implementing the City's economic development policies. Along with this re-structuring of the economic arm of the City, came focus on job creation and redevelopment. The OED has responsibility for implementing the City's economic development policies county-wide, with the exception of the City's urban core. The Downtown Investment Authority ("DIA") carries the responsibility for economic development in the core.

The City Council created the DIA in 2012 in order to revitalize the City's urban core by utilizing Community Redevelopment Area ("CRA") resources to spur economic development.

Both the OED and the DIA are authorized to offer economic incentives to eligible companies consistent with the City's Public Investment Policy (2016, as amended from time to time), the purposes of such policy includes the creation of jobs new to Jacksonville, and the incentivization of private capital investment for expansion of existing or construction of new facilities.

B. Economic Development Agreements

All economic incentives offered by the DIA or the City for a specific project are incorporated into an Economic Development Agreement ("EDA"). Once negotiated and agreed to by the OED (on behalf of the City) and the company seeking the incentives, legislation is filed in City Council, which legislation will authorize the City to enter into the EDA. The DIA has its own approval process for authorizing EDAs, which does not require City Council approval in many cases. Due to the frequent need of companies to adhere to construction time lines, EDAs have "fast track" legislative authority. This fast track, authorized by Council Rules 3.305 and 3.306, eliminates the three read requirement

for most legislation and permits passage after only one or two readings, depending on the dollar amount of City incentives offered.

Generally, EDAs outline the incentives offered, set forth the compliance requirements, performance and timing parameters, and provide the required reporting forms.

C. Economic Incentives

The two most frequently used economic incentives are: (i) Qualified Target Industries ("QTI") program tax refund incentives; and (ii) Recapture Enhanced Value ("REV") grants. Other incentives include Industrial Revenue Bonds and DIA-BID Plan Incentives.

i. QTI Refunds

The State of Florida's Qualified Target Industry Tax Refund Program, created in 1994 as authorized by Sections 288.106-108, Florida Statutes, facilitates the attraction of high-value, export-industry jobs that generate new wealth and create jobs. The program seeks to diversify Florida's economy by targeting certain industry clusters of strategic importance to the state's economic diversity.

The amount of the refund is based on the wages paid, number of jobs created, and location within the state where the eligible business chooses to open or expand, but the minimum is $3,000 per employee over the term of the incentive agreement signed by the business and the State of Florida Department of Economic Opportunity ("DEO"). The DEO conducts annual incentives compliance with all active projects to ensure job creation and capital investment requirements are met before any payments are made. The OED compliance documentation process is coordinated with the state to ensure the integrity of the data and streamline the process for the companies.

In order for a company to be eligible for a QTI Refund, the City must first commit to the local matching funding requirement. Of the total QTI Refund offered by the DEO, the City of Jacksonville, via the Resolution approved by City Council authorizing the economic development agreement, must commit to a local match of 20% of the total QTI award offered by the DEO. The State of Florida pays the remaining 80%.

ii. REV Grants

A REV grant brings private capital investment and redevelopment into a nonresidential project site. The REV program provides grants to developers based on increases in ad valorem taxes created by the developer's project. Oversimplified, determining the grant amount begins with utilizing a "base year" for assessed property value. The project presumably increases the taxable value of the property. The grant amount equals a fixed percentage of the incremental increase in ad valorem

taxes created by the project's increase in taxable value for the property. This increase may include increases in both real and tangible personal property.

A REV grant is paid annually to the developer after construction of the project that creates the "increment" and the taxes are paid. There are typically no restrictions on the use of funds.

iii. Industrial Development Revenue Bonds ("IRB's")

The Office of Economic Development is designated as the City's industrial development authority. In this capacity, the OED is authorized to file legislation for the City to serve as the conduit issuer of tax-exempt bonds to finance the expansion or relocation of a development project as outlined in Chapter 104, Part 3 of the City of Jacksonville's Ordinance Code. The benefits to the City are the absence of any financial obligation of the City and the lower cost financing to stimulate capital investment projects.

IRB's are conduit financing instruments. Although the City "issues" the bonds, the City has is no financial obligation, and bond holders have no recourse against the City as the issuing body.

iv. DIA – BID Plan Incentives

The DIA's Business Investment and Development ("BID") Plan, approved by City Council via Ordinance 2014-560-E, includes specific and measurable goals, objectives, and performance standards for the successful development of Downtown and various economic incentives and programs. The BID Plan also includes (1) long-range plans designed to halt or prevent deterioration of downtown property values and (2) the community redevelopment plans for the Southside Community Redevelopment Area and the Downtown Northbank Community Redevelopment Area.

Other economic incentives offered by the DIA or the City are set forth in the City Council- approved Public Investment Policy.

II. SPORTS AND ENTERTAINMENT FACILITIES

The City owns several sports and entertainment facilities, including TIAA Bank Field, Daily's Place Amphitheater and Covered Flex Field, the VyStar Veterans Memorial Arena, the Baseball Grounds of Jacksonville, the Times Union Center for the Performing Arts, the Prime Osborne Convention Center, and the Ritz Theatre and Museum.

All of the aforementioned facilities (excluding Daily's Place, which is managed by the Jacksonville Jaguars on behalf of the City) are managed on behalf of the City by SMG, pursuant to its Facilities Management Contract with the City. Generally, SMG is responsible for the

maintenance and operation of the facilities and for promoting the facilities and booking events therein. Each year, the City approves an annual budget for the facilities, which includes a capital improvement budget.

Pursuant to various lease agreements, the City has a number of tenants in the sports facilities, which at TIAA Bank Field include the Jacksonville Jaguars and the Gator Bowl Association. The Baseball Grounds tenant is Jacksonville Baseball, LLC, which operates the minor league Jacksonville Jumbo Shrimp baseball team. VyStar Veterans Memorial Arena has leases with the Jacksonville Icemen hockey team, the Jacksonville Sharks arena football team, and the Jacksonville Giants minor league basketball team.

The sports and entertainment facilities can serve as economic drivers by encouraging sports tourism and attracting and retaining residents and businesses by improving amenities and quality of life in downtown Jacksonville.

Attachments
Public Investment Policy (2016)
DIA BID Plan - Excerpt

Table of Authorities

1. Ordinance 2014-560-E (approving the DIA BID Plan)
2. Ordinance 2016-382-E, (approving the Public Investment Policy)
3. Chapter 104, Part 3, Ordinance code (Industrial Revenue Bonds)

PUBLIC INVESTMENT POLICY

In Collaboration with the Special Economic Development Incentives Committee of the City Council

Council Member John Crescimbeni, Chairman

June 28, 2016

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Public Investment Policy Introduction

The foregoing Public Investment Policy (PIP) is intended to be a tool used by the Office of Economic Development (OED) staff to make fact-based decisions regarding projects to ensure that individual project goals are aligned with the goals of the organization, its mission and objectives. The PIP sets forth minimum standards and eligibility criteria based on uniquely created investment programs. The fundamental basis to any proposed project is whether public investment is a material factor in the completion of a project ("but for" test). Projects will be evaluated on whether they provide a return on investment (ROI) to the City (see the following section). Projects will also be evaluated against standard underwriting criteria and an assessment of the public investment risk associated with the project.

Mission

To enhance the quality of life for all of Jacksonville by developing and executing policies that strengthen the economy, broaden the tax base, and create opportunities for advancement of the workforce and local small business enterprises.

Objectives

I. Recruit and expand high wage job opportunities in targeted industries throughout Jacksonville.
II. Promote private capital investment that results in an increase in the commercial tax base.
III. Redevelop economically distressed areas by encouraging private capital investment and *higher* wage job opportunities within those areas.
IV. Advocate for small business/entrepreneurial growth and expansion.
V. Encourage downtown development in accordance with the Downtown Investment Authority's Master Plan.
VI. Maintain an overall system of accountability that allows a high level of confidence in our stewardship of public funds.

Public Investment Guidelines

The OED encourages economic based jobs – those that generate goods and services that are exported outside the community to bring new dollars into the community, thus expanding community wealth and prosperity. Projects that create service oriented jobs – those that recycle and exchange local dollars already in the community – will be considered only if the project is located in a designated economically distressed area. Specific incentives have been established for commercial projects in those designated areas.

The OED staff negotiates the final public incentives based upon an assessment of whether public investment is warranted due to the competitive nature of the project and/or a financial gap for the project to commence and succeed, in Duval County. This assessment is done by a thorough due diligence, underwriting, and public investment risk analysis. The project analysis process may also consider multiple "public purpose" elements that may not be applicable for every project. Not all projects will receive the maximum eligibility as the intention of the PIP is to work within a set of limitations to overcome a company's financial impediments to relocation, expansion and success.

Within this PIP there is a focus on targeted industry categories. These categories were developed in collaboration with the State of Florida and economic development partners. They include: Finance & Insurance; Life Sciences; Logistics & Distribution; Headquarters; Information Technology; Aviation and Aerospace; Advanced Manufacturing; and the Energy Sector. These industries may change from time to time and therefore, any reference to these industry sectors in any program are meant to pertain to the listing as recorded by the State. See Exhibit A for the current Targeted Industry Category list.

Return on Investment Formula

Economic benefit is the direct, indirect, and induced gains in City revenues which result from the City's public investment in a project.

Return on investment (ROI) measures the economic benefit against the public investment for a project. This measure does not address issues of overall effectiveness or societal benefit; instead, it focuses on tangible financial gains or losses to City revenues that are derived from an investment in a specific project.

The ROI is not intended to evaluate whether the State's investment is appropriate, nor does it distinguish the State's investment over any other financial vehicle.

General ROI Measurements:

- Greater Than One - the project more than breaks even; the direct return to the City produces more projected revenues than the total cost of the public investment.
- Equal To One - the project breaks even; the return to the City in additional direct revenues equals the total cost of the public investment.
- Less Than One, But Positive - the project does not break even; however, the City generates enough revenues to recover a portion of its cost for the public investment.
- Less Than Zero - the project does not recover any portion of the public investment cost, and the City revenues are less than they would have been in the absence of the program because taxable activity is shifted to a nontaxable activity.

OED's evaluation takes into account the number of jobs to be created, the anticipated wages and corresponding personal income, and the projected ad valorem revenues. As warranted, the impact on other economic generators such as the JAXPORT, will be considered.

For all projects requesting public investment, OED will calculate a City ROI. ROI formulas for public investments can incorporate many different aspects. However, the City of Jacksonville chooses to take a conservative approach to our ROI formula, which will be as follows:

Projected City Ad Valorem Taxes (10 years)	A
Induced Taxes (10 years)	B
Total Direct City Revenue	A + B = C
Total City Investment	D
City's ROI	C/D = E

A: Projected City ad valorem taxes. For OED's calculation of ROI, we project the direct revenue impacts to the City in the form of ad valorem taxes, both real and tangible personal property. An analysis may be done to include the impact to the Duval County School District, Florida Inland Navigation District, and St. Johns River Water Management District taxes generated by the projects. However, our standard ROI calculation includes only the direct ad valorem taxes projected to be paid to the City from the project, for a period of 10 years.

B: Payroll infused into the local economy (induced taxes). This impacts the economy through the direct spending of the employee salary in local businesses such as grocery stores, gas stations, movie theaters, restaurants, etc. Each of these businesses employs people in and around the community and result in their employees' ability to purchase local goods and services. For ROI calculation purposes, OED will calculate the estimated payroll at project completion. It will be assumed that on average, 20 percent of the total payroll will be spent within the City of Jacksonville on goods and services from which the City receives a 1 percent sales tax. (Total number of employees, multiplied by average wage, multiplied by 20 percent factor, multiplied by 1 percent sales tax rate.)

C: Sum of A and B, total direct City revenue.

D: City investment is the total maximum commitment of the City's funding toward the project.

E: City's ROI.

OED's goal is to have the ROI on a project exceed the ratio of 1:1. If this is the case, especially considering the conservative nature of the ROI formula being used, it should be evident that the public funding for the project is a sound financial investment. We recognize that some large and very competitive projects may not produce an ROI of 1:1 using the conservative 10-year horizon. In those cases, OED will calculate the estimated period of time it will take for the project to achieve an ROI of 1:1 and include that within the project summary. There will also be a justification statement as to why OED supports the project in lieu of the fact that a longer period than normal will be required to achieve the desired ROI level.

Film & Television projects use a different evaluation process. See pages 48-51, for a full description of the Film & Television review process.

Additional Considerations

While not an exhaustive list, the items below are things which are not reflected in the ROI calculation and are difficult to quantify, but may be considered when evaluating potential public investments.

1) **Downtown Development and Redevelopment.** The success of Downtown Jacksonville is an important element of the City's overall vitality. In an effort to continue to attract new investment and businesses, a project could be given additional positive consideration if choosing a Downtown location.
2) **Potential impact of the company's primary business on JAXPORT.** JAXPORT is considered a primary engine affecting Gross Domestic Product (GDP); which is a key indicator when evaluating the health of an economy. JAXPORT is also a large generator of jobs and a key element in the decision for some companies to locate in Jacksonville. Therefore, projects that benefit JAXPORT could be given additional positive consideration.

3) **Potential impact of the company on economically distressed areas in Duval County.** Typically, in these areas of Duval County the cost for services outpace the revenue generated to pay for the aging infrastructure (example: storm water) and demanding services (example: police). In order to reverse this trend and reduce the burden on the City, the OED will engage in community redevelopment efforts and encourage companies to locate to these areas. Projects located in economically distressed areas may be given additional positive consideration. As further described within this PIP, projects meeting certain criteria and locating in designated economically distressed areas are eligible for "bonus" incentives.
4) **Potential secondary and tertiary businesses supporting a company.** Generally, companies locating to or expanding in Duval County require support from local businesses. This support ranges from an office requiring paper to a manufacturing company needing electrical maintenance and repair work associated with their machinery. Each business sector has a job multiplier which varies based upon its needs. While this is certainly a positive impact created by most projects, due to the differing theories on how to accurately calculate these impacts, we have excluded it from our standard calculation.

Mega Projects

A "Mega Project" is an extremely large project (i.e., over 500 jobs, or $200 million in private capital investment). Projects of this magnitude require an extremely competitive offering which would go above and beyond normal incentives addressed in this policy. If and when a project of this size arises, it would be handled on a case by case basis, and a custom offer would be formulated.

COUNTYWIDE

Jacksonville, in partnership with the State of Florida, works with existing targeted industry businesses seeking to expand and actively recruits new targeted industry businesses to all areas of the city (see Exhibit A for a list of current targeted industries). These industries are targeted, as they generally pay higher wages and provide benefits to their employees. They tend to be in growth industries and some include high levels of private capital investment. The attraction of these new businesses to the community support local small businesses and result in indirect job growth and additional private capital investment. Higher wages add to the amount of disposable income available to be spent within the community, which generates more local spending, indirect job creation and corresponding tax revenues. Increasing wages help support local small businesses and result in additional home ownership within the City of Jacksonville.

The following programs are available to eligible projects anywhere within Duval County. These programs are primarily focused on projects that have high wage job creation (above average) or significant capital investment that will enhance the non-residential tax base.

Local Countywide Programs

Frequently used State Programs

Recapture Enhanced Value (REV) Grant

Objective

A "REV" grant is designed to bring private capital investment and redevelopment into a nonresidential project site. Utilizing a "base year" assessed property value (from the Property Appraiser's database) for the project, a certain percentage of the city's portion of the incremental increase in ad valorem taxes on real and/or tangible personal property paid by the project above the base year amount is available as a REV grant to incent the project (the "increment").

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A).
- The company must create at least 10 new full-time jobs.
- Wages must be greater than or equal to 100 percent of the State of Florida average wage, determined by the Florida Department of Economic Opportunity (Exhibit F).
- The company must commit to a minimum of $3 million in private capital investment.
- The standard grant will be up to 50 percent of the increment and up to 10 years. However, in some instances large number of jobs (over 100) and high capital investment (over $10 million) may dictate that the OED present a project with a higher percentage and/or longer period of time for the grant.
- A REV grant is paid annually to the developer AFTER construction of the project that creates the increment is completed and the tangible personal property becomes taxable, and the taxes are paid.
- In lieu of any other funding source, the REV grant may be utilized to fund the City's required match to any State program requiring such a match.
- In most instances, REV grant recipients will be required to maintain a specific number of jobs throughout the grant payment term.
- For criteria for REV grants within an economically distressed area, see page 22.

Industrial Revenue Bond (IRB)

Objective

The OED is the agency within the City of Jacksonville designated as the Industrial Development Authority. In this capacity, the OED is authorized to be the conduit issuer of tax-exempt bonds to finance the expansion or relocation of a development project as outlined in Chapter 104 Part 3 of the City of Jacksonville's Ordinance Code. These bonds are considered "conduit debt," therefore the City has no financial liability.

Criteria

- Applicants must retain either Bond Counsel or a Tax Attorney to review project scope and determine its eligibility to receive tax-exempt bond financing pursuant to federal, state and local regulations.

- Project assistance is determined by the needs and parameters of the project as determined by a TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) hearing. A TEFRA hearing is mandated by the IRS to provide a reasonable opportunity for interested parties to express their views, either orally or in writing, on the issuance of bonds and the nature of the improvements and projects for which the bond funds will be allocated.

- Industrial Revenue Bonds (IRB's) are conduit financing instruments and although the bonds are issued by the City; there is no recourse against the issuing body.

- No conduit bond issued will be sold in the public bond market without a minimum rating from at least one of the three major bond rating agencies of "A" or better without regard to modifiers.

Note: the applicant must pay a nonrefundable application fee of $15,000; and an issuance fee of 0.25 percent of the principal amount of the bond issue upon closing. If the applicant demonstrates per Chapter 104.305 of the City's Ordinance Code, that it is a health care provider that provides indigent patient health care to residents of the City, an amount equal to one-sixth of the amount of such indigent patient health care provided during such applicant's most recent fiscal year for which audited financial statements are available shall be taken as a credit against the issuance fee.

Disabled Veterans Hiring Bonus

Objective

According to the latest statistics from the United States Department of Veterans Affairs, Jacksonville has the largest concentration of military personnel, retired military members, veterans of all military services, and women veterans in the State of Florida. Veterans, transitioning military men and women, and their families are our neighbors and co-workers, and their collective contributions to our city help to define who we are as a community.

This program is intended for the hiring of disabled veterans and builds upon existing federal and state veteran hiring programs. According to the U.S. Code (5 U.S.C. 2108), a "disabled veteran" means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department.

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A). (*If the company is investing $5 million or more, the company may get a waiver of this criterion*).

- The company must create at least 20 new full-time jobs, provided that those companies would not otherwise be creating those jobs in Duval County (competitive location).

- Wages must be greater than or equal to 60 percent of Duval County's average annual wage, determined by the Florida Department of Economic Opportunity (Exhibit F).

- Those companies located in Duval County that meet the above criteria and hire employees that qualify as a disabled veteran in accordance with the definition above are eligible for up to $2,000 per employee hired.

- Incentives will be paid over a four-year period so long as the company can demonstrate proof of employment each year and proof that the employee is a qualified disabled veteran.

- The maximum payout by the City will be $100,000 paid out over the aforementioned four-year term.

Local Training Grant

Objective

The workforce demands of companies can be the determining factor in whether a company decides to expand or relocate within a region. Often times, the company has performed a considerable amount of investigation and statistical gathering to reduce the amount of risk that it can find the necessary workforce in an area. While Jacksonville has a well-qualified and trained workforce in general, a number of qualified workers lack some of the very specific skills for which a company may be looking. It is the goal of this program to:

1. Provide Jacksonville a competitive advantage over other regions.
2. Continue to compete nationally by developing a better trained workforce.
3. Provide the newly created workforce an opportunity to expand their skill sets and ensure a better qualified and more easily employed individual.
4. Complement Career Source, Duval County Public Schools and private-sector programs.

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A).
- The company must create at least 50 new full-time jobs, provided that those companies would not otherwise be creating those jobs in Duval County (competitive location).
- The company must be participating in the State of Florida's Florida Flex Grant Program and adhere to the training program requirements.
- The company is eligible for up to $2,000 per employee hired.
- Incentives will be paid within a four-year period (expires after four years) so long as the company can demonstrate that the employee has met all training requirements of the State's Florida Flex Grant Program.
- The maximum payout by the City will be $200,000 paid out within the aforementioned four-year term.

Closing Fund

Objective

In the past, the City has been presented with the opportunity to submit proposals on very large projects. The competition for these projects from other states and municipalities is substantial, with many of the other short-listed sites off-setting the companies' risks with larger incentives. While Jacksonville is a premium location for a company to locate or expand, the competition still remains. This fund would provide Jacksonville an opportunity to aggressively compete for a project that was deemed to be highly desirable, but also highly competitive.

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A).
- The company must either:
    - create at least 200 new full-time jobs, provided that those companies would not otherwise be creating those jobs in Duval County (competitive location) or;
    - commit to a minimum of $30 million in private capital investment.
- This program must be combined with other local incentive and State programs.
- This incentive can be used to meet the State's matching requirements.

Frequently Used State of Florida Programs

State incentive programs constantly evolve. These programs comprise the vast majority of incentives that a company may receive as a part of any relocation or expansion package. The programs offered include tax credits, infrastructure grants, workforce training programs, and cash grants.

If a program requires local funding, the match payments to the incentivized company are directed through the State, thus requiring the local government to make the payment to the State once the Florida Department of Economic Opportunity has determined that the company has met its obligations for that budget year.

Program	**Description**	**Local Match Required?**	**Page No.**
Qualified Targeted Industry (QTI)	A tool available to encourage quality job growth in targeted high value-added businesses.	Yes – 20% of the per job incentive offered by state	15
Quick Action Closing Fund (QACF)	Provides a discretionary grant to close a competitive gap for projects creating jobs and investment.	Yes – 50% match	16
Florida Flex Grant Program	Provides grant funds for customized training for new and existing/expanding businesses that are creating new high-quality jobs.	No	17
High-Impact Performance Incentive (HIPI)	Negotiated incentive used to attract and grow major high impact facilities in Florida.	No	18
Capital Investment Tax Credit (CITC)	Used to attract and grow capital-intensive industries.	No	19
Economic Development Transportation Fund (Road Fund)	Designed to alleviate transportation problems that adversely impact a specific company's location or expansion decision.	No	20

A brief summary of each frequently used program is included on the following pages. For a complete listing of State of Florida programs and eligibility requirements, visit the Department of Economic Opportunity's website: www.Floridajobs.org.

Qualified Targeted Industry (QTI)

Objective

Qualified Target Industry Tax Refund (QTI): The Qualified Target Industry Tax Refund incentive is available for companies that create high wage jobs in targeted high value-added industries. This incentive includes refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes. Pre-approved applicants who create jobs in Florida paying 115 percent or more of the State of Florida average wage (Exhibit F), receive tax refunds of $3,000 per net new Florida full-time equivalent job created. For businesses paying 150 percent of the average annual wage, add $1,000 per job; for businesses paying 200 percent of the average annual salary, add $2,000 per job; businesses falling within a designated high impact sector or increasing exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each year of receiving a QTI refund, add $2,000 per job; projects locating in a designated Brownfield area (Brownfield Bonus) can add $2,500 per job. The local community where the company locates contributes 20 percent of the total tax refund. No more than 25 percent of the total refund approved may be taken in any single fiscal year. New or expanding businesses in selected targeted industries or corporate headquarters are eligible.

Quick Action Closing Fund (QACF)

Objective

The Quick Action Closing Fund (Closing Fund) is a discretionary grant incentive that can be accessed by Florida's Governor, after consultation with the President of the Senate and the Speaker of the House of Representatives, to respond to unique requirements of wealth-creating projects. When Florida is vying for intensely competitive projects, Closing Funds may be utilized to overcome a distinct, quantifiable disadvantage after other available resources have been exhausted. The Closing Fund award is paid out based on specific project criteria outlined in a performance-based contract between the company and the State of Florida. Wages must be greater than or equal to 125 percent of the State of Florida average wage. Sanctions are applied to companies who fail to meet or maintain performance goals.

Florida Flex Grant Program (FKA: Quick Response Training Program)

Objective

Florida Flex Grant Program – an employer-driven training program designed to assist new value-added businesses and provide existing Florida businesses the necessary training for expansion. A state educational facility – community college, area technical center, school district or university – is available to assist with application and program development or delivery. The educational facility will also serve as fiscal agent for the project. The company may use in-house training, outside vendor training programs or the local educational entity to provide training.

Reimbursable training expenses include: instructors'/trainers' wages, curriculum development, and textbooks/manuals. This program is customized, flexible, and responsive to individual company needs. To learn more about the Florida Flex Grant Program, visit CareerSource Florida.

High-Impact Performance Incentive (HIPI)

Objective

The High Impact Performance Incentive is a negotiated grant used to attract and grow major high impact facilities in Florida. Grants are provided to pre-approved applicants in certain high-impact sectors designated by the Florida Department of Economic Opportunity (DEO). In order to participate in the program, the project must: operate within designated high-impact portions of the following sectors– clean energy, corporate headquarters, financial services, life sciences, semiconductors, and transportation equipment manufacturing; create at least 50 new full-time equivalent jobs (if a R&D facility, create at least 25 new full-time equivalent jobs) in Florida in a three-year period; and make a cumulative investment in the state of at least $50 million (if a R&D facility, make a cumulative investment of at least $25 million) in a three-year period. Once recommended by Enterprise Florida, Inc. (EFI) and approved by DEO, the high impact business is awarded 50 percent of the eligible grant upon commencement of operations and the balance of the awarded grant once full employment and capital investment goals are met.

Capital Investment Tax Credit (CITC)

Objective

The Capital Investment Tax Credit is used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against the corporate income tax. Eligible projects are those in designated high-impact portions of the following sectors: clean energy, biomedical technology, financial services, information technology, silicon technology, transportation equipment manufacturing, or be a corporate headquarters facility. Projects must also create a minimum of 100 jobs and invest at least $25 million in eligible capital costs. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations. The level of investment and the project's Florida corporate income tax liability for the 20 years following commencement of operations determines the amount of the annual credit.

Economic Development Transportation Fund "Road Fund"

Objective

Economic Development Transportation Fund: The Economic Development Transportation Fund, commonly referred to as the "Road Fund," is an incentive tool designed to alleviate transportation problems that adversely impact a specific company's location or expansion decision. The award amount is based on the number of new and retained jobs and the eligible transportation project costs, up to $3 million. The award is made to the local government on behalf of a specific business for public transportation improvements.

ECONOMICALLY DISTRESSED AREAS

Economically distressed areas are determined from an analysis of the percent of the labor force not employed and the median household income within each census tract in Duval County.

Economically distressed areas are considered to be those areas that meet the criteria outlined in Exhibit B. For a detailed map of economically distressed areas in Duval County, see Exhibit C. Census tract data, and those areas deemed to be economically distressed, will be reevaluated on a bi-annual basis (every 2 years).

Projects located within an economically distressed area may be eligible for the programs below. Based on the program, there may be a distinction between those areas that meet one (Level 1) or both (Level 2) of the criteria.

Economically Distressed Areas Programs

Recapture Enhanced Value (REV) Grant within an Economically Distressed Area

Economically Distressed Area only.

Objective

A "REV" grant is designed to bring private capital investment and redevelopment into a nonresidential project site. Utilizing a "base year" assessed property value (from the Property Appraiser's database) for the project, a certain percentage of the city's portion of the incremental increase in ad valorem taxes on real and/or tangible personal property paid by the project above the base year amount is available as a REV grant to incent the project (the "increment").

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A).
- The company must create at least 10 new full-time jobs.
- Wages must be greater than or equal to 60 percent of Duval County's average annual wage, determined by the Florida Department of Economic Opportunity (Exhibit F).
- The company must commit to a minimum of $1 million in private capital investment.
- The standard grant will be up to 50 percent of the increment and up to 10 years. However, in some instances large number of jobs (over 100) and high capital investment (over $10 million) may dictate that the OED present a project with a higher percentage and/or longer period of time for the grant.
- Within an area deemed as economically distressed (Exhibits B and C):
    - Level 1: Grant amounts may go up to 60%.
    - Level 2: Grant amounts may go up to 75%.
- A REV grant is paid annually to the developer AFTER construction of the project that creates the increment is completed and the tangible personal property becomes taxable, and the taxes are paid.
- In lieu of any other funding source, the REV Grant may be utilized to fund the City's required match to any State program requiring such a match.
- In most instances, REV grant recipients will be required to maintain a specific number of jobs throughout the grant payment term.
- For criteria for REV grants outside of an economically distressed area, see page 9.

Commercial Development Area Program
Economically Distressed Area only.

Objective

The Commercial Development Area program is designed to retain and attract businesses in commercial corridors located in economically distressed areas by providing loans to finance the purchase of machinery and equipment and/or leasehold improvements.

Criteria

- The company must be located within a designated economically distressed area (Exhibits B and C).

- Project must be located in a commercial corridor and must have a letter of recommendation from the Planning Department which states that the project is consistent with the established goals of the applicable planning document.

- The maximum amount of public investment is 20 percent of total proposed project cost (up to $100,000). The amount of public investment is determined by the impact to the area and the financial needs of the project. All assistance will be in the form of low interest loans. These loans may be structured in the form of a forgivable loan with certain milestones (job creation, machinery purchased, expansion goals reached, total sales, etc.) being met.

- Funds may be used for leasehold improvements (including professional fees associated with the design and permitting of the proposed construction activities), purchasing machinery and equipment, purchasing furniture and fixtures (for retail buildings located on the first floor of commercial buildings providing a needed product/service), and professional fees and soft costs associated with closings and documentation of small business loans.

- Eligibility is subject to standard underwriting criteria.

Façade Renovation Grant Program
Economically Distressed Area only.

Objective

The Façade Renovation Grant Program is designed to provide commercial or retail façade renovation funding assistance for existing businesses in targeted areas. In these areas, the insufficient infrastructure coupled with degrading structures has become an obstacle to business location and expansion. The collateral/equity in the buildings in these areas do not translate into enough to get traditional financing/loans to make improvements and thus the buildings continue to degrade. The public investment in the facades of structures in strategic areas not only will provide the gap in equity to get traditional financing for upgrades; it has the potential to translate into enhanced sales and/or customers for many of the businesses in these areas. Furthermore, these renovations can help in reducing blight and creating positive momentum toward community redevelopment.

Criteria

- The company must be located within a designated economically distressed area (Exhibits B and C).

- The company must be located within a commercial corridor meeting all required zoning.

- The property must be in good standing with the City and have no outstanding liens or violations.

- The program matches dollar for dollar façade renovation costs up to a maximum of:
    - Level 1 Areas - $5,000 in City funding.
    - Level 2 Areas - $10,000 in City funding.

- Funds may be used for renovation of the front and sides of buildings visible to public streets (including painting, cleaning, staining, masonry repairs, repairing or replacing cornices, entrances, doors, windows, decorative details and awning) as well as the installation of signage. Funds may not be used for residential property, building permits, acquisition of property, machinery or equipment, working capital, inventory or refinancing of existing debt.

- Businesses eligible for the Façade Renovation Grant Program must strive to utilize City approved JSEB's for renovation work associated with this grant.

- Business structures receiving Façade Renovation Grant funds must be in compliance with all existing city, state, and federal building codes and regulations and permitting requirements as a prerequisite to the receipt of funds.

- Grant eligibility is limited to one address per year.

Local QTI Bonus

Economically Distressed Area only.

Objective

Currently, there are portions of Duval County that have high unemployment with low average wages and low property values (representing a depressed real estate market). This incentive is being proposed to attract greater private sector investment; to expand the opportunity for individuals in this area to gain high wage employment; and lower the overall unemployment rate in Duval County by providing jobs at a wage level that is rarely available in these areas of the community.

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A).
- The company must be located within a designated economically distressed area (Exhibit C).
- The company must create at least 10 new full-time jobs, provided that those companies would not otherwise be creating those jobs in Duval County (competitive location).
- The project must qualify for the State's QTI Program, and obtain the necessary approvals from both the State and local entities. The City will add a 100 percent local match bonus to be paid under the same terms as the approved QTI grant. This does not affect the State contribution in any way.
- Projects that qualify for this program are not eligible to use the Economically Distressed Area Targeted Industry Program.

Economically Distressed Area Targeted Industry Program

Economically Distressed Area only.

Objective

Currently, there are portions of Duval County that have high unemployment with low average wages and low ad valorem (representing a depressed real estate market). This incentive is being proposed to attract greater private sector investment; to expand the opportunity for individuals in this area to gain employment; and lower the overall unemployment rate in Duval County by providing jobs at a wage level commensurate with skill and education/training levels.

Criteria

- The company is required to be in a Targeted Industry Category (Exhibit A).
- The company must be located within a designated economically distressed area (Exhibits B and C).
- The company must create at least 10 new full-time jobs.
- Wages must be greater than or equal to 60 percent of Duval County's average annual wage, determined by the Florida Department of Economic Opportunity (Exhibit F).
- In most instances, Economically Distressed Area Targeted Industry Program recipients will be required to maintain a specific number of jobs throughout the payment term.
- Award amount:
    - Level 1 – Up to $1,000 per job.
    - Level 2 – Up to $2,000 per job.
- Incentives will be paid over a four-year period – only after COJ verifies the wages and hires were met.
- The award by the City will be paid out over the aforementioned four-year term:
    - Level 1 - $500,000 maximum, $125,000 maximum per year
    - Level 2 - $1,000,000 maximum, $250,000 maximum per year
- Cannot be used if company qualifies for the Local QTI Bonus program.

TAX INCREMENT DISTRICT (TID) INFRASTRUCTURE DEVELOPMENT

TIDs have been formed as part of Community Redevelopment Areas (CRAs) per Florida Statute Chapter 163. Currently, there are five CRAs in the City: the JIA CRA, the Soutel/Moncrief CRA, the Downtown Northbank CRA, the Downtown Southbank CRA and the Arlington CRA.

Objective

The TID Infrastructure Development program is designed to attract economic development to these targeted areas of the city by providing infrastructure improvements to create opportunities for businesses that will create new jobs and increase the tax base within the CRA.

Criteria

- The company must be located within a designated CRA (Exhibit D).
- The project is deemed to be in accordance with the adopted CRA Plan.
- The company must create at least 20 new full-time jobs.
- The company must commit to a minimum of $1 million in private capital investment.
- The maximum amount of public investment is 25 percent of total proposed project cost. The amount of public investment is determined by the impact to the area and the financial needs of the project.
- Project funding subject to available funds within that TID.
- Projects are subject to approval by CRA boards, if applicable.
- Projects that receive assistance from the TID Program may also be eligible for other public investment programs.

NORTHWEST JACKSONVILLE PROGRAMS

The City of Jacksonville administers the Northwest Economic Development Trust Fund (NWJEDF), which provides capital for project development within the defined Northwest Jacksonville area. See Exhibit E for a map of the boundaries.

The following programs are available to companies locating in Northwest Jacksonville.

Business Infrastructure Grant/Loan (BIG)
Northwest Jacksonville

Objective

The City of Jacksonville desires to promote growth within the Northwest area. Unfortunately, sometimes this area does not have the infrastructure to accommodate the desired growth. The BIG program is designed to attract economic development to the Northwest area by providing access to capital for infrastructure improvements to commercial businesses that increase the tax base.

Criteria

- The company must be located within Northwest Jacksonville (Exhibit E).
- The maximum amount of public investment is 25 percent of total proposed project cost (up to $250,000). The amount of public investment is determined by the impact to the area and the financial needs of the project.
- Grants are limited to 10 percent of the total proposed project cost (up to $100,000).
- The minimum loan amount is $25,000.
- Funds may be used for infrastructure improvements including but not limited to road construction, water and sewer lines, fencing, sidewalks, entryways, lighting and handicap accessibility to the project site. Projects that receive assistance for the construction of roads or for water or sewer utilities may be eligible for other public investment programs.
- Eligibility is subject to standard underwriting criteria.

Large Scale Economic Development Fund
Northwest Jacksonville

Objective

The Large Scale Economic Development Fund targets commercial projects that add to the tax base, anticipates new employment in excess of 50 persons or makes a significant economic impact within a targeted area.

Criteria

- The company must be located within Northwest Jacksonville (Exhibit E).
- The company must create at least 50 new full-time jobs.
- The company must commit to a minimum of $1 million in private capital investment.
- The maximum amount of public investment is 25 percent of total proposed project cost (up to $2,000,000). The amount of public investment is determined by the impact to the area and the financial needs of the project.
- Grants are limited to 10 percent of the total proposed project cost (maximum of $600,000). Grant amounts are also determined by a project's wage levels.
- The minimum loan amount is $25,000.
- Funds may be used for acquisition of land or buildings, infrastructure related costs, new construction and renovation of commercial buildings ("hard" costs only).
- Eligibility is subject to standard underwriting criteria.

Small Business Development Initiative (SBDI)
Northwest Jacksonville

Objective

The SBDI was established to stimulate small business investment within the defined Northwest Jacksonville targeted area of the city, increase the tax base in that area and create access to jobs for area residents.

Criteria

- The company must be located within Northwest Jacksonville (Exhibit E).
- The maximum amount of public investment is 25 percent of total proposed project cost (up to $250,000). The amount of public investment is determined by the impact to the area and the financial needs of the project.
- Grants are limited to 10 percent of the total proposed project cost (up to $50,000). Grant amounts are also determined by a project's wage levels and number of jobs to be created.
- Funds may NOT be used for working capital, furniture and fixtures, office equipment and other non-capital related expenses.
- Eligibility is subject to standard underwriting criteria.

DOWNTOWN

The success of Downtown Jacksonville is an important element of the city's overall vitality. The OED works in partnership with the Downtown Investment Authority (DIA) to bring economic development to Downtown. The following programs are administered by the DIA.

Downtown Programs

DIA Downtown Historic Preservation and Revitalization Trust Fund (DHPTF) (Funded)

The intent of the DHPTF is to foster the preservation and reuse of unoccupied, underutilized, and deteriorating historic buildings located in Downtown Jacksonville. The DHPTF is a permanent trust fund containing all donations and contributions of money, including gifts and grants received by the City for use in furthering the goals of this fund, as well as all funds as may be appropriated from time to time by Council and all fees, fines, and civil penalties as may be designated for deposit into the fund from time to time by Council. The DIA and the Historic Preservation Section of the Jacksonville Planning and Development Department (the "Historic Preservation Section") review all applications for grants and loans to be paid out of the fund; provided, however, that all grants or loans over $50,000 require City Council approval. Grant funds for exterior rehabilitation and restoration shall not exceed 50 percent of the total costs.

To receive assistance from the fund, the owner of a historic building, or his or her agent, shall submit a design application to the Historic Preservation Section for approval. The Historic Preservation Section shall review the application for eligibility. Only historic buildings located within the Downtown area as depicted in the Downtown Historic Preservation and Revitalization Trust Fund Guidelines and which meet one of the following criteria shall be eligible to make application for assistance from the fund:

1. The building is a local landmark, designated by the City pursuant to Chapter 307, *Ordinance Code*; or
2. The building is a contributing structure to a local historic district, designated by the City pursuant to Chapter 307, *Ordinance Code*; or
3. The building has been declared a potential local landmark, as defined in Chapter 307, *Ordinance Code*; however final local landmark designation must be obtained from the Council prior to final approval of the application.

DIA Retail Enhancement Grant Program (Funded)

The Downtown Retail Enhancement Grant Program (the "Program") is designed to create momentum in the critical task of recruiting and retaining restaurant and retail businesses and creative office space in the Northbank Core Retail Enhancement Area. The project must be consistent with the Downtown Master Plan and the Downtown Overlay Zone. In the first phase of the Program, the DIA will allocate $750,000.00 in recoverable grants to any property or business owner with qualified projects to assist with paying some of the costs associated with renovating or preparing commercial space for retail, salon, restaurant, gallery or other similar use for occupancy as identified above. Funds may be used to retain existing businesses or to recruit new businesses to the Northbank Core Retail Enhancement Area.

The following identifies specific goals for the Program:

- Expand the local property tax base by stimulating new investment in older, Downtown properties;
- Expand state and local sales tax base by increasing sales for new or existing shops; and
- Attract new and retain existing business to/in Downtown by decreasing renovation costs incurred for modernizing retail space in older, commercial properties in the Northbank Core Retail Enhancement Area.

To advance recruitment and marketability, the recoverable grant ("Grant") provides an incentive to improve the interior appearance and utility of street level storefronts, which will in theory attract retail and restaurant owners and draw more customers to the Downtown area.

Desired Retail Businesses

The following is a list of desired retail and other businesses. The list below is not all inclusive but serves as a guide only:

- Business incubators
- Education/academia
- Information technology offices
- Apparel stores including accessories (purses, scarves, hats)
- Shoe stores
- Toy stores
- Hobby stores, craft store and supplies
- Art supplies, framing stores
- Pet stores and supplies
- Specialty food stores/delicatessens
- Restaurants
- Coffee/Tea shops
- Gift Stores
- Book stores
- Stationery stores
- Kitchen/home accessories
- Small appliances
- Electronics
- Sporting goods
- Entertainment venues
- Jewelry stores
- Florists
- Specialty retail apparel such as bridal, formal gown, tuxedo, costume. (does not include rental)
- Art Galleries
- Office supply stores
- Pharmacies

General Program Requirements

The DIA has set aside $750,000.00 for the Program. The DIA will award Grant funds on a first-come, first-served basis. All rehabilitation work and design features must comply with all applicable city codes, ordinances, the established Downtown Design Review Board Guidelines, the Downtown Master Plan and the Downtown Overlay Zone. Work must follow plans and specifications as approved by the DIA and must be completed within six (6) months from the date of permitting. All applicable licenses and permits must be obtained, including all permits required by the City of Jacksonville's Planning Department, Development Services Division.

Applicants will be required to execute a grant agreement and other security documents, including but not limited to, a forgivable promissory note and subordinate mortgage (as to a property owner applicant or property owner/tenant applicant) and a forgivable promissory note and personal guarantee (as to a tenant applicant). If a property owner applicant does not have a prospective tenant at the time of the Grant award, at the discretion of the DIA, the property owner applicant may be required to execute a non-forgivable promissory note, subordinate mortgage and personal guaranty (the specific loan terms to be determined by the DIA). All loan closing costs (e.g., recording fees and documentary stamp taxes) shall be included in the Grant amount awarded.

The Grants shall be recoverable and amortized over a period of five (5) years. The principal amount of the Grant will diminish 20 percent each year for a period of five (5) years. If the grantee does not default on the Grant terms during the required five (5) year period, the Grant will be closed.

In addition to the requirements above, applicant projects will be subject to the following Program requirements:

- Projects must be located within the Northbank Core Retail Enhancement Area (the area designated in the attached map).
- Remodeling, renovation, rehabilitation, installation, and additions to the interior and exterior of the commercial building are eligible for Grant funds. Grant funds shall be used to modify and improve buildings and shall not be used for normal maintenance repair.
- Mixed-use projects improving multiple floors can qualify for funds; provided the ground floor will be used for retail and renovations to the ground floor are part of the project renovation scope.
- Generally, renovation projects must exceed $10,000 before DIA will consider the project for grant funding.
- Maximum Grant award shall be $20 for every square foot leased or occupied by the proposed tenant or business. The amount of incentive dollars awarded shall not exceed 50 percent of the total construction costs.
- Grantee must remain in the location for five (5) years and must create or retain for five (5) years during the term of the agreement two (2) or more full time equivalent jobs.
- Existing retailers who need to modernize the location or business owners at the end of their lease term who are considering moving from Downtown can qualify for grant funds.
- Applicants proposing to use Grant funds to help relocate from one Downtown building to another are not eligible to receive Grant funds unless the proposed move is necessary for business

expansion that includes job creation, involuntary displacement from current space that is unrelated to financial or operating disputes, or similar circumstances.

- Applicants proposing to construct new buildings are not eligible to receive Grant funds. Other non-eligible projects include adult entertainment venues, single-serving package stores, business-to-business companies, non-profit and government agencies.

Eligible Grant expenditures include:

- Interior demolition or site preparation costs as part of a comprehensive renovation project.
- Permanent building improvements, which are likely to have universal functionality. Items including but not necessarily limited to demising walls, exterior lighting, code compliant restrooms, electrical wiring to the panel, HVAC systems.
- Improvements to meet Fire and Life Safety codes and/or Americans with Disabilities Act requirements.
- Exterior improvements including signs, painting, or other improvements to the outside of a building.
- Sanitary sewer improvements.
- Grease traps.
- Elevator Installation which services the retail.

Ineligible Grant expenditures include:

- Temporary or movable cubicles or partitions to subdivide space.
- Office equipment including computers, telephones, copy machines, and other similar items.
- Renovating space on a speculative basis to help attract new tenants. (Note: This provision can be waived pursuant to the recommendation of the Program review committee and approval by the DIA Governing Board).
- Moving expenses.
- Working capital.

Funding Requirements

The Grant offers a maximum grant award of $20 for every square foot leased or occupied by the proposed tenant or business (as recommended by DIA staff, the Retail Enhancement Review Committee (defined in Article VI below) and approved by the DIA Board). The amount of incentive dollars awarded shall not exceed 50 percent of the total project construction costs. The application may be made by the property owner, the tenant or jointly by the property owner and the tenant.

The applicant's verified expenditures for the improvements must at least match the amount of the Grant funding (a minimum of $1 to $1 ratio). The amount of the Grant shall not exceed the $20 for every square foot leased or occupied by the proposed tenant or business.

The grant will be given on a reimbursement basis only. Prior to reimbursement, the applicant must hold a current occupational license to do business in the City. Acceptable proof of payments for materials, supplies, and labor shall be in the form of "paid" receipts and/or invoices. Reimbursement shall be disbursed per an established disbursement schedule approved by the DIA or via one-time lump sum payment at the time of completion and final inspection and acceptance by the DIA.

Application Requirements

A completed and signed application by the applicant will be presented to the Retail Enhancement Review Committee. With the application, each applicant must provide:

- A copy of the property tax bill or deed to confirm ownership of the property.
- A legally valid and binding new lease for a period of at least five years with use restricted to an allowable retail use. If the tenant is paying for the improvements, the lease must provide for a minimum of free rent, discounted rent, or equivalent thereof in lieu of the property owner having to share the cost of the improvements.
- A detailed written description and scaled elevation drawing depicting the size, dimension, and location of the improvements and modifications, with samples when applicable.
- A legally binding agreement with a licensed and qualified contractor.
- Unless the property owner is the applicant, a notarized statement from the property owner authorizing the construction and improvements.
- Evidence that the applicant is prepared to do business by including with the application the following required items:

    - Business Plan to include:
        - Concept and target market
        - Advertising/marketing plan
        - Source of cash/capital and cash flow analysis
        - Summary of management team's skills and experience
        - Number of job positions created
    - Three-year projected operating pro-forma
    - Design for the storefront and interior
    - Plan for merchandising (inventory levels, brands)
    - Minimum one-year corporate (as to a property owner applicant) and three year's personal tax returns (as to a tenant applicant) (exceptions will be considered for start-ups to accept three year's personal tax returns).

Project Evaluation Criteria and Application Approval

All eligible applications, as presented by DIA staff, will be considered on a case-by-case basis by a review committee comprised of three members from the DIA Board ("Retail Enhancement Review Committee") appointed by the DIA Chairman. The Retail Enhancement Review Committee will make recommendations based on the DIA staff's evaluation of the project utilizing the Project Evaluation Criteria below. A minimum score of twenty-five (25) points must be obtained by the applicant in order to be eligible to receive a recommendation from the Retail Enhancement Review Committee. The DIA Chief Executive Officer (CEO) will present recommendations of the Retail Enhancement Review

Committee to the DIA Board at a regularly scheduled monthly meeting for approval or denial of the application. Notification of Grant funding approval or denial will be sent to the applicant by the DIA staff promptly.

Applicants will be encouraged during the Grant review process to reuse, rehabilitate or restore historic architectural elements to retain the charm and character of older buildings and incorporate design principles sensitive to neighboring building structures.

The primary criteria for approval will be the feasibility of the business plan. A successful business plan will be the one that conveys the most promising combination of financial feasibility, product and market research, growth potential and job creation. Financial need or gap financing analysis must be included in the business plan.

The Project Evaluation Criteria and allocated points are listed below:

1. Business Plan (see point breakdown below) – (up to 30 points)

    - Plan shows good short-term profit potential and contains realistic financial projections (up to 5 points)
    - Plan shows how the business will target a clearly defined market and its competitive edge (up to 10 points)
    - Plan shows that the management team has the skills and experience to make the business successful (up to 5 points)
    - Plan shows that the entrepreneur has made or will make a personal (equity) investment in the business venture (up to 5 points)
    - Number of job positions created in excess of the required two (2) positions (up to 5 points)

2. Expansion of the local property tax base by stimulating new investment in older, Downtown properties (up to 5 points and an additional 5 points if the property is a historic property – maximum of 10 points)

3. Expansion of the state and local sales tax base by increasing sales for new or existing shops (up to 5 points)

Maximum of 45 points; Minimum score of 25 points needed to have the proposed project referred to the Retail Enhancement Review Committee for funding consideration.

<u>Review and Award Procedure</u>

1. Applicant complete and submit application form with all required supporting documents to the DIA CEO. Processing of the application will not commence until the application is deemed complete.

2. Applicant schedules a meeting with DIA staff to review the project.

3. DIA staff will review the project and provide comments to the applicant relating to any application requirement deficiencies.

4. If the application requirements have been met, the DIA staff, including the DIA CEO, will evaluate the project utilizing the Project Evaluation Criteria and present the application, project budget, and recommended Grant amount to the Retail Enhancement Review Committee for review and approval.

5. If the application and Grant amount is approved by the Retail Enhancement Review Committee, the committee will recommend that the application move forward for consideration by the DIA Board at the next regularly scheduled Board meeting.

6. DIA Board approves, modifies, or rejects Retail Enhancement Review Committee's recommendation. If approved or modified, DIA staff is directed to work with the Office of General Counsel to prepare a grant agreement, utilizing the form approved by the DIA, and other applicable security documents for signature by the applicant. The agreement shall identify the approved scope of work and amount of the Grant.

7. Applicant or contractor(s) must secure a building permit and approval from the Downtown Design Review Board for the complete scope of work, and contractors must be registered with the City.

8. Upon completion of the project and final approvals of all required inspections, the applicant may request reimbursement of eligible expenses. Reimbursement for improvements will require proof of payment (lien waivers, contractor affidavit).

9. A request for reimbursement payment in accordance with the approved disbursement schedule or upon completion of the project and final inspection and acceptance by the DIA a one-time lump sum payment will be submitted to the DIA staff for approval. The payment request will be processed within thirty (30) business days from receipt.

DIA Sale-Leaseback Incentive (Not funded)

The sale-leaseback incentive provides an alternative to a traditional arrangement whereby the DIA and its partners could pay for the development of a new build-to-suit facility or renovation of an existing building for a specific employer and charges a rental rate substantially below market rents. Under a sale-leaseback arrangement, the DIA would sell a build-to-suit facility to an investor-developer for an amount above construction cost. The DIA would receive a bonus cash payment from the investor who will own the building. In turn, the DIA would sign a long-term fixed lease (15-20 years) on the facility at a rate that would provide the investor-developer a market rate of return, which would then sub-lease to an employer for the same period at Downtown Jacksonville's rental rate.

The sale-leaseback investor will pay the community more than the brick and mortar cost of the building as the investor is paying for the building on the basis of the long-term lease commitment of the DIA. The DIA then has one of three options:

1. It takes the cash bonus from the investor-developer for itself;
2. It passes the bonus on to the company as a cash grant or forgivable loan; or
3. It reduces the rent to the company by the amount of the cash bonus.

By investing the cash bonus into an interest-bearing account, the DIA may further reduce rents by the amount of the interest generated. Because the DIA has master-leased the entire building, it may not be obligated to pay real estate taxes. This benefit can be passed on to the DIA's tenant as an additional inventive.

DIA Commercial Revitalization Program (CRP) (Self-funding)

The Commercial Revitalization Program provides for real estate tax recovery grant for the incremental improvements made for new, renewal, or expansion leases involving office or retail space in Downtown Jacksonville.

For leases of 3 or 4 years a 3-year real estate tax recovery grant equal in the first year to the lesser of:

- 75% of the actual tax liability, and
- $2.50 PSF with a 2-year phase-out thereafter

For leases of 5 years or more, a 5-year real estate tax recovery grant equal in the first three years to the lesser of:

- 75% of the actual tax liability, and
- $2.50 PSF with a 2-year phase-out thereafter

Leasehold expenditures for improvements must be at least (a) $5 PSF for new and renewal leases of less than 10 years; (b) $10 PSF for renewal leases of 10 years or more involving only previously occupied space; and (c) $35 PSF for new leases of 10 years or more and renewal leases of 10 years or more involving expansion space. Lease must not be a sublet or license agreement. Lease must provide that (a) any recoveries of real estate taxes will be passed through to tenant and (b) required leasehold improvement expenditures will be made. Tenant must not have accessed CRP previously for any space, except that, if tenant expands into new space and continues to occupy space for with CRP was accessed, tenant can receive benefits on expansion space. Not available to businesses that relocate from one part of Downtown Jacksonville to another. This Program cannot be used for a space that has an outstanding Retail Enhancement Program recoverable grant.

Applications must be filed before lease is signed. For a new lease, evidence of leasehold improvement expenditures and number of new employees must be submitted to the DIA within 60 days of rent commencement. For a renewal lease, evidence must be submitted to DIA within 14 months of lease commencement and evidence of number of employees must be submitted to DIA within 60 days of rent commencement.

Example: A financial services firm with 300 employees signs a 10-year lease for 100,000 SF in Downtown Jacksonville at $30 PSF. Without benefits, its annual real estate tax liability would be $10 PSF, or $1,000,000.

Year	CRP Recovery Percent*	CRP Property Tax recovery
1	75%	$ 250,000
2	75%	$ 250,000
3	75%	$ 250,000
4	50%	$ 166,667
5	25%	$ 83,333
Total (Nominal) Tax Recovery		**$ 1,000,000**

As shown above, CRP would result in an aggregate recovery of $1,000,000 in real estate taxes over 5 years.

* CRP Recovery Percent is the percentage of the initial year's benefit that is available each year.

DIA - Downtown Residential Rental Incentive Program - "Live, Work, & Play Downtown" (Not funded)

Program Subsidy:

- The Program will provide a monthly subsidy of $200.00 per month. Funds will be provided on a first come first served basis until exhausted.
- Towards the rental of a unit located in the Jacksonville Downtown area (Downtown Northbank or Southside CRA).
- The subsidy can be renewed annually for 2 additional years if the recipient remains qualified, for a maximum term of 3 years of subsidy.

Program operation:

- The program will act as a rental voucher.
- The tenant will provide the voucher to the rental owner/property manager.
- The Property Manager will request the payment on the voucher for the incentivized unit.
  - The payments will be made quarterly in arrears.
  - The Property Manager will receive 105 percent of the rental voucher amount reflecting the lost time value of the payment and as an incentive to accept the voucher program.

Program Eligibility:

Prospective tenants will need to apply to receive a "pre-approval "letter which they can take to Downtown rental properties demonstrating the subsidy commitment from the DIA and the time remaining on their subsidy clock. To qualify the recipient must document that they meet the following criteria:

- Have not have lived in the Jacksonville Downtown area in the past 2 years;
- Have a household income < 150 percent of the Jacksonville AMI (currently $66,450 for a household size of 1 person in the Jacksonville MSA);
- Are employed in the Downtown Jacksonville area (Downtown Northbank or Southside CRA) if seeking the $50.00 workforce housing bonus amount.
- An additional $50.00 bonus per month can be received if the rental unit is located in a DIA designated Strategic Housing Area (an "SHA").

The recipient will also need to meet the following requirements between "pre-approval" and the actual payment on the voucher incentive:

- Provide proof of an executed residential lease located in Downtown Jacksonville.
- Execute a funding agreement with the DIA, recognizing among other item: noncompliance with the program may result in the DIA taking action to recapture and recover any unqualified subsidy provided (including collections and attorney's fees); and that termination of the recipients subsidy will not affect the requirements under the lease for the unit with the landlord that full market rent on the unit must be paid.

DIA will market the program to the development and apartment management community in an effort to create programmatic buy in, and to better estimate the appropriate size of the program. The DIA will seek out employer matching funds from companies with a substantial workforce located in Downtown Jacksonville to help reduce the outlay of DIA funds.

DIA Multi-Family Housing REV Grant (Self- funding)

The following has been modeled after the OED REV Grant Incentive Program:

- The program provides for a recovery of a portion of the incremental increase in ad-valorem taxes, on real and tangible personal property, which is produced as a result of the multi-family housing development.

- The amount of the grant is determined by the number of units developed, plus
  - the number of those units set aside for workforce housing specific to Downtown Jacksonville (the "Downtown Northbank and Southside CRA"), the amount of green- space and cultural amenities the development provides, and the amount of retail/commercial space included in a mixed use development.

- Program eligibility: To be eligible for the program the development must either (1) provide units for workforce housing specific to Downtown Jacksonville, or (2) provide mixed income affordable housing.

  - To qualify a unit as workforce housing the unit must meet the following criteria:

    - Set aside for a resident earning < 150% AMI (currently $66,450 for a household size of 1 person); and
    - The resident must work in Downtown Jacksonville; and
    - The project must set aside a minimum of 5% of the units for workforce housing to qualify under the workforce housing option.

  - To qualify as an affordable mixed income project the project must meet the following criteria:

    - Provide a minimum of 20% of the units as set aside for households with an income < 80% AMI; and
    - The project cannot have more than 40% of the units as set aside for households with an income < 80% AMI.
    - The project must also leverage at least one (1) additional affordable housing financing method, e.g., LIHTCs, Tax Exempt Bonds, SHIP Funds, HOME funds, etc.

  - The DIA will confirm compliance with the eligibility requirements and additional commitments made by the Developer with quarterly reviews of rent rolls and annual audits and additional monitoring as needed.

REV Grant Parameters: The grant will be for an amount no greater than 75% of the City/County portion of the incremental increase in taxes for a fifteen (15) year period. The precise REV Grant size will be determined by the following factors:

- 5% for every 20 units produced in Downtown Jacksonville (not to exceed a factor of 30%); plus
- The % of total units set aside for Downtown workforce housing times 2 (not to exceed a factor of 20%); plus

- The % of the total number of units set aside as affordable housing units (see definition above) times 0.5 (not to exceed a factor of 20%); plus
- 10% for a mixed use development with a minimum of 2,500 square feet of retail/office/commercial space; plus
- 10% for the development of green space and amenities for residents; plus
- 10% if the Developer documents they are working with an employer of Non-profit organization to provide other housing incentives for Downtown; plus
- 10% for a project located in a DIA designated Strategic Housing Area (an "SHA").
- *** Please contact the DIA for locations of all SHA Designated areas.***

Grant Process: For Grant amounts at or below the 75% and for 15 years or less:

1. The DIA staff would take the application from the prospective grantee, and make a recommendation based upon the MF REV Grant Factors; and
2. The DIA Board would evaluate the staff recommendation and pass a resolution approving a grant amount and time frame to be agreed to by the Applicant and the DIA as part of a Redevelopment and REV Grant Funding Agreement.

Or For Grant amounts above the 75% or for a time period longer than 15 years:

1. The DIA staff would take the application from the prospective grantee, and make a recommendation based upon the MF REV Grant Factors;
2. The DIA Board would evaluate the staff recommendation and pass a resolution proposing the grant legislation be presented to the City Council; and
3. City Council would hear the DIA Board proposed legislation and after debate pass an ordinance with a grant amount and time frame to be agreed to by the Applicant and the DIA as part of a Redevelopment and REV Grant Funding Agreement.

DIA Market Rate Multi-Family Housing REV Grant (Self-funding)

The following has been modeled after the OED REV Grant Incentive Program:

- The program provides for a recovery of a portion of the incremental increase in ad-valorem taxes, on real and tangible personal property, which is produced as a result of the multi-family housing development.
- The amount of the grant is determined by the number of units developed, plus
- The amount of green- space and cultural amenities the development provides, and the amount of retail/commercial space included in a mixed use development.
- Program eligibility: To be eligible for the program the development must develop at least 25 new multi-family rental housing units in Downtown.
- The DIA will confirm compliance with the eligibility requirements and additional commitments made by the Developer with quarterly reviews of rent rolls and annual audits and additional monitoring as needed.

REV Grant Parameters: The grant will be for an amount no greater than 75% of the City/County portion of the incremental increase in taxes for a fifteen (15) year period. The precise REV Grant size will be determined by the following factors:

- 5% for every 25 units produced in Downtown Jacksonville (not to exceed a factor of 30%); plus
- 15% for the development of City-owned lazy / underutilized assets; plus
- 10% for a mixed use development for each 2,500 square feet of retail/office/commercial space (not to exceed 20%); plus
- 10% if the Developer documents they are working with an employer or Non-profit organization to provide other housing incentives for Downtown; plus
- 15% for the development of green space and amenities for residents; plus
- 15% for a project located in a DIA designated Strategic Housing Area (an "SHA").
- *** Please contact the DIA for locations of all SHA Designated areas.***

Grant Process: For Grant amounts at or below the 75% and for 15 years or less:

1. The DIA staff would take the application from the prospective grantee, and make a recommendation based upon the MF REV Grant Factors; and
2. The DIA Board would evaluate the staff recommendation and pass a resolution approving a grant amount and time frame to be agreed to by the Applicant and the DIA as part of a Redevelopment and REV Grant Funding Agreement.

Or For Grant amounts above the 75% or for a time period longer than 15 years:

1. The DIA staff would take the application from the prospective grantee, and make a recommendation based upon the MF REV Grant Factors;
2. The DIA Board would evaluate the staff recommendation and pass a resolution proposing the grant legislation be presented to the City Council; and
3. City Council would hear the DIA Board proposed legislation and after debate pass an ordinance with a grant amount and time frame to be agreed to by the Applicant and the DIA as part of a Redevelopment and REV Grant Funding Agreement.

DIA Downtown Down-Payment Assistance Program (DPA) (Not funded)

- Provides Down Payment Assistance to potential home owners for purchasing a primary residence in Downtown Jacksonville (Within the Downtown Northbank or Southside CRA).
- To qualify for the DPA incentive program buyers would need to have household incomes ≤ 150% AMI (currently $66,450 for a household size of 1 for the Jacksonville MSA).
- Buyers would be eligible for up to $20,000 in DPA.
  - The DPA will be in the form of a 0% interest rate, no payment, junior (2nd) lien mortgage.
  - The program will fund up to 10% of the purchase price
  - Borrower would be required to contribute a minimum of 2.5% of the purchase price.
  - Combined the owner would have 12.5% equity in the home.
  - The loan would be due on sale, transfer, refinance, or if additional debt is secured with the equity in the property.

- Loan Repayment & Shared Equity DPA Component
  - Loan repayment on the DPA loan will begin after the affordability period ends.
  - The affordability period will match the term of the 1st Mortgage Loan, and be secured by a Junior (2nd Lien) Mortgage.
  - At the end of the affordability period, the payments begin on the Junior Mortgage, as determined by a previously executed Promissory Note.
  - The Junior Mortgage can be forgiven when payments are scheduled to begin at the discretion of the DIA Board.
  - If the property is sold, refinanced, title to the property is transferred, or additional debt is secured by the equity in the property the Borrower would have to repay the principal amount of the Note (the DPA assistance) plus a percentage of any equity the homeowner has in the property.
  - The percentage of equity sharing is directly related to the percentage of 1st lien security (LTV) the DPA loan provided.
  - Any repayments of principal on a DPA loan, recoveries of DPA loan funds, and all Shared Equity payments shall be returned to the DPA Loan Fund for the purpose of making new DPA Loans.

- For example:
  - Household seeks to Purchase a $150,000 owner occupied condo/townhome/single family detached unit in Downtown Jacksonville.
  - The Borrower contribution requirement of $3,750 (2.5% of the purchase price).
  - The DIA provides $15,000 of assistance through a Shared Equity DPA loan (10% of the purchase price)
  - The Mortgage (1st Lien) Lender Provides $131,250 in Financing.
  - If homeowner sells the property in year 10 for $75,000 gain, the Homeowner would owe the DIA $21,000 from the sale proceeds as follows:
    - The original $15,000 DPA Loan
    - Plus 10% of the gain of $60,000 ($75,000-$15,000= $60,000) on the sale = $6,000

The DIA recommends funding an initial pool of DPA loans with a commitment of $1,500,000 to assist an average loan size of $15,000 on 100 units of owner occupied housing.

JACKSONVILLE FILM & TELEVISION JOB & BUSINESS CREATION INCENTIVE PROGRAM

Program Summary

This is a performance based program structured to attract high wage unique film and television production opportunities to Jacksonville that will hire area professionals and purchase goods and services from local businesses.

This program will be managed and facilitated by the COJ Sports & Entertainment Office.

The Film & Television Job and Business Creation Program utilize different metrics than those applied to the Office of Economic Development (OED) Public Investment Policy Programs. The program is a sliding scale based on the total qualified expenditures, following similar standards used by the state's Office of Film & Entertainment (OFE), a division of the Florida Department of Economic Opportunity. The OFE does not use a ROI model in their application evaluation. However, they utilize a broader set of qualified expenditure criteria. Their program is based upon meeting minimum thresholds on qualified expenditures and hiring of Florida residents and first come-first serve priority.

Incentive Investment Thresholds

%	Qualified Expenditures Range	Investment Range
5%	$500,000 - $749,999	$25,000 - $37,499
10%	$750,000 – $999,999	$75,000 - $99,000
15%	$1,000,000 - $5,000,000+	$150,000

Program Process

I. Application Process

Submit application within 180 days prior to start date. Applicant must have supporting schedules and documents including, as specified in the application, along with the original, signed, application, and, if desired, the Request for Confidentiality Form provided by the Jacksonville Film & Television Office (JFTO), which is hereby incorporated by reference. These items must be provided as both hard copy and electronic files.

II. Qualification Process

Once an application is complete, JFTO shall review it to determine whether it contains all required information and meets the program criteria. The review will include an interview with the contact person listed on the application. JFTO shall either deny the application or qualify the applicant and recommend to the Office of Sports & Entertainment, JFTO shall prioritize all qualified productions on economic impact evaluation basis, and a High-Impact Television Series shall be allowed first position.

III. Certification Decision Process

1. The Office of Sports & Entertainment shall consider JFTO's recommendation and make a final determination of the actual maximum rebate to certify, if available, to the qualified production.

2. Certification of rebates is conditioned upon their availability pursuant to the fiscal year allocation.

   (a) Certification of rebates shall be tied to the fiscal year in which the certified production is scheduled for completion.
   (b) If no funds are available in the present fiscal year, then the applicant must be notified.
   (c) Applicant must meet minimum threshold of 80% of projected expenditures with minimum of $500,000, otherwise the application will be void.

IV. Verification of Actual Qualified Expenditures

1. After all qualified expenditures have been made; the certified production shall verify the qualified expenditures.
   (a) Qualified expenditures broken out by type: accounts payable to Duval County qualified vendors, petty cash, and Duval County worker payroll, the latter being provided as separate files for the cast, crew, and extras and including Declaration of Duval County Residency Forms, which is hereby incorporated by reference.
   (b) Any substantiation which JFTO considers not a qualified expenditure will be returned to the certified production company for written rebuttal. If no written rebuttal is received within 10 business days, the expenses will not be considered a qualified expenditure.

V. Award of Rebate

The final rebate award amount may not exceed the maximum funding award amount certified.

Program Evaluation

Applications must meet the following criteria, with the highest priority given to paragraph (a):

a. The number of county residents who will be employed on the project, the duration of such employment, and the average wages paid to such residents. Preference shall be given to a project that expects to pay higher than the statewide average wage.
b. The amount of qualified expenditures that will be made in Duval County.
c. Planned or executed contracts with production facilities or soundstages in this county and the percentage of principal photography or production activity that will occur in this county.
d. Planned preproduction and postproduction to occur in this county.
e. The amount of capital investment, especially fixed capital investment, to be made directly by the production company in this county related to the project and the amount of any other capital investment to be made in this state related to the project.
f. The duration of the project in this county.
g. The extent to which the production company will promote Jacksonville, including the production of marketing materials promoting this county as a tourist destination or a film and entertainment production destination; placement of county agency logos in the production and credits; authorized use of production assets, characters, and themes by this county; promotional videos for this county included on optical disc formats; and other marketing integration.
h. The project is about Jacksonville or county or shows this city/county in a positive light.
i. A review of the production company's past activities in Florida or other states.
j. The length of time the production company has made productions in this county, if producing a project that would not otherwise produce in county, the number of production's the production company has made in this county, and the production company's overall commitment to this county. This includes a production company that is based in this county.
k. The expected effect of the award on the viability of the project and the probability that the project would be undertaken in this county, funds are granted to the production company.

Jacksonville Film & Television Office
A Division of Sports & Entertainment Office
DUVAL COUNTY RESIDENCY FORM

Purpose: Film, television, commercial and digital media production companies claiming wages or salaries paid to Duval County residents for work performed on a qualified production in Duval County under Duval County's incentive program must complete this declaration of residency for each resident. All production companies must retain this form in its records and submit a copy to the Film & Television Office when submitting documentation for the rebate. Additional documentation is required. See item #3 below.

Last Name	First Name
Permanent Residence - Physical Address	
City, State and Zip Code	Home Telephone Number
Title of Film of Entertainment Project	Production Company

1. Is employee presently a resident of Duval County? See Residency below. _____

2. Does employee anticipate changing his/her residency status during the time expected to work on this project? _____

3. The production company must provide at least one of the following, and attach to this document:

   □ A copy of employee's valid Florida Driver's License Driver License Number:_____
   Expiration Date: _____

   □ A copy of employee's current Florida Voter Registration. Enter the Registering County: _____

   □ A copy of employee's most recent personal income tax return.

   □ Other. Indicate type: ____

If employee cannot provide one of the previous three forms of evidence, other evidence may be acceptable. For example, a minor may present parent's proof of residency. Other evidence must be clear and convincing, and show intent to maintain a permanent residence in Duval County. Proof of ownership of property or establishing an abode in Duval County is not acceptable unless supplemented by other information showing intent.

4. Police Officers who are unable to provide a driver's license must provide the following two items:

   Precinct #:_____ Badge #:_____

Residency: To be a resident of Duval County, you must be domiciled in Duval County. Your domicile is your permanent home; it is the place to which you intend to return after any temporary absence. You can only have one domicile. A change in domicile is established only be establishing a physical presence in a new location with intent to abandon your old domicile and make a new home in the new location permanently or indefinitely.

I declare under penalty of perjury that I have examined this documentation to the best of my knowledge and I believe it is true, correct and complete.

Signature (Employee):_____ Date:_____

Signature (Producer, Production Manager or Production Coordinator:_____Date:_____

Request for Confidentiality Form Letter

[Instructions: This form is to be completed and provided on your company letterhead]

Date:

Jacksonville Film & Television Office
117 W. Duval Street, Suite #280
Jacksonville, Florida 32202

Re: Jacksonville Film & Television Job and Business Creation Incentive – Request for Confidentiality

On behalf of **[applicant/production company]**, and in reference to **[project name's]** application, please accept this letter as a request for the information, including but not limited to project budget details, cast members, and script, contained within this application to be held confidential pursuant to Florida Statute 288.075, Confidentiality of records. I understand that said information will remain confidential for 12 months from the date of this letter or until the information is otherwise disclosed whichever occurs first.

I understand, once my production begins, the state has the right to release information regarding the amount of funds certified to this project in conjunction with the anticipated Duval County qualified expenditures and the anticipated number of jobs created.

I also understand that, in order to extend the period of confidentiality for up to an additional 12 months, another written request must be submitted prior to the expiration of any confidentiality originally provided under Florida Statute 288.075.

Sincerely,

[Signature]

Print Name:
Title:

MISCELLANEOUS

Incentives Process

Application

Companies applying for incentives from the City of Jacksonville (Office of Economic Development - OED) must submit an application using the Enterprise Florida's Inc. (EFI) application form. The OED will review the application and complete its due diligence to see if the project qualifies for public investment. If the OED recommends public investment, staff will begin vetting the proposal with the Administration advocating the merits for City funding. After gaining consensus, OED staff will prepare a project summary and legislation for consideration by the Mayor and City Council. The project summary and legislation may be submitted under a confidential code name, per Florida Statute 288.075, to protect the identity of the company until plans are finalized.

Please contact the DIA for DIA administered programs.

Approval

The project summary will provide an overview of the project and outline the return on investment calculation used to evaluate any public investment in the project. The legislation will outline the approved programs and terms, as well as cap the maximum public investment for the project.

Economic development project legislation requires an introduction (a bill placed on the agenda) at a City Council meeting. At a subsequent meeting of a standing committee (typically Finance Committee) the legislation will be presented and voted upon by the Committee (making a recommendation to the full City Council). Finally, at the following City Council meeting, the legislation will be voted upon by the full City Council. If the local public investment is less than $300,000, approval may be obtained in one meeting.

OED staff will make themselves available to meet with City Council members to discuss projects prior to their presentation to the City Council and its committees. The legislation will grant authority to the OED through the Office of General Counsel (OGC) to negotiate in good faith with the company and Florida Department of Economic Opportunity (DEO) to finalize the contract language within the bounds of the adopted legislation of the City Council.

Agreements

Local agreements for hybrid state/local programs should have consistent definitions and compliance terms with state agreements developed by DEO. As necessary, the City of Jacksonville's General Counsel will work with DEO's legal team to coordinate agreements to ensure common language and intent is established.

Announcements

Companies may not make any commitments or public announcements to move forward with a project until both the State and the City incentives approval is obtained. All public announcements must be coordinated with EFI and OED.

Compliance

The City of Jacksonville's Office of Economic Development (OED) is responsible for coordinated administration, monitoring, compliance review, incentive program development and financial processing. The OED compliance program is designed to promote transparency, adherence to economic development agreement regulations and ordinances, manage financial obligations, and assess return on investment performance. This is accomplished in coordination with our partner departments (Finance Department, Office of General Council, and City Council Auditor's Office). The functional activities of the compliance program consist of the following process components:

Economic Development Agreements (EDA) – EDAs should clearly outline the compliance requirements, performance timing parameters and reporting requirements. Project meetings are held regularly with project managers, partners and Office of General Council (OGC) staff. Negotiated agreements which involve our Qualified Targeted Industry (QTI) programs are coordinated in conjunction with the State of Florida's Department of Economic Opportunity (DEO) representatives for review and approval, certification, and funding obligations. DEO conducts annual incentives compliance with all active projects to ensure job creation and capital investment requirements are met before any payments are made. The OED compliance documentation process is coordinated with the state to ensure the integrity of the data and streamline the process for the companies.

Reporting Requirements – Active company participants of the economic development programs are required to submit, at a minimum, an Annual Survey Report outlining agreement performance parameters (i.e., job creation, average wages, capital investment, project progress summaries and other agreement commitments) until the completion of the project (final payout of incentives). These reports require certification by a senior officer and/or other authorized officials attesting to the information's authenticity and accuracy. Project records are subject to audit and are required to be maintained to support pertinent agreement provisions.

Review and Monitoring – Actual project results are reviewed and monitored periodically to determine whether compliance with the economic development agreement requirements is being achieved. Project progress reports are required and evaluated prior to disbursement of incentive funds. Project reports are generated to summarize yearly incentive cost estimates. Periodic site visits may be conducted to evaluate a project's compliance and strengthen business relationships with a company in order to continue growth and investment opportunities.

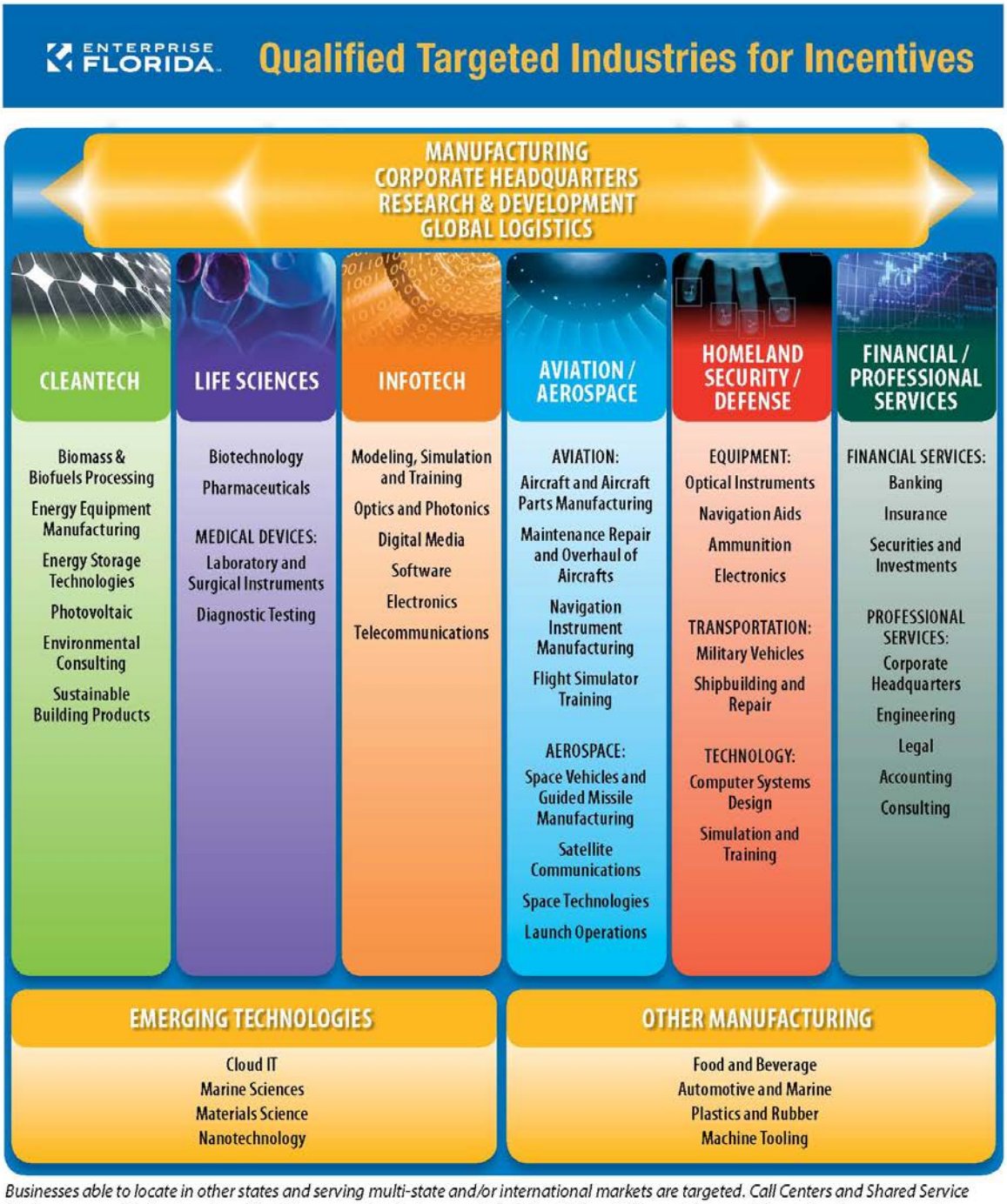
Payment Processing – Economic development projects approved for incentive payments are reviewed and project work schedules are prepared to calculate grant commitments based on performance. These schedules are reviewed and approved by OED and the City Finance Department's Compliance Office. Payment calculation schedules are also provided to company participants for review and confirmation. Once approved, payment information is submitted to the Finance Department for payment processing.

Subject to the availability of funds, incentive payments for projects that are located within a defined CRA will be made from the respective CRA.

Management Oversight – Website updates including job creation statistics, private capital investment, estimated ad valorem revenues, project completion timelines, and reporting requirement are posted annually.

EXHIBITS

Exhibit A



Businesses able to locate in other states and serving multi-state and/or international markets are targeted. Call Centers and Shared Service Centers may qualify for incentives if certain economic criteria are met. Retail activities, utilities, mining and other extraction or processing businesses, and activities regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation are statutorily excluded from consideration. All projects are evaluated on an individual basis and therefore operating in a target industry does not automatically indicate eligibility.

For additional information about Florida's business advantages, please visit Enterprise Florida's website at www.enterpriseflorida.com or call 407-956-5600.

Rev. 10/13

Exhibit B

Economically Distressed Areas

Determining Factors for all Other Areas in Duval County

For purposes of this analysis the following data was utilized to identify economic distress. Census tracts with either of the following factors are deemed to be an economically distressed area:

1. Percent of the labor force not employed equal to or greater than 125 percent of the Duval County average.
    - 45 of 174 census tracts in Duval County have a labor force not employed equal to or greater than 125 percent of the Duval County average.
2. Median household income is equal to or less than 60 percent of the Duval County Median household income.
    - 29 of 174 census tracts in Duval County have median household income equal to or less than Median household income.

In the Census Tract Breakdown below, the tracts identified with both a distressed "Percent of the labor force not employed" and the "Median household income" are deemed to be a Level Two area. Those tracts identified with one of the two factors are deemed to be a Level One area. These distressed areas are being utilized in specific programs in this document in order to gauge the requisite City funding participation. The statistical information below will be edited administratively on a bi-annual basis in order to more accurately reflect the economic condition of the most distressed areas of the City.

Data source: U.S. Census Bureau American Community Survey 2014 5-Year Estimates

Census Tract	% of Labor Force Not Employed	Median household income	Distressed Area
County Total 174*	County Average 12.4%	County Median $47,582	
1	17.7%	$32,882	Level 1
2	16.1%	$27,664	Level 2
3	18.0%	$23,158	Level 2
6	16.1%	$28,571	Level 1
7	4.3%	$73,906	
8	7.1%	$41,838	
10	60.3%	$10,789	Level 2
11	8.6%	$27,372	Level 1
12	13.6%	$36,875	
13	23.0%	$20,212	Level 2
14	22.9%	$27,024	Level 2
15	18.7%	$19,228	Level 2
16	23.1%	$18,221	Level 2
21.01	5.7%	$45,172	
21.02	8.5%	$58,125	
22	6.3%	$63,382	
23	3.6%	$43,008	
24	10.7%	$85,521	
25.01	14.7%	$23,125	Level 1
25.02	8.9%	$54,094	
26	29.3%	$19,018	Level 2
27.01	23.1%	$25,942	Level 2
27.02	14.8%	$26,369	Level 1
28.01	20.4%	$23,390	Level 2
28.02	19.0%	$20,844	Level 2
29.01	25.3%	$19,803	Level 2
29.02	16.4%	$23,140	Level 2
101.01	7.4%	$64,412	
101.02	9.6%	$68,801	
101.03	5.9%	$85,923	
102.01	13.2%	$54,417	
102.02	6.9%	$52,330	

Census Tract	% of Labor Force Not Employed	Median household income	Distressed Area
103.01	6.7%	$52,450	
103.03	9.8%	$41,997	
103.04	15.1%	$39,289	
104.01	6.9%	$42,472	
104.02	14.8%	$31,856	
105	10.5%	$44,649	
106	10.7%	$51,214	
107	22.5%	$32,365	Level 1
108	19.2%	$27,917	Level 2
109	27.2%	$42,974	Level 1
110	20.1%	$32,750	Level 1
111	10.9%	$41,420	
112	17.8%	$38,145	Level 1
113	17.5%	$25,517	Level 2
114	14.6%	$27,548	Level 1
115	23.4%	$23,871	Level 2
116	20.4%	$19,620	Level 2
117	12.1%	$43,611	
118	34.5%	$28,397	Level 2
119.01	14.9%	$46,662	
119.02	10.6%	$56,875	
119.03	9.5%	$66,788	
120	12.2%	$45,366	
121	25.4%	$25,484	Level 2
122	20.9%	$26,822	Level 2
123	15.5%	$39,128	Level 1
124	23.9%	$42,203	Level 1
125	14.6%	$30,189	
126.01	17.6%	$30,587	Level 1
126.02	18.5%	$36,681	Level 1
127.02	14.1%	$48,654	
127.03	9.7%	$51,431	
127.04	9.8%	$45,195	
128	19.6%	$43,768	Level 1
129	16.8%	$51,949	Level 1
130	5.6%	$108,897	

Census Tract	% of Labor Force Not Employed	Median household income	Distressed Area
131	12.9%	$47,740	
132	15.1%	$45,361	
133	12.1%	$46,683	
134.02	22.1%	$34,309	Level 1
134.03	12.3%	$35,473	
134.04	19.6%	$32,893	Level 1
135.02	8.3%	$52,574	
135.03	13.0%	$42,844	
135.04	15.4%	$37,060	
135.21	13.6%	$36,918	
135.22	20.4%	$47,943	Level 1
137.21	12.1%	$51,534	
137.23	11.2%	$58,542	
137.26	15.1%	$57,154	
137.27	6.7%	$75,397	
138	28.1%	$37,148	Level 1
139.01	19.4%	$39,675	Level 1
139.02	6.2%	$50,042	
139.04	15.9%	$32,853	Level 1
139.05	4.7%	$97,218	
139.06	7.7%	$74,583	
140.01	3.3%	$68,026	
140.02	10.9%	$63,173	
141.01	5.9%	$62,750	
141.02	4.6%	$46,468	
142.02	3.6%	$47,917	
142.03	5.7%	$62,110	
142.04	6.3%	$65,441	
143.11	11.6%	$37,188	
143.12	10.8%	$55,728	
143.26	7.2%	$70,643	
143.28	5.8%	$70,054	
143.29	9.1%	$80,074	
143.3	3.5%	$105,441	
143.31	8.0%	$43,750	
143.32	4.5%	$53,529	

Census Tract	% of Labor Force Not Employed	Median household income	Distressed Area
143.33	3.5%	$59,762	
143.34	10.5%	$62,181	
143.35	8.1%	$75,598	
143.36	10.1%	$66,923	
143.37	4.0%	$58,590	
143.38	9.2%	$50,227	
144.01	14.2%	$42,433	
144.04	12.4%	$46,268	
144.06	6.8%	$77,550	
144.08	5.5%	$46,899	
144.09	0.7%	$87,781	
144.1	6.8%	$57,224	
144.11	5.6%	$50,886	
144.12	6.5%	$86,456	
144.13	7.7%	$70,879	
145	8.2%	$49,866	
146.01	2.3%	$84,540	
146.03	15.3%	$40,246	
146.04	3.9%	$36,670	
147.01	10.5%	$39,132	
147.02	10.0%	$70,240	
148	18.2%	$26,482	Level 2
149.01	9.8%	$42,647	
149.02	11.9%	$50,216	
150.01	8.6%	$48,354	
150.02	17.6%	$63,969	Level 1
151	13.0%	$42,854	
152	17.4%	$33,939	Level 1
153	13.8%	$32,399	
154	6.2%	$35,904	
155.01	22.7%	$33,536	Level 1
155.02	17.9%	$26,856	Level 2
156	11.1%	$40,766	
157	11.5%	$31,067	
158.01	12.3%	$46,232	
158.02	11.3%	$34,358	

Census Tract	% of Labor Force Not Employed	Median household income	Distressed Area
159.22	12.9%	$37,607	
159.23	8.3%	$65,692	
159.24	5.0%	$43,628	
159.25	6.4%	$48,831	
159.26	11.6%	$44,183	
160	14.6%	$36,908	
161	10.6%	$33,693	
162	13.1%	$35,156	
163	8.8%	$40,625	
164	4.9%	$57,546	
165	8.4%	$76,978	
166.01	10.3%	$26,196	Level 1
166.03	14.3%	$64,451	
166.04	5.9%	$42,132	
167.11	6.9%	$88,413	
167.22	10.0%	$42,043	
167.24	12.0%	$46,051	
167.25	6.5%	$41,875	
167.26	10.0%	$46,488	
167.27	12.1%	$40,572	
167.28	9.9%	$74,890	
167.29	8.7%	$54,277	
168.01	12.9%	$81,563	
168.03	3.9%	$95,132	
168.04	7.5%	$104,386	
168.05	10.0%	$97,904	
168.06	6.9%	$67,941	
168.07	2.8%	$48,875	
168.08	11.1%	$43,284	
171	4.2%	$36,932	
172	12.9%	$28,125	Level 1
173	15.5%	$50,797	Level 1
174	17.4%	$17,014	Level 2

Exhibit C

Economically Distressed Areas (as defined in Exhibit B):

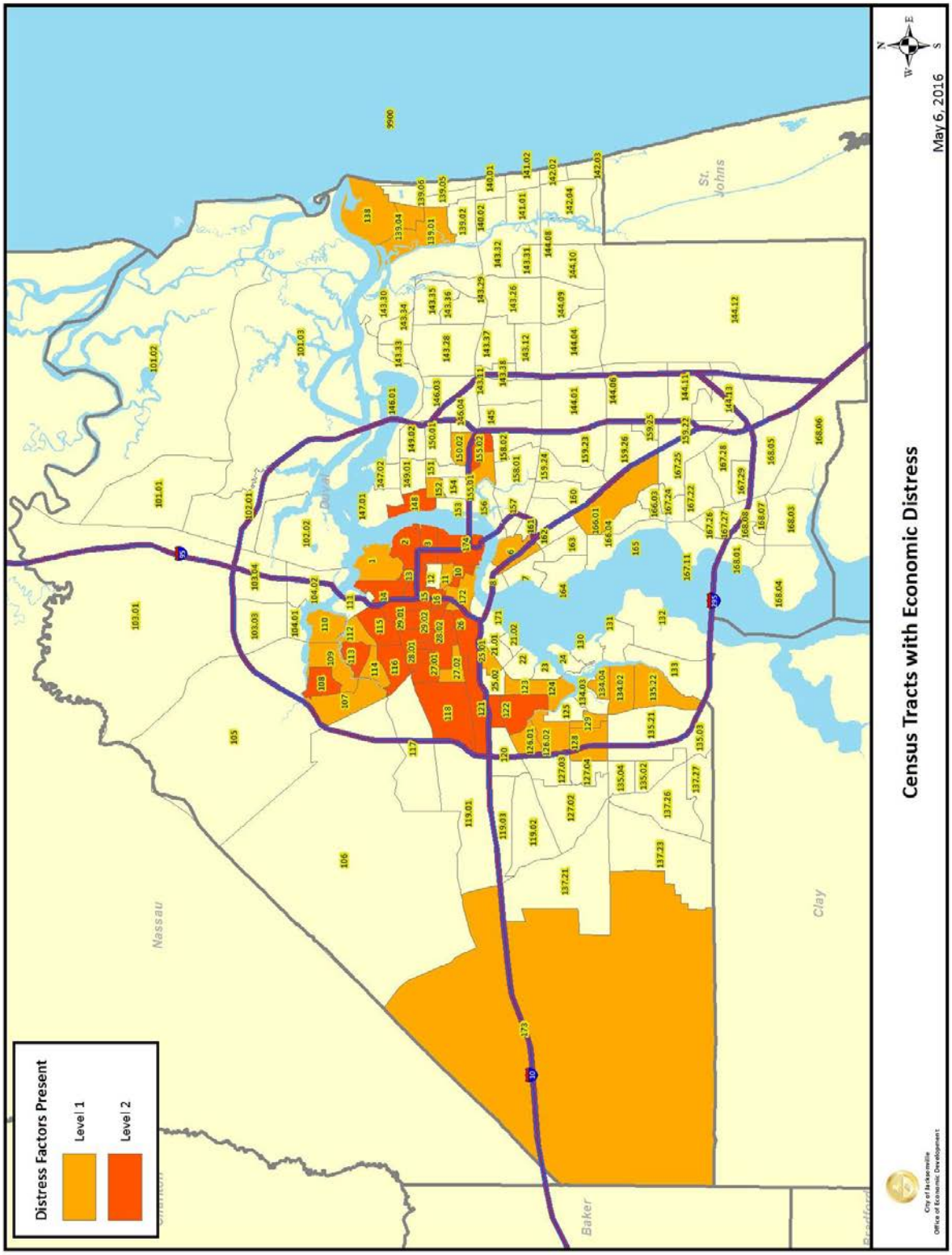


Exhibit D

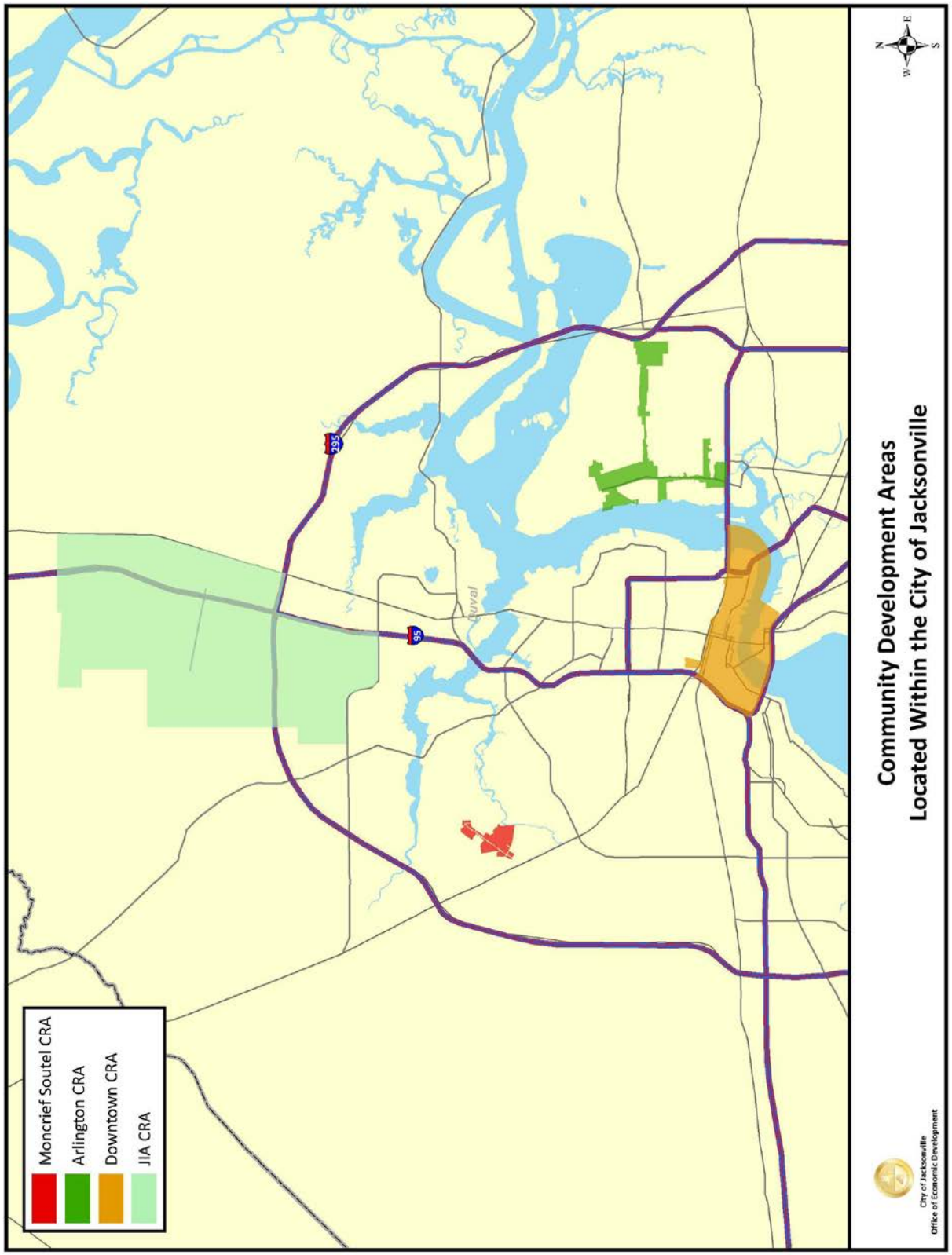

Community Development Areas
Located Within the City of Jacksonville
Moncrief Soutel CRA
Arlington CRA
Downtown CRA
JIA CRA
295
95
Duval
N
E
S
W
City of Jacksonville
Office of Economic Development

Exhibit E

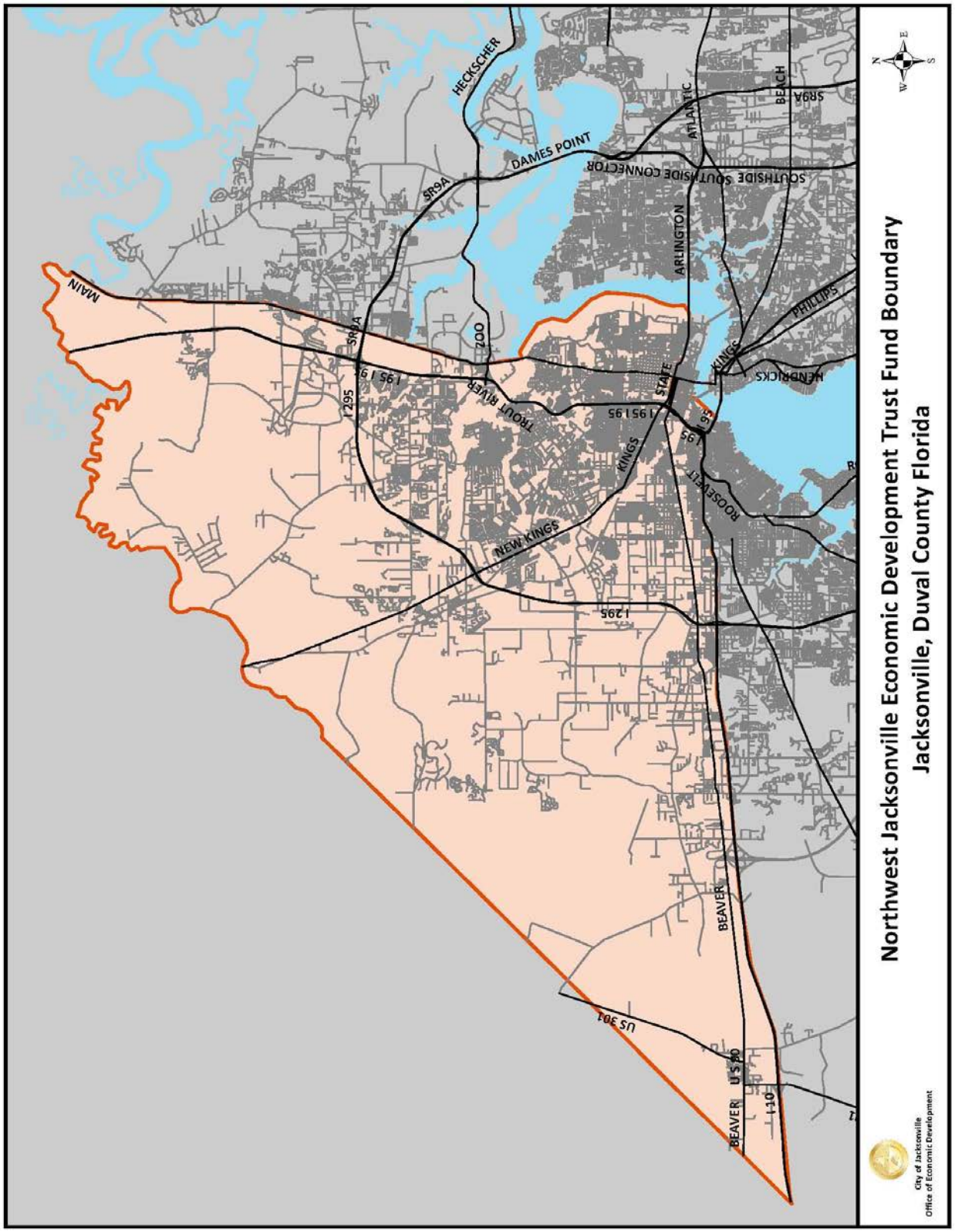

Northwest Jacksonville Economic Development Trust Fund Boundary
Jacksonville, Duval County Florida
City of Jacksonville
Office of Economic Development
HECKSCHER
DAMES POINT
SR9A
ATLANTIC
BEACH
SR9A
SOUTHSIDE CONNECTOR
ARLINGTON
MAIN
ZOO
TROUT RIVER
I 95 I 95
I 295
STATE
KINGS
NEMBRICKS
PHILLIPS
I 95
ROOSEVELT
NEW KINGS
I 295
BEAVER
US 301
I-10
BEAVER

Exhibit F

ENTERPRISE FLORIDA

STATE OF FLORIDA INCENTIVES AVERAGE WAGE REQUIREMENTS

2014 Average Annual County Wage Data

Effective January 1, 2016

	Average Annual Wage[2]	Hourly Wage	**115%** of Avg Annual Wage	Hourly Wage	**150%** of Avg Annual Wage	Hourly Wage	**200%** of Avg Annual Wage	Hourly Wage
STATEWIDE	**$44,065**	**$21.19**	**$50,675**	**$24.36**	**$66,098**	**$31.78**	**$88,130**	**$42.37**
ALACHUA	$36,941	$17.76	$42,482	$20.42	$55,412	$26.64	$73,882	$35.52
BAKER	$28,568	$13.73	$32,853	$15.79	$42,852	$20.60	$57,136	$27.47
BAY	$34,776	$16.72	$39,992	$19.23	$52,164	$25.08	$69,552	$33.44
BRADFORD	$34,025	$16.36	$39,129	$18.81	$51,038	$24.54	$68,050	$32.72
BREVARD	$43,705	$21.01	$50,261	$24.16	$65,558	$31.52	$87,410	$42.02
BROWARD	$46,033	$22.13	$52,938	$25.45	$69,050	$33.20	$92,066	$44.26
CALHOUN	$27,572	$13.26	$31,708	$15.24	$41,358	$19.88	$55,144	$26.51
CHARLOTTE	$33,170	$15.95	$38,146	$18.34	$49,755	$23.92	$66,340	$31.89
CITRUS	$34,795	$16.73	$40,014	$19.24	$52,193	$25.09	$69,590	$33.46
CLAY	$33,694	$16.20	$38,748	$18.63	$50,541	$24.30	$67,388	$32.40
COLLIER	$43,181	$20.76	$49,658	$23.87	$64,772	$31.14	$86,362	$41.52
COLUMBIA	$32,057	$15.41	$36,866	$17.72	$48,086	$23.12	$64,114	$30.82
DESOTO	$31,841	$15.31	$36,617	$17.60	$47,762	$22.96	$63,682	$30.62
DIXIE	$30,730	$14.77	$35,340	$16.99	$46,095	$22.16	$61,460	$29.55
DUVAL	$48,304	$23.22	$55,550	$26.71	$72,456	$34.83	$96,608	$46.45
ESCAMBIA	$38,224	$18.38	$43,958	$21.13	$57,336	$27.57	$76,448	$36.75
FLAGLER	$29,687	$14.27	$34,140	$16.41	$44,531	$21.41	$59,374	$28.55
FRANKLIN	$27,193	$13.07	$31,272	$15.03	$40,790	$19.61	$54,386	$26.15
GADSDEN	$31,828	$15.30	$36,602	$17.60	$47,742	$22.95	$63,656	$30.60
GILCHRIST	$30,977	$14.89	$35,624	$17.13	$46,466	$22.34	$61,954	$29.79
GLADES	$36,822	$17.70	$42,345	$20.36	$55,233	$26.55	$73,644	$35.41
GULF	$33,057	$15.89	$38,016	$18.28	$49,586	$23.84	$66,114	$31.79
HAMILTON	$45,556	$21.90	$52,389	$25.19	$68,334	$32.85	$91,112	$43.80
HARDEE	$28,802	$13.85	$33,122	$15.92	$43,203	$20.77	$57,604	$27.69
HENDRY	$34,442	$16.56	$39,608	$19.04	$51,663	$24.84	$68,884	$33.12
HERNANDO	$31,475	$15.13	$36,196	$17.40	$47,213	$22.70	$62,950	$30.26
HIGHLANDS	$29,950	$14.40	$34,443	$16.56	$44,925	$21.60	$59,900	$28.80
HILLSBOROUGH	$47,939	$23.05	$55,130	$26.50	$71,909	$34.57	$95,878	$46.10
HOLMES	$25,131	$12.08	$28,901	$13.89	$37,697	$18.12	$50,262	$24.16
INDIAN RIVER	$37,882	$18.21	$43,564	$20.94	$56,823	$27.32	$75,764	$36.43
JACKSON	$29,877	$14.36	$34,359	$16.52	$44,816	$21.55	$59,754	$28.73
JEFFERSON	$29,896	$14.37	$34,380	$16.53	$44,844	$21.56	$59,792	$28.75
LAFAYETTE	$25,349	$12.19	$29,151	$14.02	$38,024	$18.28	$50,698	$24.37
LAKE	$33,150	$15.94	$38,123	$18.33	$49,725	$23.91	$66,300	$31.88

Page 1

ENTERPRISE FLORIDA

STATE OF FLORIDA INCENTIVES AVERAGE WAGE REQUIREMENTS

	Average Annual Wage[2]	Hourly Wage	**115%** of Avg Annual Wage	Hourly Wage	**150%** of Avg Annual Wage	Hourly Wage	**200%** of Avg Annual Wage	Hourly Wage
LEE	$37,550	$18.05	$43,183	$20.76	$56,325	$27.08	$75,100	$36.11
LEON	$38,178	$18.35	$43,905	$21.11	$57,267	$27.53	$76,356	$36.71
LEVY	$28,257	$13.59	$32,496	$15.62	$42,386	$20.38	$56,514	$27.17
LIBERTY	$33,076	$15.90	$38,037	$18.29	$49,614	$23.85	$66,152	$31.80
MADISON	$30,017	$14.43	$34,520	$16.60	$45,026	$21.65	$60,034	$28.86
MANATEE	$36,763	$17.67	$42,277	$20.33	$55,145	$26.51	$73,526	$35.35
MARION	$34,111	$16.40	$39,228	$18.86	$51,167	$24.60	$68,222	$32.80
MARTIN	$38,377	$18.45	$44,134	$21.22	$57,566	$27.68	$76,754	$36.90
MIAMI-DADE	$47,657	$22.91	$54,806	$26.35	$71,486	$34.37	$95,314	$45.82
MONROE	$34,850	$16.75	$40,078	$19.27	$52,275	$25.13	$69,700	$33.51
NASSAU	$37,211	$17.89	$42,793	$20.57	$55,817	$26.83	$74,422	$35.78
OKALOOSA	$37,802	$18.17	$43,472	$20.90	$56,703	$27.26	$75,604	$36.35
OKEECHOBEE	$32,572	$15.66	$37,458	$18.01	$48,858	$23.49	$65,144	$31.32
ORANGE	$43,889	$21.10	$50,472	$24.27	$65,834	$31.65	$87,778	$42.20
OSCEOLA	$33,305	$16.01	$38,301	$18.41	$49,958	$24.02	$66,610	$32.02
PALM BEACH	$49,123	$23.62	$56,491	$27.16	$73,685	$35.43	$98,246	$47.23
PASCO	$34,385	$16.53	$39,543	$19.01	$51,578	$24.80	$68,770	$33.06
PINELLAS	$44,291	$21.29	$50,935	$24.49	$66,437	$31.94	$88,582	$42.59
POLK	$38,248	$18.39	$43,985	$21.15	$57,372	$27.58	$76,496	$36.78
PUTNAM	$32,401	$15.58	$37,261	$17.91	$48,602	$23.37	$64,802	$31.15
ST JOHNS	$32,210	$15.49	$37,042	$17.81	$48,315	$23.23	$64,420	$30.97
ST LUCIE	$40,877	$19.65	$47,009	$22.60	$61,316	$29.48	$81,754	$39.30
SANTA ROSA	$41,776	$20.08	$48,042	$23.10	$62,664	$30.13	$83,552	$40.17
SARASOTA	$38,072	$18.30	$43,783	$21.05	$57,108	$27.46	$76,144	$36.61
SEMINOLE	$34,712	$16.69	$39,919	$19.19	$52,068	$25.03	$69,424	$33.38
SUMTER	$35,371	$17.01	$40,677	$19.56	$53,057	$25.51	$70,742	$34.01
SUWANNEE	$28,279	$13.60	$32,521	$15.64	$42,419	$20.39	$56,558	$27.19
TAYLOR	$38,385	$18.45	$44,143	$21.22	$57,578	$27.68	$76,770	$36.91
UNION	$32,947	$15.84	$37,889	$18.22	$49,421	$23.76	$65,894	$31.68
VOLUSIA	$34,696	$16.68	$39,900	$19.18	$52,044	$25.02	$69,392	$33.36
WAKULLA	$31,001	$14.90	$35,651	$17.14	$46,502	$22.36	$62,002	$29.81
WALTON	$31,598	$15.19	$36,338	$17.47	$47,397	$22.79	$63,196	$30.38
WASHINGTON	$28,764	$13.83	$33,079	$15.90	$43,146	$20.74	$57,528	$27.66

[1] Florida Department of Economic Opportunity, Labor Market Statistics Center, Quarterly Census of Employment and Wages Program, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

[2] All incentives applications received on or after January 1, 2016 will be subject to the new 2014 wages

rev. 12/15 Page 2

Amended 6/28/16
ENACTED 6/28/16

Introduced by Council Members Crescimbeni, Anderson, Lopez Brosche, K. Brown and Schellenberg and amended by the Finance Committee:

ORDINANCE 2016-382-E

AN ORDINANCE APPROVING AND AUTHORIZING THE PUBLIC INVESTMENT POLICY OF THE OFFICE OF ECONOMIC DEVELOPMENT REGARDING ECONOMIC INCENTIVES FUNDED BY THE CITY; REPLACING FORMER PUBLIC INVESTMENT POLICY AS APPROVED BY RESOLUTION 2006-119-A AND SUBSEQUENTLY AMENDED BY ORDINANCE 2012-213-E; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Approval and Authorization of Public Investment Policy. The Council hereby approves and authorizes the Public Investment Policy of the Office of Economic Development substantially in the form of the draft dated May 20, 2016 (the "Public Investment Policy"), a copy of which is **Revised On File** with the Legislative Services Division.

Section 2. Replacing Former Public Investment Policy. The Public Investment Policy amends, replaces and supersedes the Public Investment Policy of the City of Jacksonville adopted by Resolution 2006-119-A and subsequently amended by Ordinance 2012-213-E.

Section 3. Effective Date. This ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

__/s/ Paige Hobbs Johnston

Office of General Counsel

Legislation Prepared By: Margaret M. Sidman

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2019
City of Jacksonville
Orientation Program

EMINENT DOMAIN

Materials Prepared and Assembled By:

Sean B. Granat, Deputy General Counsel

June 2019

THE CITY'S ROLE IN EMINENT DOMAIN

"Eminent domain," (also known as expropriation of property for public use with the payment of compensation, or the condemnation of property), is the fundamental power of the government to take private property for a public use without the owner's consent but with full and fair compensation.

The power of eminent domain[1] is an inherent attribute of sovereignty. Sovereignty means simply that there is no greater power to govern. "The power to ... make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, etc. It is the supreme power by which any citizen is governed and is a person or body of persons in the state to whom there is politically no superior." As explained by the U.S. Supreme Court in a case from the earliest days of our country, "No principle is better established, nor more generally acknowledged, than that the right of eminent domain is inseparably attached to ... sovereignty ... The right belonging to the society, or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the state, is called the >eminent domain=. It is evident that this right is necessary to him [or her] who governs, and is, consequently, a part of the ... sovereign power." (Citations omitted).

The right to property counterbalances the power of eminent domain. The United States and Florida Constitutions each recognize the right to property as each explicitly protects persons from being deprived of property without due process of law. Property protection and recognition, in common law, go as far back as the Magna Carta, some eight centuries ago.

United States Constitution

The United States Constitution both recognizes and limits the power of eminent domain. The Fifth Amendment states "... nor shall private property be taken for public use, without just compensation." This "Takings Clause" of the Constitution was Aintended to restrain the arbitrary and oppressive mode of obtaining supplies for the army, and other public uses, by impressment, as was too frequently practiced during the revolutionary war, without any compensation whatever." 1 Henry St. George Tucker, *Blackstone's Commentaries* app. at 305-306 (Philadelphia, Birch & Small 1803). At the same time, the Takings Clause recognizes the power of eminent domain. Additionally, the Fifth and Fourteenth Amendments each prohibit the deprivation of property without due process of law. The United States Constitution, then, both protects property and permits its taking under certain circumstances.

---

1 The concept of eminent domain has been around for centuries. One of the earliest recorded takings of private property for a sovereign's use happened around 871 B.C. and involved the king of Israel, Ahab and his wife, Jezebel. King Ahab wanted to acquire Naboth's vineyard next to his castle. The response to Ahab's offer to purchase was, no. Jezebel arranged for trumped up charges which resulted in Naboth being stoned to death. *See* 1 Kings 21, Old Testament. As in many other legal contexts, western civilization's foundation for law and property rights springs from English common law. No freeman shall be taken or imprisoned, or disseised (dispossessed of land), or outlawed, or banished ... unless by the lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny to any man, either justice or right. Magna Carta (1215).

Florida Law

Similarly, in Florida, eminent domain is controlled by the Florida Constitution and Florida Statutes. Article X, Section 6 of the Florida Constitution provides that:

(A) No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner.

(B) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

(C) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

See also, Article 1, Section 9, Florida Constitution prohibiting the deprivation of property without due process.

The specific procedures and rules for exercising eminent domain are set forth in Chapters 73 and 74 of the Florida Statutes. The Florida Constitution, similar to the United States Constitution, both recognizes the right to property and the power of the government to take property under certain circumstances.

Delegation of Eminent Domain Power

The Legislature, which exercises the sovereign power of the State, inherently possesses the power of eminent domain. Because the Legislature cannot supervise the condemnation of property for public use in every case, the Legislature has delegated the power, with appropriate limitations and conditions, to municipalities, counties, and other governing entities, including the City of Jacksonville. Such delegated power must be exercised subject to controlling provisions and principles of law.

Specific authorization to exercise the power of eminent domain, together with particular limitations on it, is contained in numerous sections of the Florida Statutes. Some examples include the following:

F.S. Chapter 127 - counties
F.S. 125.012 - port facilities
F.S. 153.03(5) - county water and sewer facilities
F.S. 166.401 - 166.411 - municipalities
F.S. 180.22 - private companies and corporations for municipal works
F.S. 215.64- Division of Bond Finance
F.S. Chapter 361 - public utilities
F.S. 421.12 - public housing authorities
F.S. 945.27 - Department of Corrections
F.S. 1013.24 - school boards

In addition to the numerous agencies granted the power of eminent domain by the legislature, the Florida Constitution and State Statutes bestow eminent domain powers upon everyone in particular circumstances. Under certain circumstances, land owners may obtain drainage easements as well as access easements across the land of their neighbors. Common law principles of drainage relief and access relief may endow property owners in Florida with the potential power of eminent domain.

Requirements of Necessity and Public Purpose

Private property can only be taken when necessary for a public use or public purpose. The State Legislature or Congress, by granting the power of eminent domain to a particular body such as a city council or county commission, has decided what constitutes a public use or purpose. Public purposes include things such as transportation, harbor, port, shipping, and airport facilities; highways and roads; drainage, ditching and grading of land; sanitation and sewage; government buildings; public parks, playgrounds and recreational facilities; and any other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected with the public welfare or the interests of the municipality and the people thereof.

The legislative body (City Council), when acting on its grant of eminent domain power, must determine not only the intended public use of the property sought to be acquired, but also the necessity of acquiring a particular parcel of property. Florida courts have required entities exercising eminent domain to consider the following five factors in establishing the necessity of a taking: (1) availability of an alternative; (2) cost; (3) environmental factors; (4) long-range planning; and (5) safety considerations.

Judicial intervention in the process will ultimately decide whether the intended use or purpose is sufficiently "public" and "necessary" Courts have the last word because the Constitution requires a public use, and it is the courts' role to interpret the Constitution. As established in *Marbury v. Madison*, 5 U.S. 137 (1803), a law repugnant to the Constitution is void. The government's right to divest a citizen of his or her private property only where necessary for a valid public use has been compared to the government's right to restrict free speech only where a clear and present danger makes it necessary. *Schneider v. District of Columbia*, 117 F.Supp. 705, 716-17 (DDC Nov 5, 1953).

Establishing a standard for determining what a *public use* is has been difficult for the courts. One state supreme court has said that "public convenience" is enough to justify the exercise of eminent domain though that same court stated thirty one years earlier that "mere public convenience" is not enough. In 1905, the Iowa Supreme Court wrote the following:

> It must be confessed that there is no standard by which to determine in all cases what is a public use or what can fairly be regarded as a public benefit, and therefore conducive to the public health, welfare, etc.. The Constitution contains no words of definition, and it seems to remain for each act which is brought forward, aided, of course, by the disclosed purpose and object thereof, and by the conditions stated or well known, upon which it

> is to operate, to furnish an answer to the test. ... Perhaps no nearer approach to accuracy in the way of a general statement can be had than to say that the mandate of the Constitution will be satisfied if it shall be made reasonably to appear that to some appreciable extent the proposed improvement will inure to the use and benefit of parties concerned, considered as members of the community or of the state, and not solely as individuals. While, however, the benefit must be common in respect of the right of use and participation, it cannot be material that each user shall not be affected in precisely the same manner or in the same degree.

Sisson v. Board of Supervisors of Buena Vista County, 104 N.W. 454, 459 (Iowa, 1905).

The Maryland Court of Appeals said it this way:

> [W]hat is a public purpose for which public funds may be expended is not a matter of exact definition, but almost entirely a question of general acceptance. "[T]he line of demarcation is not immutable or incapable of adjustment to changing social and economic conditions that are properly of public and governmental concern."

Lerch v. Maryland Port Authority, 214 A.2d 761, 767 (Md. App. 1965).

And a court in Rhode Island said;

> With regard to what constitutes a "public use," we have said that this is a judicial question that may not be given a "rigid, unbending, absolute definition." Views on this issue necessarily vary with the changing conceptions of the functions and scope of government. AThe modern trend of authority is to expand and liberally construe the meaning of "public use." (citations omitted).

Griffin v. Bendick, 463 A.2d 1340, 1346 (R.I. 1983).

Florida courts will find a public purpose when (1) the property that is acquired will be available to the public in common; (2) the public interest in the project will be greater than any private gain; and (3) the use of the property acquired will be in the control of the public. *See Demeter Land Co. v. Florida Public Service Co.*, 99 Fla. 954, 128 So. 402, 406 (1930)

The City Council's Role

When the City decides to take property through eminent domain, it must first obtain an appraisal of the subject property, and then attempt to purchase the property through good faith negotiations with the property owner. If the negotiations fail, the City can move forward with an eminent domain law suit. However, before the eminent domain case is filed, the City Council must approve a Resolution calling for the taking. The Resolution declares the public purpose of the taking and finds that the specifically described property is necessary for that purpose. The Office of General Counsel will then litigate the case. If the case is settled short of trial for an amount greater than $50,000 more than the City's initial offer, then the Council must pass an ordinance approving the settlement. If the case does not settle, it will proceed to trial where a jury will determine the dollar value of the taking.

Paying For the Taking

Eminent domain is expensive. The Florida Constitution requires that the government pay "full compensation" for property taken by eminent domain. "Full" has been determined by the courts to mean that the condemning agency pays all of the costs associated with the action including the owner's attorney's fees and expert costs. Expert costs include real estate appraisers, engineers, accountants and land planners. These fees and costs can be quite substantial, and sometimes can exceed the value of the property being taken.

Recent Changes in the Law

In the past, the only constitutional limitation on a city's or county's eminent domain authority was that such powers be exercised for valid municipal or county purposes respectively. All 50 states have considered and nearly all have passed legislation or a constitutional amendment (Florida has done both) in response to the public outcry over the United States Supreme Court's decision in *Kelo v. New London, Connecticut* case. 545 U.S. 469 (2005). In that case a local government took the Kelo family home for part of a large commercial development which included an office, hotel and health club.

The Florida Constitution has been amended to prohibit the conveyance of property acquired by eminent domain to a private party except when authorized by a three-fifths vote of each house of the Florida Legislature. The Florida statutes have been amended to prohibit the use of eminent domain to eliminate nuisance, slum or blight conditions. *Section 73.014*, Florida Statutes. Property acquired by eminent domain may not be conveyed to a private party for at least ten years. Community development project land acquisition may be accomplished only by purchase, lease, gift, grant or other voluntary method of acquisition, but not by eminent domain.

Conclusion

Many important and needed public improvements can only be established through the judicious exercise of the power of eminent domain. Eminent Domain is essential to all local governments. It is difficult to fathom widening a road, for example, without the use of eminent domain. The City Council, as the policy-making body, chooses when to exercise this significant power to take the property of one for the benefit of the entire society.

2019
City of Jacksonville
Orientation Program

PROCUREMENT

Materials Prepared and Assembled By:

Lawsikia J. Hodges, Deputy General Counsel

June 2019

OVERVIEW OF CITY PROCUREMENT

❖ **What does the term "Procurement" mean?**

"*Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including the description of requirements, selection and solicitation of sources, preparation and award of contract and contract administration." *See* Section 126.102(k), *Ordinance Code*.

❖ **What Chapter of the Ordinance Code governs Procurement?**

Chapter 126 of the *Ordinance Code* governs City procurement (the "Procurement Code"). The Procurement Code sets forth the procedures that City agencies must follow in order to procure supplies and services. The Procurement Code primarily governs the manner in which the City procures supplies and services from third parties (public or private). Under the Procurement Code and subject to the terms of a procurement award, the Mayor is authorized to negotiate and execute contracts with third party contractors and vendors. Additionally, the City is required under the Procurement Code to adhere to federal and state procurement laws as applicable.

❖ **What are the basic principles underlying any government procurement?**

- Transparency
- Fairness
- Open competition
- Ethics
- Best pricing/services for taxpayer dollars

Public policy favors competitive government procurements whenever possible, even in the absence of controlling statutes and/or laws. Government procurement also affords the public protection by preventing favoritism toward contractors by public officials. Lastly, government procurement seeks to ensure fair competition by providing equal terms/criteria for award of government contracts.

❖ **What City agencies and offices are governed by the Procurement Code?**

All City boards and commissions, departments/divisions, and offices (i.e., Property Appraiser, Supervisor of Elections, Mayor's office, City Council, etc.) are governed by the Procurement Code. The term "using agency" refers to (i) a department, division, office, board, agency, commission or other unit of the City and (i) an independent agency required by law or voluntarily requesting to utilize the services of the City's Procurement Division. Pursuant to the City Charter, the City's independent authorities (i.e., JEA, Jacksonville Port Authority (JPA), etc.) may adopt their own procurement code and are not subject to the City's Procurement Code.

❖ **Which City department/division administers Procurements?**

Finance and Administration Department, Procurement Division

❖ **What types of services are procured by "using agencies" under the Procurement Code?**

- Capital improvements (e.g., road and building construction)
- Supplies (e.g., commodities, material, equipment and other tangible articles)
- Contractual services (e.g., repair and maintenance of equipment)
- Professional services (e.g., audit services, accountant, management consultants)
- Professional design services (e.g., engineering, surveying and architectural services)

❖ **What are Procurement solicitation documents?**

Generally, Procurements include solicitation documents (i.e., specifications or request for proposal) that contain minimum qualifications, a description of the services/specifications and evaluation criteria/scoring matrix. The solicitation documents are publicly posted and advertised for a specified period of time.

❖ **What is a Procurement award?**

The City has three procurement awards committees that recommend contract awards to the Mayor (or his designee) for approval: (1) General Government Awards Committee (GGAC); (2) Professional Services Evaluation Committee (PSEC); and (3) Competitive Sealed Proposal Evaluation Committee (CSPEC). A procurement award authorizes the Mayor to enter into a contract with the awarded contractor. A procurement award <u>does not</u> appropriate City funds. Accordingly, procurement award terms are made expressly subject to the availability of lawfully appropriated funds. Various types of procurement awards include:

- GGAC Award
- PSEC Award
- CSPEC Award
- Administrative Award
- Single-source Award
- Piggyback Award
- Emergency Award

❖ **What types of City matters are <u>not</u> governed by the Procurement Code?**

- Real estate (e.g., purchase, sale, lease, license, etc.)
- Economic incentives and redevelopment agreements
- Grants
- City services to third parties
- Interlocal agreements between public agencies

Table of Authorities

1. Chapter 126, Ordinance Code

Informal Purchases			
Estimated Cost	*Type of Inquiry*	*Minimum Solicited*	*Further information*
$0-$500	Field Order, If applicable	----	**Not** for items under contract, technology-related hardware/software/maint agreements, or construction related. **Buyer approval** prior to utilizing field order
$0-$2,500	Written	1	Minimum lead time is 4-7 business days
$2,501-$15,000*	Written	2	
$15,001*-$30,000*	Written	3	
$30,001*-$65,000*	Written	4	
Professional Design Services *(includes planning or study activity)*	Design service fee up to $35,000 and estimated cost of the construction is $325,000 or less	see above	
Capital Improvement Projects *(if expected to exceed $100,000, a Capital Improvement Verification Form is required)*	$200,000 or less	sealed bid	Advertise for min. of 10 calendar days using sealed bid process (Procurement Chief has discretion to reduce # days advertised and procure other than sealed bid)

Notes:
1. Quotes by fax are accepted as written for all informal purchases.
2. Quotes must include date and signature of an authorized agent of firm or company offering quote.
3. *Purchases exceeding $15,000 must have written concurrence from the using agency with agency Division Chief approval

Review and Approval Requirements - Informal Purchases	
Amount	*Approval*
$0-$30,000	Buyer
$30,001-$65,000	Buyer, Procurement Manager

Formal Purchases		
Type	*Amount*	*Further information*
Supplies	exceeding $65,000	Minimum advertising or notification in a newspaper of general circulation in the City at least **21 calendar days** prior to public opening date in solicitation, and at least 5 calendar days prior to scheduled pre-bid or pre-proposal conference. Note: Procurement Chief has discretion to reduce # days; but, not less than 10 calendar days.
Professional Services		
Contractual Services		
Professional Design Services *(includes planning or study activity)*	Design service fee exceeding $35,000 **or** estimated project construction costs exceeds $325,000	
Capital Improvement Projects (CIP) *(Capital Improvement Verification Form required)*	exceeding $200,000 up to $500,000	For CIP with Federal Funding, minimum 30 days with 3 consecutive weekly dates
	exceeding $500,000	See above, with exception of advertising minimum of **30 calendar days**

Sole Source and Proprietary Purchases *(formal and informal)*		
Type	*Approval*	*Further information*
Informal	Procurement Chief	Must post on Procurement's website for no less than 7 calendar days (purchases exceeding $2,500)
Formal	Awards Committee	

Note: Shall be accompanied by a written quote/proposal with the written justification request (from using agency) that the purchase can only be efficiently and effectively made from one proprietary or sole source.
Sole Source (the only provider); **Proprietary** (multiple sources, but must get from this one)

2019
City of Jacksonville
Orientation Program

DUVAL DELEGATION

Materials Prepared and Assembled By:

Lenae Voellmecke, Coordinator, Duval Delegation

June 2019

Duval Delegation

Introduction

The Duval County Legislative Delegation is the state legislative body comprised of two Senators and six Representatives who represent Duval County or portions thereof in the Florida Legislature.

History and Function

Established in 1974 as a nonpartisan office, the Duval County Legislative Delegation office serves as the liaison between the Delegation Members and local governments, community organizations and citizens. The office is established under the Office of General Counsel.

The mission of the Delegation Office is to keep the State Legislature informed of the needs of the City of Jacksonville and follow funds and legislation requested by local government agencies, citizens and community organizations of Duval County.

Delegation Office

This office provides support services to the eight Delegation Members by monitoring legislation, processing local bills and tracking appropriation issues. We are responsible for scheduling and coordinating all Delegation meetings, as well as maintaining all records and files of the meetings. The Delegation meets at least twice a year. The first meeting takes place at the end of the year and is referred to as the Organizational Meeting. The main purpose of this meeting is to elect the Chair and Vice Chair. This meeting also serves as an opportunity to receive public testimony on issues of general concern. This can include requests for legislation and/or appropriations. There is another public hearing at the beginning of the year to discuss and vote on Local Legislation, commonly known as J-Bills. Other meetings may be held at the call of the Chair.

The Delegation Office assists the Chair and members of the Duval County Legislative Delegation in preparation for Legislative Sessions and committee and subcommittee meetings of the Legislature. The Chair may also call a meeting of the Delegation to address an issue that is relative to the Members or anytime the Chair deems it necessary. You will receive notices/press releases advising you of meeting dates, deadlines and other important legislative meetings.

***** PLEASE NOTE: *****

LOBBYING BY DELEGATION STAFF IS PROHIBITED

Special Act/Local Legislation/J-Bill

A local bill is legislation relating to, or designed to operate only in a specific indicated part of the state. They are known as J-Bills because they only impact or change the Charter of the City of Jacksonville or one of the Urban Service Districts (Beaches or Baldwin) within Duval County.

Local Bill Proposals

Local bills generally are proposed when:

- A local government is limited in its authority to accomplish a specific goal and must ask the Legislature for a special act
- An area wishes to be excepted or exempted from a general law; or
- The Legislature has retained authority to decide the local issue by special act, (e.g. municipal incorporation and creation of independent special districts)

The local bill idea is usually conceived or requested by: The Mayor; City Council; Office of General Counsel; Elected Officials; Departments or independent agencies or as mandated by the Charter, i.e., sunset laws (laws expiring soon).

It is the responsibility of the person requesting the change in law to draft the legislation. In government, generally an attorney in the Office of General Counsel will assist with drafting.

City Council Local Bill Process

Within days after the bill filing deadline, the bills are delivered to the Council President, Rules Chair, or appropriate committee chair. Copies are then emailed to the Council Members, Council Secretary, Chief of Legislative Services and Chief of Legislative Research.

The Council President usually assigns the local bills to the Rules Committee and often another committee for consideration. Occasionally the President establishes a special committee to review the local bills. Those committees meet, sometimes jointly, and then make a recommendation to the full Council. You will be voting on the **Council resolution** on the J-Bills.

City Council Action on J-Bills

You cannot amend a local bill. The legislation is "owned", if you will, by the Delegation Member sponsoring the proposed legislation. Therefore, the Council generally offers the following recommendations:

- Adopt a **resolution** in support of the bill

- Adopt a **resolution** with "conditional support" meaning you will support the bill if certain suggested or proposed amendments are offered and adopted by the Duval Delegation

- Adopt a **resolution** stating opposition to the bill; or

- If the bill does not have any impact on the City of Jacksonville, i.e. (Baldwin or Beach), Council can pass a r**esolution** offering a "no recommendation."

Proposed Amendments

If the Council wishes to propose an amendment to a J-Bill, it is accomplished by stating "conditional support" within the resolution and by further explaining the suggested amendment in the body of the resolution with the amendment attached on a delegation "Amendment Form". This Delegation Amendment form is based on the one used in the past by the Florida House of Representatives, and is different from those used by City Council. It is considered a courtesy to contact the local bill sponsor to discuss the proposed amendment.

Accepting the proposed amendment is the prerogative of the bill's sponsor on the Duval Delegation.

After the full Council votes on the bill(s) and adopts the resolution(s), the Council President or the Rules Chair attends the Duval Delegation Local Bill Public Hearing meeting, to inform delegation members of the City Council's/local government's response to each J-Bill, which is also stated in the resolution.

Prohibitions

Local bills are governed by The Florida Constitution, which has a list of "Prohibited Special/Local Bills". The Florida Legislature, specifically the House Committee on Local and Federal Affairs, is responsible for the administration and review of local bills to ensure that all constitutional and statutory requirements have been met. Locally, these bills must adhere to the rules of the Duval Legislative Delegation.

Local bills are only filed in the House and are thereby accepted once the bill(s) are approved and certified to the Senate.

Notice

Section 11.02, Florida Statutes, implements the constitutional notice requirement found in Article III, section 10, State Constitution of Florida. By law, a notice advertising intent to seek enactment of local legislation and describing the substance of the contemplated law **must be**

published one time, at least 30 days prior to the bill's introduction into the Legislature. Publication can be either by advertisement in a newspaper of general circulation in each affected county or, if no such newspaper is published in or circulated throughout an affected county, by posting the notice for 30 days in three public places in that county, including the courthouse.

Referendum

Under two circumstances, a referendum is needed for a local bill.

A referendum must be held for a local bill provision, even if the local bill is properly advertised in a newspaper, whenever it:

- Creates or revises certain ad valorem taxing power;
- Provides for issuance of certain bonds;
- Establishes, amends, or repeals a county charter;
- Consolidates municipal and county government;
- Allows the selection of county officers in a manner other than by election;
- Combines school districts; or
- Provides for an appointed (rather than elected) school superintendent.

For example, a local bill creating the Key Largo Wastewater Treatment District in Monroe County was advertised 30 days prior to introduction into the 2002 Legislature. The local bill, however, contained a requirement that the voters approve an ad valorem/millage rate provision which authorized assessing and imposing ad valorem taxes for 3 years. In this case, the bill *met the requirement for notice and the requirement of voter approval.*

The other circumstance is when the local bill has not been advertised in a newspaper but its effect is conditioned upon voter approval (Article III, Section 10, Florida Constitution.) An example of a local bill that was not advertised in a newspaper but requires a referendum for the act to become law can be found in an act passed by the 2001 Legislature in House Bill 1887/lst Engrossed. That bill, transferred land area from one fire district to another, and was only effective upon voter approval.

Process in Legislature

A local bill follows the same process as a general bill. The bill is introduced and referred to committees and/or subcommittees. After it is voted out of or withdrawn from the committees

and/or subcommittees to which it has been referred, a local bill then proceeds to the House calendar. Then it is placed on the Local Bill Calendar.

Expedited Local Bill Calendar

The expedited local bill calendar is a calendar made up of those local bills not in violation of House Rule 5.5(b) [exemptions from general law] and provides a means for House members to move large numbers of bills along to the Senate in an expeditious manner. When a sufficient number of these bills are either approved by and voted out of Councils/committees/subcommittees or withdrawn the House leadership may designate a day for an expedited "local bill calendar." Voting on the expedited local bill calendar is achieved by a single roll call vote rather than voting on each bill individually. The single roll call vote is taken at the conclusion of the reading of the local bill calendar and the bills on the expedited local bill calendar are passed. Any member wishing to cast a "no" vote on a local bill that is on the expedited calendar, must file the appropriate form with the Clerk. The House Clerk will adjust the expedited local bill calendar vote count accordingly to reflect all registered "no" votes.

Florida Constitution
Article III, Section 11

Article 3, Section 11, Prohibited special laws.—

(a) There shall be no special law or general law of local application pertaining to:

(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies;

(2) assessment or collection of taxes for state or county purposes, including extension of time therefore, relief of tax officers from due performance of their duties, and relief of their sureties from liability;

(3) rules of evidence in any court;

(4) punishment for crime;

(5) petit juries, including compensation of jurors, except establishment of jury commissions;

(6) change of civil or criminal venue;

(7) conditions precedent to bringing any civil or criminal proceedings, or limitations of time therefore;

(8) refund of money legally paid or remission of fines, penalties or forfeitures;

(9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts;

(10) disposal of public property, including any interest therein, for private purposes;

(11) vacation of roads;

(12) private incorporation or grant of privilege to a private corporation;

(13) effectuation of invalid deeds, wills or other instruments, or change in the law of descent;

(14) change of name of any person;

(15) divorce;

(16) legitimation or adoption of persons;

(17) relief of minors from legal disabilities;

(18) transfer of any property interest of persons under legal disabilities or of estates of decedents;

(19) hunting or fresh water fishing;

(20) regulation of occupations which are regulated by a state agency; or

(21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote. 1

(b) In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.

RULES OF PROCEDURE
DUVAL LEGISLATIVE DELEGATION
Adopted 11/30/2016

1. **Delegation Unicameral** – Procedurally, the Delegation shall meet as a unicameral body; however, voting shall be as hereinafter provided; provided nothing herein contained shall abrogate the duty of a member to exercise his independent judgment in voting on any matter on the floor of the House or Senate during any Session.

2. **Delegation Membership** – Members of the Florida Legislature elected from the Senate Districts 4 and 6 and House Districts 11 through 16, inclusive, shall be deemed to be members of the Duval Delegation.

3. **Notification and Rules** – Meeting notification and the Duval Legislative Delegation Rules of Procedure will be mailed and emailed within five days to the home address of newly elected members.

4. **Local Act Policy** – It shall be the policy of the Delegation not to consider any matter which is within the authority granted by the Charter of the Consolidated City of Jacksonville. This shall not be construed to preclude the consideration by the Delegation of any proposed amendment to said Charter.

5. **House Rules Applicable** – The rules of the Delegation shall be those of the House except as modified hereby.

6. **Waiver of Rules** – Any rule may be waived by two-thirds vote of the members present as to the issue currently before the Delegation. Said waiver shall immediately precede the subject matter to be waived.

7. **Rules Effective** – These rules shall become effective when adopted by the Delegation and may thereafter be amended by a two-thirds vote of the members of the Delegation.

8. **Delegation Officers** – At an organizational meeting of the Delegation to be held no later than thirty (30) days after each statewide general election in even numbered years and in odd numbered years during November (or in reapportionment years at the determination of the Delegation Chairman)**,** the Delegation shall elect a Chair and a Vice Chair, each of whom shall serve for a term of one (1) year. Regardless of political party, no member will have served as Chair more than one term in an eight-year period, unless all other members have served at least one term as Chair. In the Chair's absence, the Vice Chair shall preside. If both Chair and Vice Chair are unavailable, the Chair shall have the right to name any member to perform the duties of the Chair. A record of the past chairmanship shall accompany the rules.

9. **Committees** – The Chair may appoint appropriate committees to study and report on matters which come before the Delegation. Such committees shall serve at the pleasure of

the Chair. Fair and accurate minutes shall be kept of every meeting of a committee. Minutes may be electronically or electromagnetically recorded, but, unless excused by the Committee Chairman, the Delegation Coordinator or Delegation Secretary shall be in attendance to take notes, care for the committee and legislative files being used by the committee, prepare committee reports and perform other duties as instructed by the Chair.

10. **Coordinator** – The Delegation shall have a coordinator appointed by the General Counsel with the concurrence of a majority of the members. The duties and responsibilities of the Coordinator shall include the following: (a) the careful recordation and publication to the members of the minutes of each Delegation meeting; (b) assistance to the general public in the submission of bills for Delegation consideration; (c) to insure that bills considered by the Delegation are in proper form and are accompanied by a proper proof of publication, staff analysis and economic impact statement; (d) such other duties and responsibilities as may be assigned by the Chair.

11. **Local Legislation** – The Delegation shall not accept for consideration local legislation later than thirty (30) days prior to the opening of the next session of the Legislature. No local legislation shall be accepted for filing unless sponsored by a member of the Delegation. Any local bill which is sponsored by a member shall automatically be placed on the local bill agenda for consideration and appropriate action by the Delegation. Such placement shall not be precluded nor shall consideration of the bill be negated by any committee or member of the Delegation. Such sponsorship may be shown to be by "request". No local bill may be approved by the Delegation until such bill has had a local public hearing.

12. **Form for Proposed Legislation** – Each proposed bill must be accompanied by a written statement which must include (a) the name, address, and telephone number of the party initiating the proposal, (b) the name, address, and telephone number of the party's attorney or other person drafting the proposal, the name of the Delegation member sponsoring the proposal, and (c) no less than two original copies of the Proof of Publication. Each proposed bill must also be accompanied by an economic impact statement in order to be considered by the Delegation. Such economic impact statement shall detail how much the proposed measure will cost, who will benefit, and which governmental entity or private party would bear the cost. In addition to the foregoing requirements, any bill which affects the City of Jacksonville shall be sent to the City Council and/or other governmental agency affected thereby for consideration and recommendation.

13. **Bill Copies** – Upon passage, an exact copy of each bill in final form shall be available for each member and shall be sent to the Florida House of Representatives for bill drafting.

14. **Amendments in Writing** – All amendments to proposed legislation shall be in writing.

15. **Quorum** – Five members of the Delegation shall constitute a quorum; four members of the House constitute a quorum in the House and one member of the Senate shall constitute a quorum in the Senate.

16. **Pairing and Proxy Prohibited** – The pairing of votes as permitted by the Rules of the House and Senate and voting by proxy are prohibited.

17. **Notice of Delegation Meetings** - No meeting of the Delegation shall be held when the Legislature is not in session unless the Chair has first determined the availability of a quorum of members to participate, given written notice thereof, which notice shall have been emailed and posted no less than seven (7) days prior to the date of the meeting. This notice shall set forth the time, place, and agenda for the meeting. Prior to noticing each meeting the agenda topic shall be sent to each member and cannot be officially noticed without the written consent of the majority of the House and Senate. New matters may be added to the proposed agenda with the concurrence of the presiding officer no later than three (3) calendar days prior to the meeting. Any other changes in the proposed agenda shall require a waiver of the rules. The Chair shall make every reasonable effort to give at least four hours prior notice of a Delegation meeting when the Legislature is in session and provide each member with the proposed agenda.

18. **Meeting Participation** - The Chair may make time available to any interested citizen to speak on any matter properly before the Delegation. The Chair has the discretion to limit the times afforded such citizen and may, when time requires, postpone the opportunity to speak until a later meeting.

19. **Voting Requirements** - The voting requirements on all matters, except as otherwise provided herein, shall be a quorum of the House and a quorum of the Senate. All members present within the chambers shall cast a favorable or non-favorable vote on all matters, and the vote of a member who is required to vote and does not shall be recorded in the affirmative. With regard to any subcommittee meeting or Delegation meeting held outside of Jacksonville a minimum of two members shall be present in person. The balance of the quorum at meetings held outside of Jacksonville may be achieved via teleconferencing. Any subcommittee member not present in person is allowed to vote during the meeting using conferencing technology.

20. **Appointment to position by entire Delegation** - Whenever an appointment by the entire membership of the Delegation to any commission, committee or other body is authorized by law, such appointment shall be made in the following manner. Upon the existence of a vacancy, the Chair shall cause notice of such vacancy to be communicated to each member. This notice shall be provided at least seven days before the time established for the vote to fill such position. Each member shall be given the opportunity to nominate a candidate to fill the vacancy and shall inform the Chair of his/her nominee at least twenty-four hours prior to the time the Delegation votes to fill the vacancy. At the time of the established quorum and vote, each member in attendance shall cast their vote on the record as to which candidate shall fill the vacancy even in the event only one candidate has been nominated.

EXAMPLE J-BILL

(J-3)

A bill to be entitled

An act relating to the Charter of the City of Jacksonville, as adopted in Chapter 92-341, Laws of Florida, as amended; amending section 22.02(a) concerning membership of the Jacksonville Police and Fire Pension Board of Trustees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Article 22 of the Charter of the City of Jacksonville, as adopted in Chapter 92-341, Laws of Florida, as amended, is amended by amending section 22.02(a) to read as follows:

ARTICLE 22. JACKSONVILLE POLICE AND FIRE PENSION BOARD OF TRUSTEES.

* * *

Section 22.02. Membership.

(a) The membership of the Jacksonville Police and Fire Pension Board of Trustees shall consist of five members, of whom two one shall be a legal residents of the City of Jacksonville appointed by the city council, one shall be a legal resident of the City of Jacksonville appointed by the Mayor and confirmed by the City Council,; one shall be a police officer elected by a majority vote of the police officers who are members of the pension fund, one shall be a firefighter elected by a majority of the firefighters who are members of the pension fund, and the last shall be chosen by a majority of the previous four members. The fifth member's name shall be submitted to the City Council, which shall, as a ministerial act, appoint such person as the fifth member of the board. Effective for all new appointments after July 1, 2005, each resident member appointed by the City Council shall serve as a trustee for a period of 4 years, unless sooner replaced by the City Council at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee. Effective for all new appointments after July 1, 2007, each resident member appointed by the Mayor and confirmed by the City Council shall serve as a trustee for a

period of 4 years, unless sooner replaced by the Mayor (and confirmed by the City Council) at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee. Effective for all elections after July 1, 2005, the police officer and firefighter members shall serve as trustees for a period of 4 years, unless they shall sooner leave the employment of the city as a police officer or firefighter, whereupon the class of employees who elected representative has left office shall elect a successor to fill the unexpired term of office as provided for in this section. Each employee member may succeed himself or herself in office. Effective for all new appointments after July 1, 2005, the fifth member shall serve a term of 4 years and may succeed himself or herself in office. Members shall continue to serve until their respective successor is appointed, elected, or selected.

Section 2. Effective Date. This act shall become effective upon becoming law.

2019
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LABOR & EMPLOYMENT LAW FOR THE CITY OF JACKSONVILLE

Materials Prepared and Assembled By:

Wendy E. Byndloss, Assistant General Counsel

June 2019

THE CITY COUNCIL'S ROLE IN LABOR AND EMPLOYMENT MATTERS

I. Introduction

The relationship between management and labor, and the respective rights and obligations of each, are often a subject of debate. The efforts of federal, state and local governments to improve and regulate labor conditions must be balanced against management's need for flexibility, efficiency and market responsiveness. Management-labor compromises are evident in familiar pieces of legislation, such as Title VII of the 1964 Civil Rights Act, which prohibits discrimination in employment under federal law, the Florida Civil Rights Act, which provides similar protections at the state level, and the Florida Minimum Wage Act.

Besides federal and state laws generally applicable to all private and public employees, the rights of most of the non-appointed employees of the City of Jacksonville (the "City") arise from two sources: (a) the City Charter and ordinances, rules and regulations adopted pursuant to the Charter; and (b) collective bargaining rights arising under Florida law. The default rule in employment law is "at-will" employment, which means an employer may terminate an employee at will for any reason or no reason at all, so long as the reason is not unlawful. As explained below, the civil service system and bargaining unit (i.e., union) contracts modify the "at-will" relationship between the City and its employees and limit the City's ability to discharge and take other adverse actions against employees "at-will." The City has also promulgated Civil Service and Personnel Rules and Regulations ("Civil Service Rules"), which outline the rights and protections afforded civil service employees.

II. Management of the City's Workforce by the City Council and Executive Branch

Jacksonville's elected and appointed government officials often collaborate on issues affecting the individual rights of employees (i.e., employment law) or the rights of employee labor organizations (e.g., labor law). As a legislative body, the City Council ("Council") has enacted ordinances which significantly impact the relationship between management and employees. For example, the Council enacted Ordinance 2017-15-E, which added sexual orientation and gender identity as prohibited categories of discrimination in employment. In order to foster increased diversity among the City's workforce through the City's Equal Opportunity/Equal Access Program, the Council enacted 2017-16-E. Additionally, working with the Mayor, the Council enacted pension reform (Ordinance 2017-258-E). As members of both the Council and the Executive Branch will undoubtedly find themselves involved in employment or labor issues during their terms, this memorandum briefly summarizes their respective roles.

A. The Executive Branch

Once the City has created an employment relationship with an individual, the Executive Branch administers the City's employment and labor law obligations on a day-to-day basis. The Executive Branch, consisting of the Mayor, the Chief Administrative Officer ("CAO") appointed by the Mayor, and various departments heads who report directly to the CAO, take the lead in managing the City's workforce. Under each department head, division chiefs, directors and managers directly supervise the employees in their department. The Executive Branch's

successful management of the workforce starts with the services provided by the City's Employee Services Department ("ESD"). In consultation with each department, ESD establishes job classifications, job duties, and minimal job requirements. ESD recruits and hires qualified candidates in accordance with the Civil Service Rules, which require open competition and compliance with Equal Opportunity employment guidelines. ESD also develops and administers compensation and pay plans, employee benefits, and personnel policies and directives that are consistent with the Civil Service Rules. In conjunction with department managers, ESD handles employee discipline and discharge. The Civil Service Rules state that the City may only discipline or terminate an employee "for cause." As stated above, the "for cause" requirement modifies the "at-will" employment relationship between the City and its civil service employees and gives employees a protected property interest in their jobs.

The City has approximately 8,000 employees. Due to the expense of recruiting, hiring and training that many employees, new employee orientation and ongoing training is an important part of managing the City's labor force. Training is especially important for managers and supervisors. In addition to training on municipal objectives, management should also receive training on employee right and benefits and how to administer progressive discipline and avoid discriminatory and retaliatory action that could expose the City to liability. As further explained in Section III below, the Executive Branch takes the lead in collective bargaining negotiations with the City's unions. Additionally, the Executive Branch consults with the General Counsel and his/her legal team on employment, labor, ethics and other legal questions affecting City personnel. As the workforce may account for one-third or more of the City's annual budget, a strategy that fully utilizes all of the above resources is not only economically sound, but it also helps the City to efficiently provide public services.

B. The City Council

Although there are nineteen separately elected members of the Council, the operational arm of the Council consists of a Director's Office and three divisions – Administrative Services, Legislative Services, and Research. Each Council Member may appoint an Executive Council Assistant ("ECA"), who serves at the pleasure of the Council Member and only reports to that Council Member. As ECAs and the staff members of the Council's operational unit are at-will, appointed employees of the City, they are not subject to the City's Civil Service Rules. Nonetheless, they are subject to all other federal, state and local employment laws applicable to the City's workforce. The supportive role and varied duties and responsibilities of ECAs are set forth in the Jacksonville Ordinance Code, § 10.108. Since the workload and support needed by individual Council Members may differ, Council Members are responsible for training their ECAs to fulfill the unique responsibilities of their role. The Office of General Counsel is available to Council Members for consultation and advice on employment, ethics and other legal questions affecting Council personnel.

III. The City Council Oversees Management-Labor Relationships

A. Overview of Collective Bargaining Rights of City Employees

In addition to enjoying civil service protection, many of the City's non-appointed employees, including police officers and firefighters, are members of a bargaining unit. The right to collectively bargain is a fundamental right guaranteed to public employees by the Florida Constitution. The collective bargaining rights of Florida's public employees, including the right to engage in protected concerted activity, are outlined in the Public Employee Relations Act, Chapter 447, Florida Statutes. A public employer is prohibited from interfering with, restraining or coercing public employees from exercising those rights. Chapter 447 also sets forth management's rights. For the City, this includes the right to determine the purpose of its departments and divisions, set standards of service to be offered to the public, exercise control over its organization and operations, and establish reasonable work rules and standards of conduct. The Florida Constitution prohibits public employees from striking, but a union may challenge management decisions by filing an unfair labor practice charge with Florida's Public Employees Relations Commission ("PERC").

B. Overview of the Collective Bargaining Process

Chapter 447 sets forth the overall framework for collective bargaining negotiations between a public employer and its public employees. (*See* attached exhibit: Collective Bargaining Flow Chart). The chief executive officer of the employer or that person's designee and the bargaining agent of the public employees are required to meet at reasonable times and bargain in good faith. The chief executive officer is responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer. The legislative body has the authority to appropriate funds and set the terms and conditions of bargaining unit employees. Thus, for the City, the Mayor is the chief executive officer and the Council is the legislative body. Chapter 447 mandates that the Mayor or his/her bargaining agent consult with and attempt to represent the views of the legislative body at the bargaining table. This consultation occurs in closed executive sessions (i.e., a "shade meeting") where the Mayor or a designee and the Council may confidentially discuss pending collective bargaining issues. These meetings are made possible by an exemption to the Sunshine Act requirement that meetings of a public body at which official actions are to be taken be open to the public. In contrast, collective bargaining sessions between management and the union are not exempt from the Sunshine Act and can only be held at noticed, open public meetings.

In Florida, the term of a collective bargaining agreement ("agreement") is three years. Before expiration of the agreement, the City and each union negotiate a new agreement that will govern members' rights for the next three years. The City's agreements generally contain the same or similar provisions, including management rights, employees' rights, hours of work and overtime, general working conditions, safety and training, leave usage, pay, benefits, alcohol/drug testing, discipline and discharge, grievance procedures, and arbitration. Like the Civil Service Rules, a collectively bargained agreement modifies the "at-will" employment relationship between the City and bargaining unit employees by prohibiting discipline or discharge without "just cause." While no precise test exists for determining whether a particular term or condition of employment is subject to negotiation, in Florida the scope of bargaining is

broadly construed and certain subjects, such as wages and hours, are mandatory subjects of bargaining. However, even an otherwise non-mandatory subject of bargaining may become subject to "impact bargaining" if it directly and substantially impacts hours, wages or other terms and conditions of employment. The duty to bargain in good faith should be the guiding principle in collective bargaining negotiations. However, a party cannot be compelled to agree to a proposal or be required to make concessions. In accordance with management's right, the Mayor or his/her bargaining agent may take the negotiating position the Mayor believes would further the City's strategic goals and be in the best interests of not only the public employees, but all of the City's constituents.

C. Labor Agreement Ratification

When the Mayor's chief negotiator and the union's bargaining agent reach agreement, it is reduced to writing, signed by the Mayor and the bargaining agent, and submitted to the Council and bargaining unit members for ratification. In addition to receiving advice from the Mayor or his/her designee throughout negotiations, prior to deliberations Council Members may request any factual, financial, statistical or legal information they need to take an informed vote. During deliberations, the Council is prohibited from amending the terms and conditions of the negotiated agreement. Instead, the Council must either ratify or reject the agreement as proposed. Upon ratification by the Council and bargaining unit members, the Mayor and the bargaining unit will be bound by the terms of the agreement. If either party fails to ratify the agreement, the parties are required to return to the bargaining table.

D. Labor Impasse Resolution

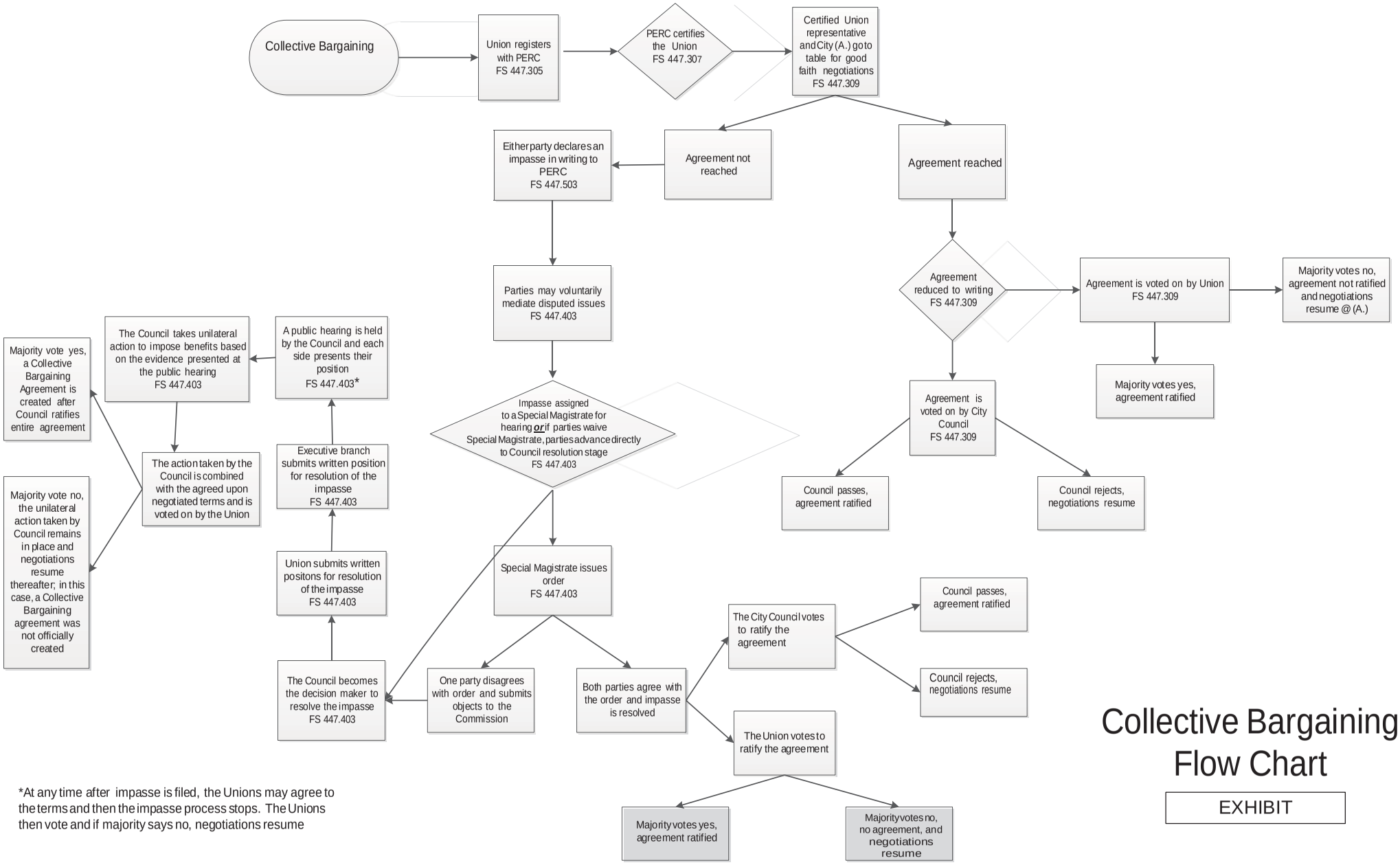
If a dispute exists between the parties after a reasonable period of good faith bargaining, either party may declare "impasse" or a deadlock in bargaining negotiations. When an impasse occurs, Chapter 447 requires the parties to take their dispute to PERC, which will appoint a special magistrate to recommend a resolution, unless both parties agree in writing to waive this step. After a hearing at which each party presents its proposed resolution of the disputed issue, the special magistrate recommends a resolution. If the parties agree with the special magistrate's recommendation, then the recommendation and the terms the parties already agreed upon are reduced to a written agreement for ratification. If either party objects to any of the special magistrate's recommendations, the disputed issues are presented to the Council for resolution of the impasse. While *ex-parte* communications between Council Members and either party are not unlawful before or during negotiations, once either or both parties reject the special magistrate's recommendations or the special master process is waived, the "insulated period" begins. During that period, communications between Council Members and either party on the disputed issues at impasse should cease.

Based on the procedures outlined in Chapter 447 for a legislative body to resolve impasses, the Council has adopted rules. The Council President is to be notified of the impasse, after which both the Mayor and the union submit their proposals and the special magistrate's recommendations, if applicable, to the Council. (Rule 4.1204(a), Rules of the Council). The Council's resolution is limited to the "issues" presented by the parties at impasse, but how those "issues" are resolved is totally within the discretion of the Council. After submission of the

disputed issues, a public hearing is convened to discuss the merits of the parties' positions. The Council President may elect to have the public hearing conducted by either the Council as a Committee of the Whole or by a standing committee. (Rule 4.1204(b), Rules of the Council). In either case, the procedure is the same. Once the hearing commences, the parties advise the Council of the facts which created the deadlock, the special magistrate's recommendations (if any) are read into the record, and the parties present their respective positions. After allowing for public comment, Council Members may question the parties on their positions. When considering either party's proposal or the special magistrate's recommendations, the Council is empowered to combine, change, adopt and reject any element of the parties' positions. (Rule 4.1204(c)(2), Rules of the Council). However, the Council's decision must address each of the disputed issues at impasse. After deliberation and debate, the Council has the responsibility of taking such action as it believes to be in the public interest, including the interests of the public employees involved, to resolve the impasse. Thereafter, the Council's decision on the disputed issues and the agreed-upon terms are reduced to writing and submitted to the parties for ratification. If any party rejects the Council's resolution, it can be imposed for only one year. The one-year imposed agreement then acts as the status quo governing the parties' relationship until a successor agreement is negotiated.

E. Impartiality

Per Chapter 447, the role of the legislative body is one of strict neutrality and fairness. Since collective bargaining negotiation sessions are public meetings, individual members of the Council may attend like any other member of the public. To avoid the appearance of impropriety, however, Council Members should be sensitive about publicly commenting on the parties' proposals. They also should refrain from bargaining with union negotiators or advocating management's position. Another reason for Council Members to maintain neutrality is that, if an impasse is declared, as the legislative body they may be required to act in a quasi-judicial role to resolve the impasse.



*At any time after impasse is filed, the Unions may agree to the terms and then the impasse process stops. The Unions then vote and if majority says no, negotiations resume

Collective Bargaining Flow Chart

EXHIBIT

2019
City of Jacksonville
Orientation Program

LAND USE & QUASI-JUDICIAL PROCEEDINGS

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LAND USE & QUASI-JUDICIAL PROCEEDINGS

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INTRODUCTION

Local land use decisions are at the heart of the local government process. In Jacksonville, land use decisions often comprise up to 60 percent of the City Council's agenda for any given meeting. In addition, the Jacksonville Planning Commission conducts public hearings on several hundred applications for zoning exceptions, variances and waivers each year.

For local government to be effective in the land use arena, there must be a balance between the increasing formality of the process and community participation in the system. The significance of labeling the process as quasi-judicial or legislative is often confusing to the general public and equally unclear to the public officials who render these decisions. It is essential, however, that both the elected and appointed decision makers understand the rules that govern these types of proceedings. Similarly, both the applicants and the general public must be provided with a reasonable opportunity to be heard in a public hearing system that is predictable, consistent and provides due process to all participants.

The standard of review to sustain the land use decisions rendered by local governments has undergone a dramatic transformation since the Legislature's adoption of the Growth Management Act in 1985, as such Act was once again amended by the Legislature in 2011 and superseded via enactment of the "Community Planning Act," F.S. §§ 163.3161 - 163.3248. *See Laws of Florida*, Chapter 2011-139. The laws of the State of Florida are well-settled that the local hearing procedures used to debate and decide quasi-judicial land use decisions must honor the expectations of both property owners and the general public. Accordingly the following procedural requirements are mandated to be achieved:

- Fundamental fairness to all participants;
- Objective application of the law to the facts presented; and
- A reasonable opportunity to be heard on the issue at hand.

I. LEGISLATIVE ACTIONS: "FAIRLY DEBATABLE" STANDARD OF REVIEW

In Florida, prior to 1985, both land use and zoning decisions were considered legislative in nature and were therefore subject to the "fairly debatable" standard of judicial review. *See Florida Land Co. v. City of Winter Springs*, 427 So.2d 170 (Fla. 1983). Such decisions are presumed to be valid, as long as they are "reasonably based" upon the evidence presented *(i.e.,* reasonable people could differ as to the result) and will not be overturned unless proven to be clearly arbitrary and unreasonable. The "fairly debatable" standard of review prevents a court from substituting its judgment for that of the decision-making body and is thus very deferential to the decision rendered by the local government.

In 1985, however, things changed significantly. That is the year in which the State Legislature passed the Growth Management Act, which was further amended by the Legislature in

2011 and superseded through enactment of the "Community Planning Act" found at Chapter 163, Part II, of the Florida Statutes, thereby requiring all "development orders" to be consistent with the local government's comprehensive plan for future development.

Initially, the standard of review applied by the courts was varied and inconsistent. Accordingly, the stage was set for the Florida Supreme Court to reconcile this conflict and resolve the following issues:

(1) Whether decisions on rezoning applications are legislative or quasi-judicial determinations; and

(2) What is the appropriate legal standard of review for quasi-judicial actions?

II. "QUASI-JUDICIAL" DEFINED

The Supreme Court's answer to these questions is found in the landmark case of *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993). In *Snyder*, the Court concluded that a local government's actions are "quasi-judicial" where the decision is one that:

- Has an identifiable impact on a limited number of persons or property interests;

- Is contingent on facts arrived at from distinct alternatives presented at the local government hearing; and

- Can be viewed as policy *application*, rather than policy setting. In the words of the Florida Supreme Court:

> **Legislative action results in the *formulation* of a general rule of policy, whereas, judicial action results in the *application* of a general rule or policy.**

Thus, according to the Supreme Court, it is the *character* of the hearing that determines whether the actions of local governments are legislative (policy making) or quasi-judicial (policy application). Applying this analysis, the courts have universally held that the following decisions are quasi-judicial and therefore subject to the "strict scrutiny" standard of review:

- Site-specific Rezonings
- Zoning Exceptions
- Zoning Variances
- Zoning Waivers

Certain procedural safeguards must be adhered to when conducting quasi-judicial hearings. Of paramount importance is that the hearing procedures afford all parties constitutional due process. *See Jennings v. Dade County*, 589 So.2d. 1337, *review denied*, 598 So.2d 75 (Fla. 1992).

Procedural due process requires that all interested parties be provided reasonable notice of the hearing and an opportunity to be heard on the matter. It also requires that the parties be able to present evidence, cross- examine witnesses, and be informed of all facts presented to the quasi-judicial body. *Compare Carillon Community Residential v. Seminole County*, 45 So.3d 7 (Fla. 5th DCA 2010) (while *parties* to quasi-judicial proceedings are allowed to cross-examine witnesses, *participants* in the quasi-judicial proceedings are not necessarily entitled to cross-examine witnesses). Both the City Council and the Planning Commission have promulgated special procedural rules for quasi-judicial hearings which are designed to ensure that all participants are fully accorded due process in these proceedings.

III. QUASI-JUDICIAL ACTIONS: "STRICT SCRUTINY" STANDARD OF REVIEW

When considering an appeal of a quasi-judicial decision of a local government, the courts are limited to reviewing the record made during the proceedings below. This "strict scrutiny" standard of judicial review was set forth by the Florida Supreme Court in *Haines City Community Dev. v. Heggs*, 658 So.2d 523 (Fla. 1995). According to the Florida Supreme Court, three questions are asked when a circuit court reviews a quasi-judicial decision of a local government:

(1) Whether procedural due process was afforded;

(2) Whether the administrative body applied the correct law; and

(3) Whether its findings are supported by competent substantial evidence.

Educational Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals, 541 So.2d 106 (Fla. 1989).

A. PROCEDURAL DUE PROCESS

Due process requires that there must be a hearing where evidence and testimony are taken and considered. The hearing must be conducted so that the applicant and public are given a reasonable opportunity to present the request and rebut information presented by persons appearing at the hearing. The Florida Supreme Court has not provided a detailed analysis of the procedural due process requirements in quasi- judicial proceedings, although it has clarified that such hearings do *not* have to meet the formal rules of evidence.

1. *Ex Parte* Communications

Ex parte communications are contacts made by one party to a proceeding with the decision-maker outside of the presence of the other parties. Because such communications are made off the record and intended to influence the decision maker, they undermine the concept of an impartial, neutral decision-maker. In the past, it was accepted that these types of communications with public officials were not prohibited.

The decision in *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3d DCA 1991), *rev. denied*, 598 So.2d 75 (Fla. 1992), however, dramatically altered the legal effect of such communications. The *Jennings* decision established that *ex parte* communications with the decision maker prior to a quasi-judicial hearing render the final decision on that matter presumptively prejudicial to those who were not parties to the prior communication. In many communities, including Jacksonville, it is common for constituents to freely discuss with board members and elected officials their position on issues of concern, including land use issues. The average constituent is not aware of the difference between a legislative matter, where they may freely communicate their concerns to decision makers, and a quasi-judicial zoning matter in their neighborhood, where *ex parte* communications are discouraged, if not prohibited.

In response to *Jennings*, many communities in Florida adopted procedures to deal with the issue of *ex parte* communications. Some local governments established a total prohibition on *ex parte* communications. In 1995, however, the Legislature adopted Chapter 95-352, Laws of Florida (codified at Section 286.0115, Fla. Stat.) which provides a procedure that may be adopted by municipalities to permit site visits and *ex parte* contacts between board members and constituents of the community in which the land use decision is to be made. This amendment authorized access by the public to local public officials, including *ex parte* communications in a quasi-judicial proceeding, subject to the adoption of local procedures pursuant to the statute.

Pursuant to both the statute and local ordinances, *ex parte* discussions are not presumed to be prejudicial to actions taken by the board or commission as long as the proper disclosure is made prior to or at the hearing. A further amendment was adopted in the 1996 legislative session, which provided that members of the public do *not* need to be sworn as witnesses and are *not* required to be subject to cross-examination. Parties are only subject to being sworn as witnesses and cross-examination upon the request of another party.

To enjoy the benefits of this statute, a municipality must adopt the procedures by resolution or ordinance. Jacksonville established such procedures in 1997 when it adopted Part 2, Chapter 50, Ordinance Code ("Procedures Governing Conduct of Public Officials with Respect to *Ex Parte* Communications"). It is important to recognize, however, that the adoption and utilization of such procedures may not always be sufficient to avoid problems. The prohibition against *ex parte* communications is based on constitutional requirements of a fair hearing. Therefore, it is questionable whether a statute can waive something that is constitutionally-based. By erasing the presumption of prejudice, however, Section 286.0115 forces proof of prejudice as a result of the *ex parte* communication. If the nature of the *ex parte* communication is disclosed and adverse parties are provided the right to express contrary views, it becomes difficult to argue that prejudice has been suffered.

One of the problems that has developed since the Legislature acted to waive the *Jennings* Rule is that local government officials are meeting with constituents, *taking a position on the quasi-judicial issues*, and then disclosing the constituent meeting at a public hearing, as required by Section 286.0115, Florida Statutes. If the issue was functionally legislative, there would be no problem with the official taking a position prior to the public hearing. *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3d DCA 1984). However, due process and the right to a fair hearing still apply in quasi-judicial matters. ***Thus, by publicly taking a position***

either for or against a quasi-judicial matter prior to the actual hearing date, a quasi- judicial officer subjects himself to being disqualified from taking any official action on the matter. *See State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So.2d 253 (Fla. 1941); *Board of Public Instruction of Broward County v. State ex rel. Allen*, 219 So.2d 430 (Fla. 1969). Moreover, if the board member refuses to recuse himself, the entire decision is subject to reversal on appeal.

In *Huntley's Jiffy Stores, Inc. v. Brevard County*, Case No. 90-12261-AP (Fla. 18th Cir. 1991), Huntley's Jiffy Stores sought a rezoning of property for a retail, commercial use. Residents in the area opposed the rezoning, and the County denied the application. On appeal, the circuit court overturned the County's denial of the rezoning. In doing so, the court was highly critical of one County Commissioner who had apparently advised residents that he would oppose the rezoning. The Court stated:

> Disquieting in our search was the revelation that a Commissioner telegraphed his decision before considering the information upon which the decision was to be made. We think that was a questionable departure from the fundamental fairness which should prevail when any governing body considers a citizen's request.

In *ABC Ventures, Inc. v. Board of County Commissioners of Brevard County*, Case No. 95-8041-AP (Fla. 18th Cir., January, 1996), ABC Ventures sought a rezoning. Residents from the area had made their position in opposition known prior to the Commission's public hearing. At the hearing, prior to listening to any comment from the applicant or the public on the application, the district County Commissioner moved to deny the rezoning. In overturning the County's decision, the Court noted that the proceedings were quasi- judicial, requiring impartial proceedings, and stated:

> [a]t the Board hearing before any evidence was received, [the district] County Commissioner . . . moved for denial of the Petitioner's rezoning request which would give some cause to question the Commissioner's impartiality on the issue before the Board.

The message in the *ABC Ventures* and *Huntley's Jiffy Stores* cases is that individuals participating in quasi-judicial proceedings have a right to expect impartial decisions to be made on the basis of the evidence presented. Decision makers are well advised not to take a position on a quasi-judicial land development application until each side has made its presentation at the public hearing. Taking a position on a land development issue prior to hearing both sides of the issue at the public hearing deprives one side or the other of its constitutionally protected right to a fair hearing.

B. APPLICATION OF THE CORRECT LAW

Application of the correct law means that the City Council, Planning Commission or other administrative body conducting the hearing must apply the law applicable to the land use decision. This is usually the Zoning Code or the Comprehensive Plan. More simply stated, the City Council or Planning Commission must apply the law as it exists, rather than how a member or members

might *like* it to be. The requirement that the hearing body limit itself to considering the facts and applying the law to the matter properly before it is the principal limitation on the quasi-judicial power. This requirement applies equally to judicial review of zoning appeals. See *City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1999).

In *Snyder*, the Supreme Court established that the appropriate standard of review for quasi-judicial actions is the "strict scrutiny" standard. Significantly, the court also adopted the analysis employed in *Machado v. Musgrove*, 519 So.2d 629 (Fla. 3d DCA 1987) *rev. den.*, 529 So.2d 694 (Fla. 1988). *Machado* adopted a strict scrutiny standard of review and "did not distinguish between rezonings based on whether they allow more or less intensive uses than those contemplated by the local plan." Noting that "strict scrutiny" is a term arising from the "necessity of strict compliance with comprehensive plan," the court cited both *Machado* and the lower court's *Snyder* decision as examples of the type of strict scrutiny review applicable in the judicial review of land use decisions. Thus, at least with regard to quasi-judicial rezonings, the court adopted a strict standard of judicial review that facilitates the effective enforcement of the consistency requirement.

1. Burdens of Proof

(a) Rezonings

A rezoning is a change in the zoning district and, consequently, the permitted uses and structures allowed on a particular piece of property. In *Snyder*, the Florida Supreme court held that a property owner who is seeking rezoning of his property bears the initial burden of establishing that the proposed rezoning is consistent with the Comprehensive Plan and complies with all applicable zoning regulations. At this point, the burden shifts to the administrative board to demonstrate that maintaining the existing zoning for the subject parcel accomplishes a "legitimate public purpose." In other words, the decision to deny the requested rezoning cannot be arbitrary, discriminatory or unreasonable. Section 656.125 of the Zoning Code establishes criteria for rezonings and guidelines for establishing a legitimate public purpose sufficient to deny a rezoning.

(b) Zoning Exceptions

A zoning exception is defined in the Zoning Code as:

> A use that would not be appropriate generally or without restriction throughout the zoning district but which -- if controlled as to number, area, location or relation to the neighborhood -- could promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare.

Such uses may be permissible in the zoning district if specific provision for the exception is made in the Zoning Code and the uses are found to be in conformity with the applicable standards and criteria of Section 656.131(c) of the Zoning Code. Namely, the applicant must establish that the proposed use:

> (1) Will be consistent with the Comprehensive Plan, including any subsequent plan adopted by the Council pursuant thereto;

(2) Will be compatible with the existing contiguous uses or zoning and compatible with the general character of the area, considering population density, design, scale and orientation of structures to the area, property values, and existing similar uses or zoning;

(3) Will not have an environmental impact inconsistent with the health, safety and welfare of the community;

(4) Will not have a detrimental effect on vehicular or pedestrian traffic, or parking conditions, and will not result in the generation or creation of traffic inconsistent with the health, safety and welfare of the community;

(5) Will not have a detrimental effect on the future development of contiguous properties or the general area, according to the Comprehensive Plan, including any subsequent amendment to the plan adopted by the Council;

(6) Will not result in the creation of objectionable or excessive noise, lights, vibrations, fumes, odors, dust or physical activities, taking into account existing uses or zoning in the vicinity;

(7) Will not overburden existing public services and facilities;

(8) Will be sufficiently accessible to permit entry onto the property by fire, police, rescue and other services; and

(9) Will be consistent with the definition of a zoning exception, and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the Zoning Code, or otherwise adopted by the Planning Commission.

A use that is permissible by exception is a use to which the applicant is entitled, unless the zoning authority determines that - based on the standards and criteria set forth above - the proposed use would adversely affect the public interest. Therefore, the applicant has the initial burden before the Planning Commission of showing that his application meets the requirements of the statutory criteria for granting such exceptions. Once the petitioner demonstrates that his application meets these standards and criteria, the burden shifts to the Planning Commission to demonstrate, by competent, substantial evidence presented at the hearing and made a part of the record, that the exception requested by the applicant does not meet one or more standards and is therefore adverse to the public interest. *Irvine v. Duval County Planning Commission*, 504 So.2d

1265 (Fla. 1st DCA 1986). *See also Broward County v. G.B.V. International, Ltd.*, 787 So.2d 838 (Fla. 2001).

(c) Zoning Variances

A zoning variance is defined in the Zoning Code as:

> A relaxation of the terms of Zoning Code which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Zoning Code would result in unnecessary and undue hardship.

In order to obtain a variance, the applicant must meet *all* of the standards and criteria set forth in Section 656.132(c) of the Zoning Code. Specifically, the applicant must show, by a preponderance of the evidence, that:

(1) The property has unique and peculiar circumstances which create an unnecessary and undue hardship;

(2) The variance is the minimum necessary to alleviate the hardship;

(3) The need for the variance is not the result of the actions of the property owner;

(4) The grant of variance would not create a detriment to adjacent and nearby properties or the public in general;

(5) The variance will not substantially diminish property values or alter the general character of the area; and

(6) The effect of the variance is in harmony with the intent of the relevant area of the Zoning Code.

The burden of proof is on the applicant for a variance to show an "undue hardship" that is related to the property, **not** a personal hardship on the applicant. In other words, it must be shown that the existing zoning regulations make the property virtually unusable or incapable of yielding a reasonable return unless the variance is granted. This is a heavy burden to meet since it is unlikely that the facts will demonstrate the existence of all of these factors in any given case. In most cases, it is very difficult to substantiate the grant of a variance with substantial competent evidence.

(d) Zoning Waivers

Waivers for minimum distance requirements and minimum street frontage are similar to

variances, but have different criteria for approval. Waivers are authorized pursuant to the criteria set forth in Section 656.133 of the Zoning Code:

(a) The waiver for minimum distance requirements from a church or school for a liquor license location may be granted if there exist one or more circumstances which negate the necessity for compliance with the distance requirements, including, but not limited to the following:

(1) The commercial activity associated with the alcoholic beverage use is of a lesser intensity than the commercial activity associated with the alcoholic beverage use which previously existed; *e.g.*, there has been a reduction in the number of seats or square footage or the type license;

(2) The alcoholic beverage use is designed to be an integral part of a mixed planned unit development;

(3) The alcoholic beverage use is located within a shopping center with an aggregate gross leasable area of fifty thousand (50,000) square feet or more, inclusive of all outparcels and meets the definition of a "bona fide restaurant", as defined in s.656.805(c);

(4) The alcoholic beverage use is not directly visible along the line of measurement defined in s.656.806 and is physically separated from the church or school, thereby negating the distance requirement as a result of the extra travel time; or

(5) There are other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location; provided, however, that no waiver shall be granted pursuant to this criterion if the proposed liquor license location is closer to the church or school than other existing locations.

(b) The waiver for minimum required street frontage may be granted if the Commission makes a positive finding based on substantial, competent evidence that the application meets all of the following criteria:

(1) There are practical or economic difficulties in

carrying out the strict letter of the regulation;

(2) The request is not based exclusively upon the desire to reduce the cost of developing the site or to circumvent the requirements of Chapter 654 (Code of Subdivision Regulations);

(3) The proposed waiver will not substantially diminish the property values in, nor alter the essential character of, the area surrounding the site and will not substantially interfere with or injure the rights of others whose property would be affected by the waiver;

(4) There is a valid and effective easement for adequate vehicular access connected to a public street which is maintained by the City or an approved private street; and

(5) The proposed waiver will not be detrimental to the public health, safety or welfare, result in additional expense, the creation of nuisances or conflict with any other applicable law.

With respect to a waiver of the distance limitations for alcoholic beverage locations, the burden of proof is on the applicant to show that *one* or more circumstances exist which eliminate the need for the standard separation between the two uses. With respect to a waiver for street frontage, the applicant must show that *all five* of the criteria have been met. Both of these burdens of proof must be established by substantial, competent evidence.

C. SUBSTANTIAL COMPETENT EVIDENCE

In order to sustain a local government's quasi-judicial decision, it must be shown that there was "substantial competent evidence" presented to the board to support its rulings. *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993). Although simply stated, this requirement of "competent substantial evidence" is -- in the words of one court – "susceptible to misunderstanding." *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So 2d. 996 (Fla. 2d DCA 1993). According to the Second District Court of Appeal, the issue of competent substantial evidence "involves a purely legal question;" that is:

> [W]hether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and *reweigh* that evidence (*e.g.*, where there may be conflicts in the evidence), or to substitute *its* judgment about what *should* be done for that of the administrative agency.

Id. at 1003.

The seminal case defining "substantial competent evidence" is *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957). In that case, the Florida Supreme Court defined competent substantial evidence as "evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred … such relevant evidence as a reasonable mind would accept as adequate to support a conclusion" A further elaboration of this definition was presented by the Fifth District Court of Appeal in *Lonergan v. Estate of Budahazi*, 669 So. 2d 1062, 1064 (Fla. 5th DCA 1996):

> The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence but refers to the existence of some evidence (quantity) as to each essential element and as to the legality and admissibility of that evidence. Competency of evidence refers to its admissibility under legal rules of evidence. "Substantial" requires that there be some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, "tending to prove") as to each essential element of the offense charged . . . [C]ircumstantial evidence is sufficient. Direct evidence is not required.

In sum, quasi-judicial decisions must be supported, in the record, by evidence that is both legally competent and quantifiably substantial. Examples of what does and does not constitute substantial competent evidence sufficient to support a local government's zoning decisions are set forth below.

1. Findings of Fact

Unfortunately, *Snyder* gives very limited guidance on the precise *procedural* requirements of a quasi- judicial hearing. Nevertheless, the Supreme Court did state that the local government "will *not* be required to make findings of fact" to support its decision on an application for rezoning. *Snyder*, 627 So.2d at 476. All that is required is that the record (*i.e.*, the testimonial and documentary evidence presented at the hearing) contain substantial competent evidence. *Id.*

> Although not mandated, however, written findings of fact can serve important public policy objectives.

For example, written findings:

- Are essential to *effective* strict judicial scrutiny of quasi-judicial decisions.
- Greatly reduce the possibility of arbitrary or politically motivated

rezoning decisions, thereby providing greater protection for private property rights; and

- Force close attention to the consistency requirement; if local governments must make written findings of fact to support their consistency determinations, local officials are likely to focus much more closely on the relationship between a proposed rezoning and the goals, objectives and policies of the local comprehensive plan.

By relieving local governments of this fact-finding responsibility with respect to site-specific rezonings, the Florida Supreme Court missed an opportunity to emphasize the importance of complying with the consistency requirement, made it much easier for local officials to disguise arbitrary decisions, and made effective judicial review of local rezoning decisions much more difficult. It is worth noting that detailed findings of fact are required to be made in almost every other type of quasi-judicial decision. For example, in *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla. 1986), the Florida Supreme Court adopted the dissenting opinion of the lower court, which found that:

> without [detailed findings to support the approval of the application for a zoning exception], the reviewing court would be compelled to grope in the dark and to resort to guess-work as to what facts the Board had found to be true and what facts alleged were not found to be true.

Irvine v. Duval County Planning Commission, 466 So.2d 357, 366 (1st DCA 1985)(Judge Zehmer dissenting).

2. Expert Testimony

Expert testimony is considered to be substantial competent evidence as long as the expert gives testimony that is within his area of expertise and is based either facts known to the expert, a hypothetical situation or facts disclosed at the hearing. It is important that expert witnesses state their qualifications on the record or submit their resume to the quasi-judicial body record.

The reports and recommendations of a local government's professional planning staff have long been recognized as the type of expert testimony sufficient to sustain a quasi-judicial zoning decision where the statements in the report are supported by the facts and are not merely conclusory in nature. *ABG Real Estate Development Co. of Florida, Inc. v. St. Johns County*, 608 So.2d 59 (Fla. 5th DCA 1992); *Battaglia Fruit Co. v. City of Maitland*, 530 So.2d 940 (Fla. 5th DCA 1988). In *Florida Mining & Materials v. City of Port Orange*, 518 So.2d 311 (Fla. 3d DCA 1987), however, the court reversed the city's denial of a zoning exception for a cement batch plant. Although, the City found that the proposed use would create potential traffic problems, the Court held that there was no substantial competent evidence to support the staff recommendation of denial where there was no factual basis to distinguish how the applicant's cement trucks would adversely affect a residential neighborhood any more than other large trucks which traveled through the neighborhood. *Id*. at 313.

In addition to professional planning staff recommendations, the courts have also held decisions of a local government's Planning Commission may also constitute substantial competent evidence upon which to grant or deny a zoning request. *Hillsborough County Board of County Commissioners v. Longo*, 505 So.2d 470 (Fla. 2d DCA 1987); *Conetta v. City of Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981).

In contrast, the "testimony" of attorneys does not constitute substantial competent evidence. *National Advertising Co. v. Broward County*, 491 So.2d 1262 (Fla. 4th DCA 1986). Attorneys generally appear on *behalf of* a party; they are advocates -- not witnesses. As such, absent stipulation by the opposing party, they cannot testify. Although mere conclusory assertions of law may sound persuasive, they fall far short of satisfying the requisite foundational element of "competent" evidence. As aptly stated by one court:

> [T]he practice we wish to see terminated is that of attorneys making unsworn statements of fact at hearings which trial courts [or quasi-judicial bodies] may consider as establishing facts. It is essential that attorneys conduct themselves as officers of the court; but their unsworn statements do not establish facts in the absence of stipulation. Trial judges cannot rely upon these unsworn statements as the basis for making factual determinations, and this court cannot so consider them on review of the record. If the advocate wishes to establish a fact, he must provide sworn testimony *through witnesses other than himself* or a stipulation to which his opponent agrees.

Leon Shaffer Golnick Advertising, Inc. v. Cedar, 423 So.2d 1015, 1016-1017 (Fla. 4th DCA 1982)(emphasis added)(internal citations omitted).

3. Citizen Testimony

Florida courts have long acknowledged the legitimate interest of neighboring property owners in preserving the character of their neighborhood. As recognized by the Fourth District Court of Appeal:

> The role of the governmental entity is to arrive at sound decisions affecting the use of property within its domain. *This includes receiving citizen input regarding the effect of the proposed use on the neighborhood,* especially where the input is fact-based.

City of Dania v. Florida Power & Light, 718 So.2d 813, 816 (Fla. 4th DCA, 1998), *app'd in part, quashed in part*, *Florida. Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla. 2000) (emphasis added).

In short, although citizen testimony may be considered, it can only be used to support a quasi-judicial zoning decision when it is based on something more than mere opinions. Popularity polls of neighborhood residents do not constitute substantial competent evidence. *See City of*

Apopka v. Orange County, 299 So.2d 657 (Fla. 4th DCA 1974).

This issue regarding the weight and legal sufficiency to be accorded public "concerns" was revisited by the Third District Court of Appeal in the case of *Metropolitan Dade County v. Section 11 Property Corp.*, 719 So.2d 1204 (Fla. 3d DCA 1998). In that case, the court expressly considered whether the opposition of neighboring property owners could be considered as "competent substantial evidence" sufficient to withstand judicial review of the local government's decision to deny the zoning request. According to the developer (as well as the circuit court), the citizen testimony was "merely opinion" and therefore insufficient grounds for denying the proposed development. The Third District Court of Appeal, however, saw things differently:

> In the instant case, when the Commission examined the issue of compatibility, it properly considered aesthetics, as well as use. The Commission received the testimony of several neighbors who characterized the project as "industrial" and who stated that the project would be incompatible with the surrounding residential neighborhood. Specifically, one neighbor stated that the self-storage facility would be "an eyesore." He commented that any proposed landscaping to try to enhance the appearance of the self-storage facility would not be effective and stated, "it's almost like trying to put an elephant in a Volkswagen, you know the elephant is still there." *This fact-based testimony regarding the aesthetic incompatibility of the project with the surrounding neighborhood, coupled with the site plan, elevation drawings, and the aerial photograph constituted substantial competent evidence supporting the denial of the exception.*

Id. (citations omitted) (emphasis added).

(a) Examples of Unacceptable Citizen Testimony

The comments of witnesses must be probative or competent as to whether the standards in the Zoning Code have been satisfied. The courts have universally held that objections of neighborhood residents, without more, are not a sound basis for denying a zoning application.

Examples of citizen testimony that does not constitute substantial competent evidence include: *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990) (special exception for an ACLF; neighbors testified as to traffic, light and noise problems that would occur if permit approved); *Flowers Baking Co. v. City of Melbourne*, 537 So.2d 1040 (Fla. 5th DCA 1989) (gas station will cause tremendous traffic problem adjacent to condominium inhabited by retirees); *City of St. Petersburg v. Cardinal Industries Development Corp.*, 493 So.2d 535 (Fla. 2d DCA 1986) (lay testimony insufficient to sustain denial; concerns that construction would be done by labor force from outside the area, wooden homes would be a fire hazard); *BML Investments v. City of Casselberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. denied*, 486 So.2d 595 (Fla. 1986) (development plan approval denied; testimony of residents regarding relationship of project to surrounding neighborhood insufficient to deny plan approval); *City of Apopka v. Orange County*,

299 So.2d 657 (Fla. 4th DCA 1974) (special exception for airplane landing strip; noise and cost of future home construction cited by interested residents); *Conetta v. Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981) (special exception for guest house; residents stated it would not conform to neighborhood); *Miami Mental Health Center v. City of Miami*, 3 Fla. L. Weekly Supp. 91 (Fla. 11th Cir. Ct. 1995) (two residents testified as to declining property values if mental health facility was approved; testimony disapproved as ambiguous); *Robinson v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 320 (Fla. 11th Cir. 1995) (testimony by resident that helicopters are dangerous was unacceptable as contrary to a city code which allowed the permitting of helicopter pads); *Demarinis v. Town of Palm Beach*, 3 Fla. L. Weekly Supp. 150 (Fla. 15th Cir. Ct. 1995) (Applicant sought a permit to expand an outdoor dining area; homeowner's association president testified that residents objected; next door resident objected to the 4 L's: "liquor, later, longer, and louder;" none of this testimony was competent); *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So.2d 708 (Fla. 3d DCA 2000) (testimony by non-expert citizens insufficient to rebut expert testimony presented on behalf of landowner).

Similarly, expressions of mass opinions from neighborhood residents do not constitute substantial competent evidence. It has long been common practice at a hearing for someone to get up and ask the question: "How many people here oppose this project?" A large number of the citizens present stand or raise their hands. This expression by the audience simply does not constitute evidence.

The fact that there may be a large number of objectors to the approval of a permit or other quasi- judicial decision is not a sound basis for denial, no matter how strenuous the objections. The function of a quasi-judicial board must be exercised on the basis of facts adduced at the hearing and upon appropriate zoning principles and objectives as set forth in the zoning ordinance and shall *not* be based on a mere poll of the neighbors. The merits of the application, rather than the number of opponents, must control the consideration. Local governing bodies and boards acting in a quasi-judicial-capacity must base their decisions on fact and *not* indulge in "government by applause meter." *A.A. Profiles, Inc. v. City of Fort Lauderdale*, 850 F.2d 1483 (11th Cir. 1988).

(b) Examples of Acceptable Citizen Testimony

One case that fully supports the testimony of neighborhood residents is *Board of County Commissioners of Pinellas County v. City of Clearwater*, 440 So.2d 497 (Fla. 2d DCA 1983). This case concerned an application for a public pier 200 feet in length with a 100 foot long T-end. The application was denied after residents appeared in opposition stating that the proposed dock would have a material and adverse effect upon the beauty and recreation advantages of the area. The circuit court reversed, citing a lack of expert testimony, and that the opinions of citizens did not constitute substantial, competent evidence. The appellate court reversed, finding local lay individuals with first-hand knowledge of the vicinity qualified as expert witnesses as to the issue of natural beauty and recreational advantages of the area.

Statements of neighbors regarding the effect of a development on their quality of life are also admissible. *City of St. Petersburg v. Cardinal Industries Development Corp.*, 493 So.2d 535, 538 (Fla. 2d DCA 1986); *Graham Companies v. Dade County*, Case No. 93-163AP, 2 Fla. L.

Weekly Supp. 241, 242 (Fla. 11th Cir. Ct. Apr. 22, 1994). Lay citizens have the ability to testify how conditions in a neighborhood have changed over time, if they have witnessed those changes.

Other cases in which the testimony of residents has been found to be acceptable include: *Metro Dade County v. Blumenthal*, 675 So.2d 598 (Fla. 3d DCA 1995), *reversed en banc*, 675 So.2d 610 (Fla. 3d DCA 1996) (resident Morgan Levy testified as to location and density of nearby developments; original opinion determined that Levy was not competent to testify to "zoning trends" (Judge Cope dissenting); *en banc* the court adopted Judge Cope's dissent, in which he noted that no one had ever used the word "zoning trends" except a Commissioner and that what Levy had done was simply to present information on nearby developments from which the County Commission could draw its own conclusions; Levy was competent to testify to that information); *Robinson v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 320 (Fla. 11th Cir. Ct. 1995) (testimony by residents that existing unpermitted helicopter pad should not be permitted because helicopters made too much noise, blew covers off boats, caused houses to rattle, and windows to vibrate was expert testimony because the witnesses had observed these occurrences); and *Citivest Construction Corp. v. City of Tampa*, 3 Fla. L. Weekly Supp. 212 (Fla. 13th Cir. 1995) (permit was for single-family homes on sub- standard lots; resident testimony related to permitting standards; a resident who was an architect presented a picture board comparing home sizes of proposed and existing homes; a resident took pictures of all homes in the neighborhood and compared existing lot intensiveness with proposed lot intensiveness; testimony found to be "expert" testimony); *Marion County v. Priest*, 26 Fla. L. Weekly Supp. 1098 (Fla. 5th DCA 2001) (Marion County's denial of special use permit to withdraw 100,000 gallons of water to be sold outside county based on testimony of three homeowners in opposition to special use permit regarding impact on existing roads, existing water usage restrictions and salt water intrusion in wells in Levy County upheld as supported by substantial competent evidence).

IV. JUDICIAL REVIEW BY DISTRICT COURTS OF APPEAL

When the jurisdiction of a district court of appeal is invoked to review a circuit court's ruling on the decision of a quasi-judicial body, the scope of the court's review is quite narrow. Namely, the district courts of appeal are limited to considering two issues:

(1) Whether the circuit court afforded procedural due process; and

(2) Whether the circuit court departed from the essential requirements of law.

Fla. Power and Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000).

Thus, while the circuit courts examine the record of the quasi-judicial proceedings to determine whether "substantial competent evidence" exists to support the zoning decision, the district courts of appeal look primarily at the issue of whether the circuit court applied the correct law in rendering its decision.

The most common reason cited for reversal of a circuit court's order quashing the decision of the quasi-judicial body is where they seek to reweigh the evidence presented during the quasi-judicial proceeding. This constitutes a "departure from the essential requirements of law," as the

circuit courts are strictly prohibited from reweighing the record evidence presented below. Rather, the courts are restricted to *reviewing* the record of the proceedings below -- they are not permitted to substitute their judgment for that of the local government. *See Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

In sum, a circuit court acting in its appellate capacity is charged with simply ascertaining whether the challenged administrative action is *supported* by substantial competent evidence. In the words of the Florida Supreme Court:

> The question is not whether upon review of the evidence in the record there exists substantial competent evidence to support a position *contrary* to that reached by the agency. Instead, the circuit court should review the factual determination made by the agency and determine whether there is substantial competent evidence to *support* the agency's conclusion.

Education Dev. Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals, 541 So.2d 106, 107-08 (Fla. 1989)(emphasis added); *see also, C City of Dania v. Florida Power & Light*, 718 So.2d 813, 816 (Fla. 4th DCA, 1998), *app'd in part, quashed in part*, *Florida. Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla. 2000) ("The test is not whether the circuit court *would* have reached the same conclusion based on the evidence, but 'whether there was *any* substantial competent evidence upon which to base the [local government's] decision.'")(emphasis added).

A "departure from the essential requirements of law" can also occur where the circuit court misstates the criteria of a local zoning ordinance. One such case was presented in *City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998). In *Taylor*, the circuit court had reversed the City's decision to deny the landowner his request for a zoning variance to reduce the required road frontage, concluding that there was no substantial competent evidence to support the denial. According to the circuit court, the City Council had misapplied the governing zoning code criteria; Mr. Taylor, the court reasoned, was entitled to the variance because surrounding properties had already received identical zoning variances.

The First District Court of Appeal reversed the circuit court's decision, concluding that it was the circuit court -- not the City Council -- that failed to apply the correct law, stating:

> The fact that certain other property owners have received a variance is not a consideration under the City of Jacksonville ordinance code, the law applicable here . . . . Obviously, the lower court's statement of the law is not consistent with the local zoning ordinance.

Taylor, 721 So.2d at 1214.

Once a case makes its way to the district court of appeal, the scope of review is generally limited to ascertaining whether the lower court applied the correct law. The appellate courts do not revisit the substantial competent evidence issue. That issue is determined at the circuit court level. However, if a circuit court exceeds its own scope of review and substitutes its judgment for that of the quasi-judicial body, the appellate courts will not hesitate to find reversible error. In *St. Johns County v. Smith*, 766 So.2d 1097, 1100 (Fla. 5th DCA 2000), the Fifth District Court of Appeal reversed circuit court's decision denying an application for a PUD amendment to allow a solid waste transfer facility, holding that the lower court had reweighed and rejected the testimony given by the two expert witnesses. In *Florida Power & Light v. Dania*, 761 So.2d 1089 (Fla. 2000), the Florida Supreme Court held that the Fourth District Court of Appeal was precluded from assessing the record evidence. ("Once the district court determined from the face of the circuit court order that the circuit court had applied the wrong law, the job of the district court was ended. In proceeding to apply the right first-tier law, i.e., in evaluating the record for competent substantial evidence to support the Commission's decision, the district court usurped the jurisdiction of the circuit court.").

V. COMPREHENSIVE PLAN AMENDMENTS

In 1997 the Florida Supreme Court decided *Martin County v. Yusem*, 690 So.2d 1288 (Fla. 1997), which clarified the standard of review to be applied by courts when reviewing the local government's decision on an amendment to the local comprehensive plan. The court held that the local government's decision on a plan amendment is legislative in nature rather than quasi-judicial and, therefore, the deferential "fairly debatable" standard of review applies. However, the court suggested in a footnote that its holding may not apply in cases involving small-scale plan amendments.

In 2001, the Florida Supreme Court answered the unresolved question of whether small-scale comprehensive plan amendments are legislative or quasi-judicial in nature. In *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So.2d 204 (Fla. 2001), the court held that small-scale comprehensive plan amendments are also legislative decisions. The Florida Supreme Court held that the same reasoning it used in *Yusem* also applies to small-scale amendments because: (1) the original adoption of a comprehensive plan is a legislative act, the proposed modification of that plan is likewise a legislative act; (2) the integrated comprehensive plan amendment review process by several levels of government indicates that action on a plan amendment is a policy decision; (3) Section 163.3184, *Florida Statutes*, requires that the fairly debatable standard of review applies in an administrative hearing to determine consistency; and (4) characterizing all comprehensive plan amendments as legislative will remove uncertainty and promote uniformity in the land use law context. The Court rejected the contention that small-scale plan amendments are distinguishable from other plan amendments because they involve changes to the future land use map that do not alter the plan's textual goals, objectives and policies, finding that the future land use map is part of the comprehensive plan and represents a fundamental policy decision of the local government and therefore any proposed change to that established policy likewise is a policy decision. Finally, the Court held that local legislative decisions on small-scale plan amendments may be challenged in an original *de novo* action in circuit court, subject to the fairly debatable standard of review.

VI. INTERPRETATION OF LOCAL COMPREHENSIVE PLANS

Dixon v. City of Jacksonville, 774 So.2d 763 (Fla. 1st DCA 2000), *rev. dismissed*, 831 So.2d 161 (Fla. 2002), involved an action for injunctive relief by neighbors challenging the consistency of the City's development order, which permitted the construction of a hotel, with its comprehensive plan, based on the argument that the hotel was not a permitted use within the applicable RPI (Residential, Professional, Institutional) future land use classification. The Court rejected the City's argument that deference should be given to the City's interpretation of its comprehensive plan.

The First District Court of Appeal determined that the strict scrutiny standard previously established in *Machado v. Musgrove* applies in determining the consistency of the development order with the comprehensive plan and that the construction of statutes and ordinances is a question of law that is reviewable *de novo*, unless their meaning is ambiguous. Even if a statute or ordinance is complicated, that does not necessarily render it "ambiguous." Although the RPI future land use classification did not mention, either specifically or by implication, hotels, another future land use classification expressly permitted hotels. Accordingly, based upon its "strict scrutiny" of the provisions of the City's comprehensive plan, the Court concluded that hotels were not a permitted use in the RPI classification.

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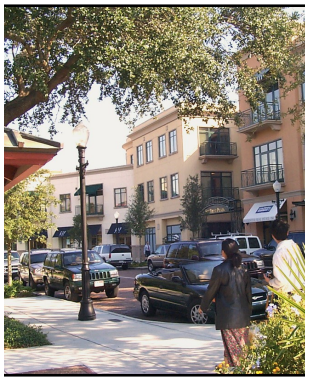
Urban Land Institute,	http://uli.org

Florida Planning Officials Handbook



Florida Resilient Communities Initiative
University of Florida

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About the Florida Planning Officials Training Program

The Florida Planning Officials Training program was developed by the University of Florida's Urban and Regional Department – a PAB-accredited graduate planning program in collaboration with agencies and organizations committed to the advancement of planning and growth management in Florida.

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Introduction

The American Planning Association defines *Planning Officials* as *any appointed or elected officials involved in planning decisions for the betterment of a community, region, state, or country.* In Florida, a lot of people fit that description including elected officials, planning commissioners, zoning board members, board of adjustment members and others who serve on a variety of commissions and boards involved in planning and growth management decisions.

The job of the *planning official* is one of public trust and is one of the most rewarding ways you can serve your community. This handbook is designed to help you do that job. It serves as the text for a short course covering the basic elements of planning in Florida.

This course offers a mixture of fact, advice and commentary about the practice of planning in Florida. There is no attempt to comprehensively cover the subject. Rather our objective is to provide an overview of this important work and some basic survival skills for the *planning official*. You will not be an expert when you complete this course, but you should have a much greater understanding of planning and how you can play an effective role in shaping the future of your community.

Chapter One: Planning and Growth Management in Florida outlines the purposes of planning, how the growth management system in Florida evolved and how it works and who the players are in Florida's growth management system

Chapter Two: The Constitutional and Legal Framework of Planning explores the constitutional provisions that relate to planning, the "property rights" issue, the "primacy" of the comprehensive plan, the constitutional basis for zoning, subdivision regulations and growth management, and the substantive due process and procedural due process requirements.

Chapter Three: The Ethics of Planning examines the important ethical concepts that affect the work of the *planning official.* The "sunshine law", "public records", "ex parte communication", and "conflicts of interest". The AICP Code of Ethics and Professional Conduct is discussed.

Chapter Four: Making Planning Work explores the qualities of an effective planning officials. How a *planning official* relates to the public, the conduct of meetings, visioning exercises and other techniques and requirements for citizen participation are presented. Five Principles for Effective Planning are of-

fered along with a discussion of "Smart Growth" and its application in Florida.

Chapter Five: The Comprehensive Plan provides an overview of the Comprehensive Plan, what it contains, its legal status, the process for its development, evaluation and amendment. Current issues and priorities including water supply planning and school coordination are also presented.

Chapter Six: Implementing the Comprehensive Plan provides a primer on land development codes including zoning, subdivision review, concurrency, planned development, traditional neighborhood development, variances, nonconforming uses, review procedures and other regulatory topics. Other implementation tools, techniques and procedures including "community redevelopment areas", "concurrency", capital improvements programs", "impact fees", "transfer of development rights", "rural land stewardship", and "sector planning" are discussed with emphasis on what the *planning official* needs to know.

Appendix. Reference material includes:

Appendix A: Definitions
Appendix B: Acronyms
Appendix C: AICP Code of Ethics & Professional Conduct
Appendix D: The Principles of Smart growth
Appendix E: The Charter of the New Urbanism
Appendix F: Information Sources

Chapter One: Planning and Growth Management in Florida

Chapter One - Planning Basics

Public planning is an organized way of meeting community needs through a local decision-making process.

What is Planning?

Planning is the word we use to describe how a community shapes and guides growth and development. The process may be called city planning, urban planning, or sometimes land use planning. The results of the planning process are contained in documents called comprehensive plans or growth management plans.

- An organized way of determining community needs and setting goals and objectives
- The art of anticipatory problem solving
- The thought that precedes decision making
- The process localities use to move from the reality of today toward the possibilities of tomorrow.

Communities plan to prepare for the future, to maximize strengths and minimize weaknesses.

Why Do Communities Plan?

Communities may engage in public planning for a variety of reasons.

- Prepare for the future
- Accommodate the present
- Anticipate change
- Maximize community strengths
- Minimize community weaknesses
- Respond to legislative charge
- Secure a sense of community coordination
- Deal with a scarce resource
- Build a sense of community
- Foster public health, safety, and welfare.

In short, communities plan because planning provides a benefit to the people of the community.

What Are the Benefits of Planning?

Effective planning ensures that future development

will occur where, when, and how the community wants. Several benefits are realized from the planning process:

- Quality of life is maintained and improved
- A vision, clearly stated and shared by all, described the future
- Private property rights are protected
- Economic development is encouraged and supported
- There is more certainty about where development will occur, what it will be like, when it will happen, and how the costs of development will be met.

If you want to make a great community happen, you must plan for it.

What Happens Without Planning?

Planning does make a difference. While some may argue that our communities today are poorly planned and fail to reap the benefits of planning, the cycle of development and redevelopment is carried out over many years. Through effective planning, our communities are constantly moving in the direction the people want. In this way, we avoid, mitigate, or correct the problems that occur with no planning at all. Those problems include:

- Sprawl
- Incompatible land uses
- No sense of place
- Disconnected development
- Congestion
- Loss of natural resources

If you do not plan, you have little say in the future of the community. If you want to make a great community happen, you must plan for it.

A Plan Belongs to the Whole Community.

Planning is about balancing competing interests and almost always involves difficult trade-offs. An effective plan reflects those trade-off decisions. The importance of the plan rests partially on the process

of preparing the plan. A plan belongs to the whole community and the members of the community should be part of the process to create, update, and amend the plan. Chapter 4, Making Planning Work, addresses the importance and processes of engaging the public in the planning process.

What is the Planning Process?

In Florida, we pay significant attention to the process of planning. Chapter 2 of this manual addresses a wide range of legal issues. However, as a process, the statutes focus more on the adopting process and the processes that occur at the state level to review the plan for compliance with the law than on the local processes that most citizens see. In contrast, *planning officials* are more likely to see the whole process, as they are responsible for the local comprehensive plan.

What exactly is the process for a local government to follow?

The process – the steps that lead to adopting a plan or plan amendment – can be summarized simply. Answer these three questions: 1) what do you have? 2) what do you want? And 3) how will you get it?

The contents and legal processes are described in Chapter 5. However, thinking about all of the statutory requirements and minimum state criteria in terms of these three simple questions may help planning officials and citizens better understand the overall planning process.

What do you have? This is called data and analysis. It means the collection of accurate, current information about the community. A community cannot maintain or change the current situation without knowing what the situation is for the community. It is the foundation for the planning process.

Planning for the future requires an understanding of the past and present. Collecting information and analyzing trends provides the basis for understanding and conclusions.

What do you want? Many communities conduct a visioning process to define the preferred future. Others discuss the future in meetings and agree on goals or other methods of defining the preferred future. This is the heart and soul of planning – people from all parts of the community and all interest areas coming together to describe the future they want to achieve.

Will this future community be exactly what any one person or group wants? Of course not, but it will be a collective statement of the future that we want together.

How will you get it? The document called a comprehensive plan describes in words, maps, and other graphics what the future community will be like and contains the policies to guide decision-making toward that future.

In Florida, plans are comprehensive, meaning the plan is not limited to land use or other physical design issues, but includes housing, recreation, coordination with other governments and agencies, financing the plan, and providing adequate public facilities for support current and future development.

Another important aspect of this question is the implementation of the comprehensive plan. Chapter 6 of this manual, *Implementing the Comprehensive Plan,* addresses implementation to make the plan a reality.

The Evolution of Planning

Planning and growth management in Florida is an evolving process. Its purposes and its legal and constitutional foundation are rooted in the framework for public planning that emerged in the United States during the twentieth century and in the specific acts of the Florida Legislature since the early 1970's.

Origins of Planning in the United States

The history of public planning in the United States

may be traced back to colonial days but public planning as practiced today was shaped primarily by events of the twentieth century.

The milestones shown on page 5 represent a very brief synopsis of the origins of public planning.

Origins of Planning in Florida

Planning and growth management in the United States evolved during the twentieth century. Key events framed the system in place today in Florida and throughout the nation.

Florida's modern planning and growth management system has its origins in the early 1970's. Three major statutes constituted the legal framework for planning in Florida in the 1970s.

The Florida State Comprehensive Planning Act of 1972 established a state comprehensive planning process and the formulation of a "State Comprehensive Plan". In 1978, the Legislature specified that the State Comprehensive Plan was *advisory only.*

Florida planning and growth management has its roots in the early 1970's with the passage of the Environmental Land & Water Management Act of 1972.

The Environmental Land and Water Management Act of 1972 focused on *areas of critical state concern* and *developments of regional impact.* These elements remain as important components of the current system.

Local Government Comprehensive Planning Act of 1975 required local governments to adopt and implement local plans.

The Community Planning Act of 2011 provides the legislative mandate for the current system.

A New 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 that the vague goals and constant amendment process made the implementation of these local plans difficult, if not impossible.

An Environmental Land Management Study Committee convened in 1984 reached a similar conclusion regarding the effectiveness of planning in Florida. The findings of this study committee contributed to the dramatic overhaul of the legislative framework for planning and to the sys-

tem described in the remainder of this chapter.

Legislative Foundation. The State of Florida has developed an integrated planning system intended to ensure the coordinated administration of policies that address the multitude of issues posed by the state's continued growth and development.

Planning and Growth Management in the United States

1907	First local planning board created in Hartford., Connecticut
1913	New Jersey requires local planning board approval of plats – first control of land subdivision as a function of city planning
1915	US Supreme Court (Hadacheck vs. Sebastian) rules that the restriction of future profitable uses was not a taking of property without just compensation
1925	First Comp Plan adopted for Cincinnati - Cornerstone of American city planning (Alfred Bettman)
1926	Village of Euclid vs Amber Realty Co (Ohio) – Established constitutionality of zoning
1928	Standard City Planning Enabling Act published by US Dept of Commerce
1934	FHA created. Established minimum housing standards adopted as part of zoning and building codes
1970	EPA & NEPA – National Environmental Policy Act of 1970 created the Environmental Impact Assessment process
1972	US Supreme Court (Golden vs. Ramapo) – Upheld growth management.

The primary elements of this system were created by three key legislative acts:

- Chapter 163, Part II, *Florida Statutes (FS)*, Local Government Comprehensive Planning and Development Regulation Act. *The provisions of this act in their interpretation and application are declared to be the* ***minimum requirements*** *necessary to accomplish the stated intent, purposes, and objectives of this 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 this state.*

- Chapter 186, *FS*: State and Regional Planning. Provides direction for the integration of state, regional and local planning efforts, and specifically requires the development of Strategic Regional Plans. Chapter 380, *FS*: Environmental Land and Water Management Act directs the integration and coordination of land and water management activities, and outlines the process and requirements for Developments of Regional Impacts and authorizes Areas of Critical State concern

Supporting legislation includes:

- Chapter 373, *FS*: Florida Water Plan / Regional Water Supply Plans

- Chapter 120, *FS*: Administrative Procedures Act

- Chapter 70 FS Relief from Burdens on Real Property Rights

- Chapter 1013, *FS* : Educational Facilities Act

In 2011, the Florida legislature enacted sweeping amendments to Florida's planning and growth management system. *"The Community Planning Act"* placed increased emphasis on the authority and responsibility of local governments to plan for and manage their while sharply reducing the role of the state land planning agency and the state in general.

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

Local Level Planning

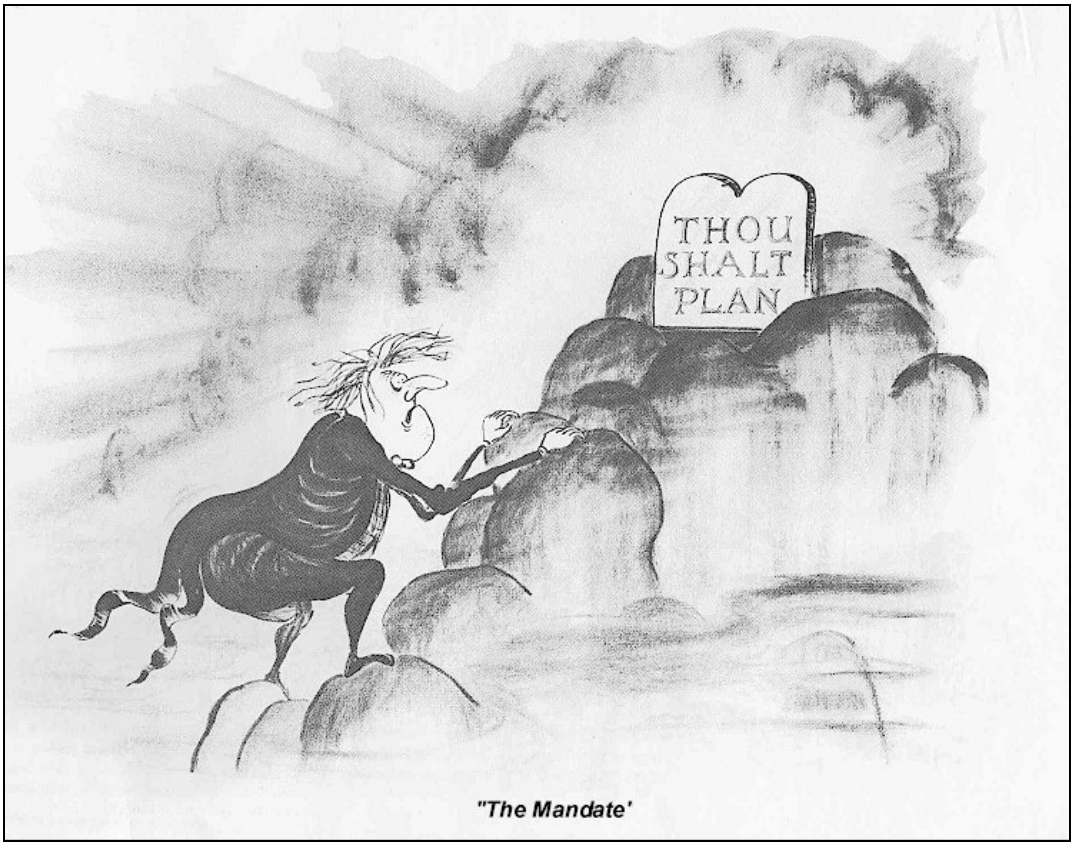
- Local Comprehensive Plan
- Land Development Regulations
- Capital Improvements Programming

State Level Planning

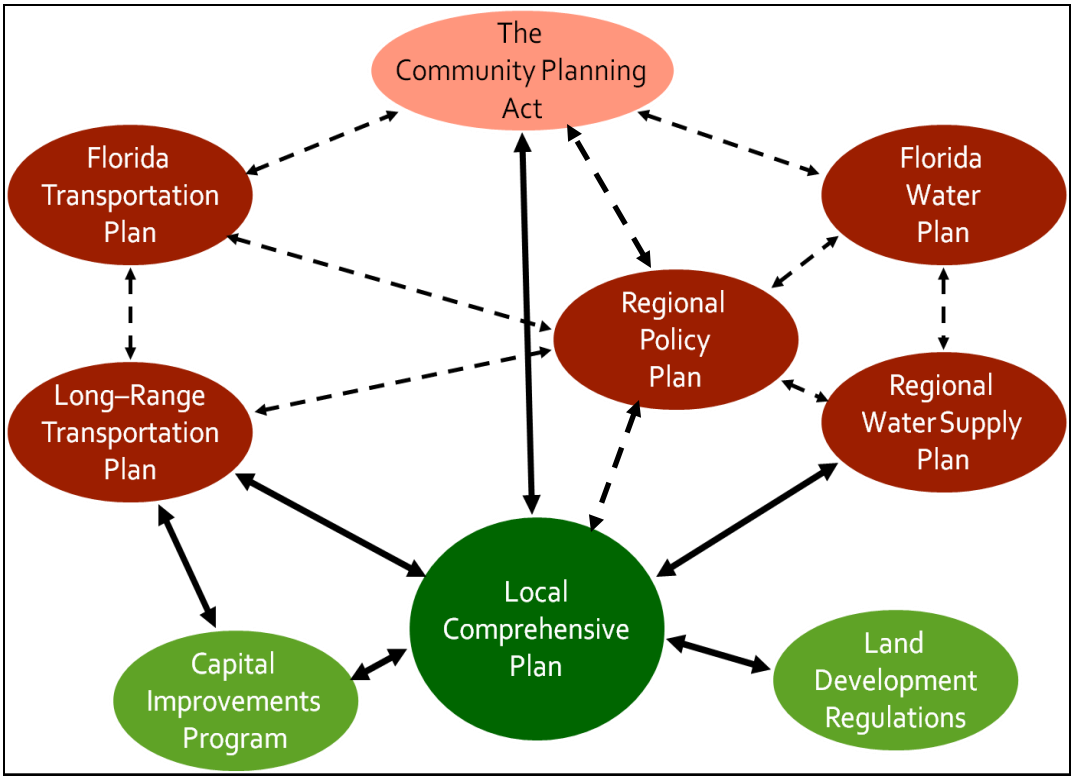
- State Land Planning Agency
- Florida Transportation Plan
- Florida Water Plan
- Areas of Critical State Concern

Regional Level Planning

- Strategic Regional Policy Plan
- Long-Range Transportation Plan
- Regional Water Supply Plan
- Developments of Regional Impact



"The Mandate'



Local Level

The Local Government Comprehensive Plan

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

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

Land Development Regulations

Each local government is required to adopt and

enforce regulations implement its comprehensive plan. These regulations are required to address the subdivision of land, the use of land and water, the protection of potable water sources, drainage and stormwater management, the protection of environmentally sensitive lands, signage, the adequacy of public facilities and services and traffic flow.

Capital Improvements Program

Each local government is required to maintain a timetable or schedule of future capital improvements that may be necessary to support the growth contemplated by the Comprehensive Plan. This schedule will typically identify the start and completion date of projects, their estimated cost, the source of funding and their priority.

State Level

Florida Transportation Plan

The Florida Transportation Plan (FTP) is maintained by the Florida Department of Transportation (FDOT). The FTP establishes long range goals that provide a policy framework for the expenditure of federal and state transportation funds. Every five years, the FDOT updates this plan to respond to new trends and challenges to meet future mobility needs. The current FTP looks at a 50 year horizon (2060). Information about the 2060 FTP and other FDOT programs and activities can be found at http://www.dot.state.fl.us/planning/ftp/ .

Florida Water Plan

The Florida Department of Environmental Protection (FDEP) is responsible for protecting the quality of Florida's drinking water as well as its rivers, lakes, wetlands, springs and sandy beaches. To meet this responsibility the FDEP provides a range of programs and activities that are collectively referred to here as the Florida Water Plan. Information about these programs and activities can be found at http://www.dep.state.fl.us/water .

Areas of Critical State Concern

The ACSC program protects resources and public facilities of major statewide significance.

Designated Areas of Critical State Concern are:

- City of Apalachicola
- City of Key West
- Green Swamp
- Florida Keys (Monroe County)
- Big Cypress Swamp (Miami-Dade, Monroe and Collier counties)

The Community Development Division of the Department of Community Affairs reviews all local development projects within the designated areas and may appeal to the Administration Commission any local development orders that are inconsistent with state guidelines. The Division also is responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed by local governments within the designated areas.

Regional Level

Strategic Regional Policy Plans

A strategic regional policy plan contains regional goals and policies that address affordable housing, economic development, emergency preparedness, natural resources of regional significance, and regional transportation, and may address any other subject which relates to the particular needs and circumstances of the comprehensive planning district as determined by the regional planning council. Regional plans identify and address significant regional resources and facilities.

In preparing the strategic regional policy plan, the regional planning council seeks the full cooperation and assistance of local governments to identify key regional resources and facilities and document present conditions and trends with respect to the policy areas addressed; forecast future conditions and trends based on expected growth patterns of the region; and analyze the problems, needs, and opportunities associated with growth and development in the region, especially as those problems, needs, and opportunities relate to the subject areas addressed in the strategic regional policy plan.

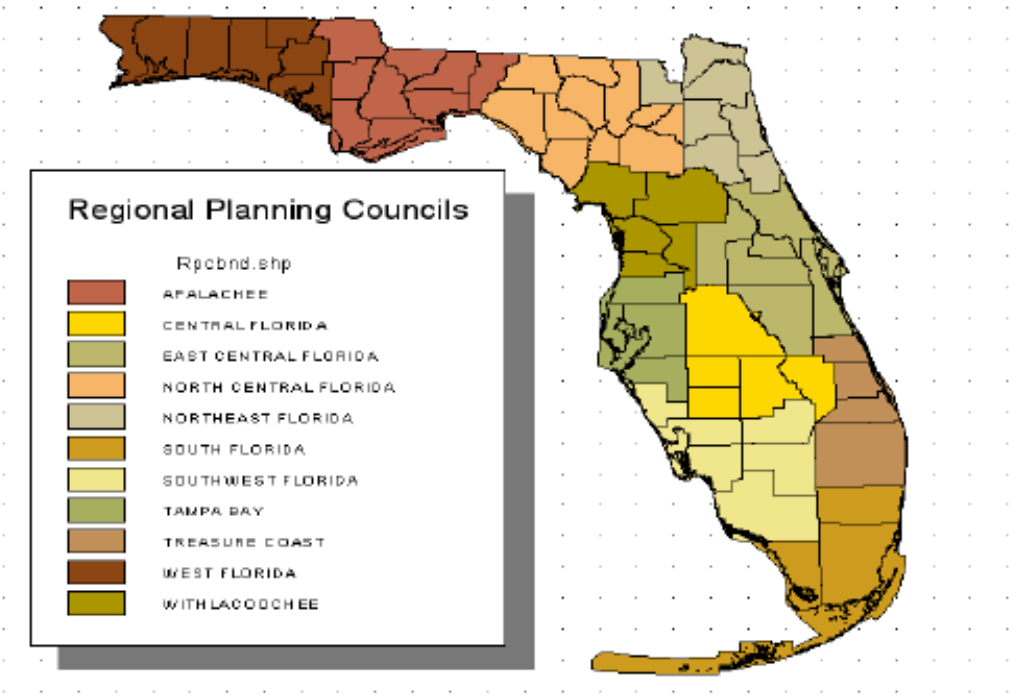
Long Range Transportation Plans

Long Range Transportation Plans (LRTP) are typically prepared by a Metropolitan Planning Organization (MPO). The LRTP normally covers a 20 year period and identifies current and future transportation needs based on population projections and travel demand. More about MPOs and their role can be found at http://www.mpoac.org.

Regional Water Supply Plans

Regional Water Supply Plans (RWSP) are maintained by those water management districts where water sources were not adequate to meet projected needs. All water management districts with the exception of the Suwannee River Water Management District meet this criteria.

The RWSPs identify water resource and supply options that could meet the projected water needs. Each year the district prepares a 5 Year Water Resource Development Work Program describing im-



plementation strategies for the water for water resource development. More information about RWSPs can be found at http://www.dep.state.fl.us/water/waterpolicy/.

Developments of Regional Impact

The DRI process was created by the Environmental Land and Water Management Act of 1972 and is the State's longest standing growth management tool. The process requires regional and state oversight of large-scale land development projects deemed to have a regional impact.

The State defines the thresholds of development intensity that constitutes a regional impact (i.e. impact beyond the boundaries of a county). Developments exceeding this threshold must undergo regional and state review in addition to the local development review process.

Who are the Players in the Planning Process?

The types of participants in the Florida planning process are varied and range from state and regional agencies to local governing bodies, appointed committees and boards, organized interest groups, and – most importantly – citizens. Who are these players?

Local Level

- Local government including the elected governing body
- Local Planning Agency (LPA)
- Appointed boards, commissions and committees
- Local school board
- Property owners
- Homeowners associations
- Business owners
- Civic and business groups and organizations
- Citizens
- Professionals such as planners, engineers, architects, landscape architects, environmental consultants and attorneys

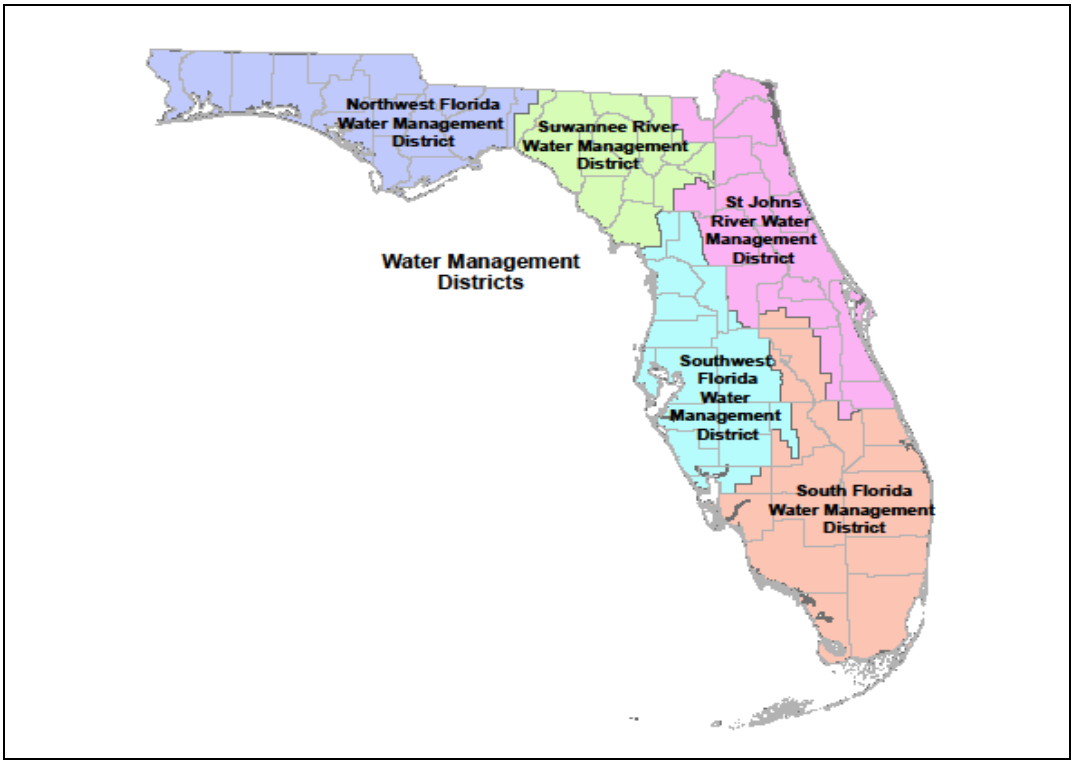
The *governing body* in every Florida city and county has final approval authority for most of the local growth management decisions. In particular these bodies must adopt and amend the Comprehensive Plan and the Land Development Code for their jurisdiction.

The *Local Planning Agency (LPA)* plays a pivotal role. The LPA is the agency responsible for preparing and maintaining the Comprehensive Plan, as well as recommending the plan to the governing body. Although the LPA can be the governing body. or even the planning department, in most cases this duty falls to a "planning commission" or a "land use and zoning board".

The implementation of the land development regulations normally involves another level of "citizen" boards. Typical examples include a zoning board, a board of adjustment, an "historical district review board", and others. Recently, the local school board has been given specific responsibility in the planning process.
Another type of local organization also derives its authority from the planning and growth management system. Authorities and special purpose districts are frequently created to carry out specific implementing actions. Community Redevelopment Authorities, special improvement districts and neighborhood associations are examples.

Citizens, individually and as part of organizations or groups, are a central part of the planning process. Citizens and organizations may be involved in working groups or task forces during the formulation of a plan or plan amendment, or may participate in workshops and public hearings conducted by the LPA and governing body. When a citizen or organization wants to challenge a plan because they believe it does not comply with the requirements of law, they must be recognized as an "affected party". Legal issues regarding the process to challenge a plan are addressed in Chapter Two.

Participation in planning and growth management activities at the local level involves numerous organizations – both public and private. It is in fact at the local level where the public participation and intergovernmental interaction is the greatest..



State Level

- Governor and cabinet
- Department of Community Affairs

- Department of Environmental Protection
- Department of State
- Department of Transportation
- Fish and Wildlife Conservation Commission
- Department of Agriculture and Consumer services
- Special interest and advocacy organizations such as 1000 Friends of Florida, the Sierra Club, the Florida Homebuilders Association, the Florida League of Cities and the Florida Association of Counties

The *Governor* is the Chief Planning Official for the State and the *Governor and Cabinet* serve as the Administration Commission. As the Administration Commission, the Governor and Cabinet is involved in matters such as final orders following a chal-

lenge to a comprehensive plan.

The *Florida Department of Community Affairs (DCA)* serves as the State Land Planning Agency. The Secretary of DCA supervises and administers the activities of DCA and advises the Governor, the Cabinet, and the Legislature with respect to matters affecting community affairs and local government. The Secretary participates in the formulation of policies which best utilize the resources of state government for the benefit of local government.

The *Florida Department of Transportation* (FDOT) is responsible for the formulation, maintenance, and implementation of the Florida Transportation Plan. FDOT also reviews local plans and plan amendments as part of the compliance review process specifically related to transportation resources and facilities of state importance

The *Florida Department of Environmental Protection* is responsible for the formulation, maintenance, and implementation of the State Water Plan, as well as reviewing plans and plan amendments regarding air and water pollution, wetlands and other surface waters of the state, federal and state-owned lands, greenways and trails, solid waste, water and wastewater treatment, and the Everglades ecosystem restoration.

The *Department of State* reviews plans and amendments with regard to historic and archeological resources.

The *Fish and Wildlife Commission* reviews plans and plans amendments as they may relate to fish and wildlife habitat and listed species and their habitats.

The *Department of Agriculture and Consumer services* reviews plans and plans amendments as they may relate to agriculture, forestry and aquaculture.

The *Department of Education* reviews plans and plans amendments as they may relate to public

school facilities.

Regional Level

- Regional planning councils
- Water management districts
- Metropolitan Transportation Planning Organizations

Regional planning councils (RPCs) are established to provide a regional perspective and to enhance the ability and opportunity for local governments to resolve issues transcending their individual boundaries. Regional planning councils are specifically charged with the preparation of a Strategic Regional Policy Plan (SRPP) and may review plans and plans amendments for adverse impact on regional resources and facilities identified by the SRPP. RPCs also review plans and plan amendments regarding extrajurisdictional impacts that are inconsistent with the comprehensive plan of any affected local government within the region.

The regional planning council is recognized as Florida's only multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region. Consequently, the regional planning councils have a specific role in review of developments of regional impact within their region.

Water management districts prepare regional or district water supply plans. The districts are review agencies for proposed plans and plan amendments and are concerned primarily with matters of stormwater and water supply.

The *Metropolitan Transportation Planning Organizations* are concerned with long range transportation planning and transportation improvement plans. Local government plans must be coordinated with these plans.

Planning Officials Are Elected or Appointed Citizens Involved in the Planning Process

The term "*Planning Officials*" was created by the American Planning Association to include a wide range of citizen participants in planning who have specific roles. City and County Commissioners are elected officials who serve on the governing bodies of local government. In Florida, these elected officials play a significant role in planning and growth management. They are the final authority for the adoption of a community's comprehensive plan, the enactment of its land development regulations and the approval of major development applications. City and County Commissions also typically appoint the officials who serve on the planning commissions and other boards of their community.

Planning Commissioners are appointed to serve on local planning commissions. Planning commissioners are the keepers of the Comprehensive Plan. They initiate and guide long-range planning efforts, conduct public meetings and hearings on proposed plans and projects, review development proposals for conformance with local plans and development regulations, and develop new planning programs.

Zoning Board members are appointed to serve on boards that review development applications. Zoning boards normally make recommendations to the local governing body regarding rezonings and other development approvals but may serve as the final approval authority for some actions prescribed by the local regulations. Planning commissions may serve as a zoning board to perform this function in many communities.

Board of Adjustment members are appointed, volunteer officials who serve on a board that hears appeals or requests for variances and conditional use approvals, all zoning and land use matters. The work of the board is generally limited to review of applications for conditional use permits, variances, and other appeals. In some communities, the functions of a planning board and a zoning board of appeals are performed by a joint planning and zoning commission.

The Work of the Planning Commission

The Planning Commission's goal is to make the comprehensive plan work. The Planning Commission's first responsibility is to recommend a comprehensive plan that reflects the vision and values of the community. The planning commission is a lay body that in many ways speaks for the community. These volunteer citizens give their time, energy, and intelligence to evaluating their community and its future, and advise the elected officials about future directions.

The Planning Commissions second goal is to move the plan from vision to reality. To do this, the planning commission must examine each issue and every application and ask the question, "Does this proposal further the goals and objectives of the comprehensive plan?" If so, the proposal conforms to the public interest as expressed in the plan and should normally be approved. If not, the proposal runs contrary to the public interest as expressed in the plan and should normally be rejected. All of this seems straightforward enough, but in practice things are much more complex. The comprehensive plan, for example, while offering guidance and showing direction, will not often provide automatic answers.

In addition to ensuring that the decisions of the planning commission conform to the comprehensive plan, it is also the duty of planning commission members to ensure that the plan is kept up to date. As technology changes, for example, what is practical or possible in the plan will also change. Further, as a community evolves, so too will the goals and objectives of its citizenry. New ideas will be introduced. Existing land uses will change. It may become evident that aspects of the plan are no longer relevant. For all of these reasons and more, a key task of the planning commission is to make certain that the plan is current and, if not, that the plan be updated and amended.

Evaluating and amending the plan should be a regular part of the planning commission's annual agenda. At least once per year, the commission should schedule time to review the existing plan and then develop any changes as required. This

will ensure that the plan remains an accurate reflection of community values and will also serve to reinforce the importance of the plan to the members of the planning commission itself.

The Work of the Zoning Board

The "Zoning Board" reviews development applications and makes recommendations to the local governing authority. The "zoning board" reviews development applications for consistency with the comprehensive plan, compliance with the land development regulations of the community and adherence to accepted planning practices and principles. The development review process normally involves an analysis and recommendation by an appointed body before a final decision is made by the local governing body. The procedures that guide this review are prescribed by the community's land development code and typically involve rezonings, subdivision review, site plan review and other processes.

A community may not have a "zoning board" but the review function described above does exist by one name or another within the planning structure. Often a planning commission will perform this role. In other communities, a hearing officer may be used. Regardless of where the responsibility is assigned, it is an essential function and one that typically involves the planning officials' most active and direct involvement in community issues.

The Work of the Board of Adjustment

Communities have "boards of appeal" or "boards of zoning adjustment". For convenience, the term "board of adjustment" is used. The moment a land development code is adopted, the work of the board of adjustment begins. As the name implies, the focus of the board's work is zoning code related appeals, but just as with the planning commission and zoning board, a second goal of the board of adjustment is to implement the comprehensive plan, or to at least assure that its decisions don't violate the comprehensive plan.

The "board of adjustment" is charged with a complex set of duties that typically include:

- Deciding on variances to the land development code;
- Reviewing appeals to decisions of the code administrator;
- Interpreting the meaning and the intent of the land development code; and often
- Evaluating special exceptions or conditional uses.

Chapter Two - The Constitutional and Legal Framework of Planning

Planning officials **are involved in both legislative and quasi judicial decisions and the *planning official* must understand the distinction**

Legislative**: Making the law or policy. In Florida, usually the exclusive province of the governing body, but may involve a recommendation from planning board members.**

Quasi-Judicial**: Applying the law or policy. Planning officials sometimes exercise final decision-making authority, and otherwise make recommendations to the governing body**

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 <u>all</u> participants in the planning process.**

Decisions made by Planning Officials can be classified as:

Legislative. Legislative actions are decided by an elected body such as a city or county commission. In these decisions, appointed officials (planning commissioners or zoning board members) may recommend the rules to be used for the planning process in the community. Public officials may exercise broad discretion in the discharge of their legislative responsibilities.

Quasi-judicial. Local governments have the discretion to act within the range of options established within their comprehensive plan and code of ordinances. When making such decisions, a planning official must weigh the facts and determine whether a proposal is consistent with existing plans and requirements. The degree of discretion is limited to a determination of consistency with established standards. For example, is the zone change consistent with the criteria laid out for granting of the zone change and with the land use category?

In Florida, the adoption of the Comprehensive Plan (and plan amendments) is legislative, as is the adoption and amendment of the text of the Land Development Code. Large scale, jurisdiction-wide rezonings involving policy making on general scale are also legislative. Site-specific zoning changes, special uses, special exceptions, site plans and subdivision review are quasi-judicial. This distinction is critical because the rules of conduct and degree of discretion for a legislative act vary significantly from a quasi-judicial decision.

The Constitutional Foundation

US Constitution

The U.S. and Florida Constitutions protect speech and religion from excessive regulation, and require that similarly situated persons be treated similarly unless there is a rational basis to treat them differently.

FIRST AMENDMENT: CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES. (APPLIED TO STATE AND LOCAL GOVERNMENTS THROUGH THE FOURTEENTH AMENDMENT).

FIFTH AMENDMENT: NO PERSON SHALL BE . . . DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION.

FOURTEENTH AMENDMENT: SECTION 1. . . . 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.

Florida Constitution

ARTICLE I, SECTION 9. DUE PROCESS.--NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW . . . .

No person may be deprived of property without due process of law, nor property taken for public use without just and full compensation.

ARTICLE II, SECTION 7. NATURAL RESOURCES AND SCENIC BEAUTY.—(a) IT SHALL BE THE POLICY OF THE STATE TO CONSERVE AND PROTECT ITS NATURAL RESOURCES AND SCENIC BEAUTY. ADEQUATE PROVISION SHALL BE MADE BY LAW FOR THE ABATEMENT OF AIR AND WATER POLLUTION AND OF EXCESSIVE AND UNNECESSARY NOISE AND FOR THE CONSERVATION AND PROTECTION OF NATURAL RESOURCES.

ARTICLE X, SECTION 6. EMINENT DOMAIN.-- (a) NO PRIVATE PROPERTY SHALL BE TAKEN EXCEPT FOR A PUBLIC PURPOSE AND WITH FULL COMPENSATION THEREFOR PAID TO EACH OWNER OR SECURED BY DEPOSIT IN THE REGISTRY OF THE

COURT AND AVAILABLE TO THE OWNER.

The Property Rights Issue in Florida

Federal Law

The U.S. Constitution states that "private property may not be taken for public use without just compensation." It is important to note that takings are not prohibited; rather, they are required to be for a public use and to be accompanied by the payment of just compensation. The most obvious kinds of takings are physical appropriations, such as where the government occupies private property and displaces the private property owner in a time of war or emergency.

In the 1920s, the U.S. Supreme Court first recognized that there could be a taking that was not physical in nature – a "regulatory taking" where a regulation of property would be so severe in its impacts on the property owner that it could fairly be considered analogous to a physical occupation of the property. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) considered a challenge to a Pennsylvania statute which prohibited the underground mining of coal if such mining would cause the subsidence of dwellings on the surface.

The Court famously said that, while property may be regulated to a certain extent, if the regulation "goes too far," it can constitute a regulatory taking. It also offered that "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." While the court invalidated the statute, a strong dissent by Justice Brandeis made the case that a "reciprocity of advantage" existed in this regulation, so that the advantage flowing to an individual property owner from uniform regulation of property to assure civilized living conditions was in proper relationship with the advantages flowing to society from the regulatory constraints on an individual property owner's use.

Exactly how far was "too far" for a regulation was left for another day. It was not until the 1970s, and the case of *Penn Central*, that the Court began

to answer the question by picking up on Justice Brandeis' notion of analyzing the balance of the benefits and burdens of the regulation. In 1987, the Court considered a challenge to a very similar Pennsylvania coal mining regulation and, this time, concluded that it did not result in a regulatory taking. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987). With *Lucas* in 1992, the Court completed its outline of those instances which would automatically result in a taking: physical occupation as in *Penn Coal*, and denial of all economically beneficial use, as in *Lucas*. Where a regulation posed neither of these extreme circumstances, the *Penn Central* balancing test would be applied, as recently reaffirmed unanimously in 2005 in *Lingle*. In *Tahoe-Sierra Preservation Council*, the Court decided that reasonable moratoria do not constitute per se takings under *Lucas*; rather, they are also analyzed under *Penn Central*'s balancing test..

***Lingle v. Chevron, USA*, 544 U.S. 528**
U.S. Supreme Court (2005)

The typical regulatory taking case requires a balancing of benefits and burdens in order to determine if there is taking liability.

Facts: The State of Hawaii regulated the maximum rent that the oil companies could charge dealers who sought to rent service stations.

Issue: Can a regulation's failure to "substantially advance" a legitimate state interest result in takings liability and require compensation?

Rule: No. A unanimous court held that "substantially advance" is a substantive due process concept, with no place in takings analysis. Absent a physical occupation or denial of all economically viable use, regulations must be analyzed under the balancing test of *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), which considers the regulation's economic impact on the claimant, the extent to which it interferes with distinct investment-backed expectations, and the character of the government action.

Analysis: The "substantially advance" test fails to address the issues of public and private benefit and burden which are key to any takings inquiry, so it sheds no light on whether the regulation is tantamount to a physical expropriation of the property. It also implicitly calls into question legislative judgments as to the efficacy of regulatory strategies -- judgments which federal courts are ill-suited to make and to which the courts have traditionally deferred. Because a failure to "substantially advance" a legitimate interest is not relevant to the takings analysis, the statute was upheld. The Court explains all of the key takings cases, and how they should be applied to different factual circumstances.

The State of Florida is a "strong" property rights state and has expanded upon the property rights protections afforded in the US Constitution

State Law

The Florida Constitution, Article I, Section 2, states that *"All natural persons…. are equal before the law and have inalienable rights, … to acquire, possess and protect property….."*

Article X, Section 6 states that "no private property shall be taken except for a public purpose and with full compensation therefore."

Florida cases interpreting the takings clause are very similar to federal regulatory takings law in all respects, except that the state measure of "full compensation" is somewhat different that the federal measure of "just compensation." However, Florida's Legislature has adopted additional protections for private property rights. The growth management statutes include a statement of legislative intent regarding property rights:

It is the intent of the Legislature that all govern-

***Lucas v. South Carolina Coastal Council*, 505 U.S. 1003**
U.S. Supreme Court (1992)

Denying all economically viable use is a per se regulatory "taking" requiring compensation.

Facts: Lucas bought beachfront property on an island in order to build a residential development. Two years later, after the development was largely complete, the South Carolina Legislature passed a law that prohibited development of Lucas' remaining land because most of it was located seaward of the state's coastal setback and subject to erosion. Lucas filed suit to allow the development of the last two lots, purchased for $975,000, claiming that the law constituted a taking of his property without just compensation.

The trial court ruled his in favor and found that the new law deprived Lucas of 100% of the economic value of the land, and ordered the Council to pay $1.2 million to Lucas. The Supreme Court of South Carolina reversed, saying that the statute served a valuable public purpose and therefore no compensation was required by the Fifth Amendment. Lucas appealed to the U.S. Supreme Court.

Issue: Did the law's effect on the economic value of Lucas's remaining land constitute a "taking" under the Fifth and Fourteenth Amendments requiring "just compensation"?

Rule: When the state deprives a property owner of 100% of the economic value of their land for some public purpose, it is a compensable taking unless the use that is being taken away was never part of the title to the land in the first place. For example, it's not a taking to deprive the owner of the right to create a nuisance on their land, because that wasn't part of their property rights anyway.

Analysis: The Court says that there are two clear-cut cases of regulatory "takings":

1. Physical occupation of private property
2. Denial of all economically productive use of private property

This case falls into the latter category. The Court acknowledges that there are many occasions when such regulation falls short of a compensable taking. The Court even recognizes that deprivation of 90% or more of value may not constitute a taking. It is reasonable for property owners to expect that their property will be restricted in some ways. One way to look at this is to say that certain implied limitations exist in the title to the land. The government doesn't need to compensate for making *explicit* limitations that were previously *implicit*. In order for South Carolina to prevail on remand, it must show that common law principles of nuisance and property forbid the intended use of the land. These principles involve the balancing of social harm against private rights and evolve over time as society evolves. On remand, the state court decided that the law of South Carolina did not prohibit the development of these lots.

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302
U.S. Supreme Court (2002)

While generally upheld without the requirement of compensation, moratoria can constitute a compensable taking if they go on too long.

Facts: The regional planning agency placed two temporary moratoria on development of
the slopes surrounding Lake Tahoe, lasting a combined total of 32 months. The purpose of the moratoria was to allow time to complete a comprehensive land-use plan for the area and impose regulations to protect the Lake's water quality.

Issue: Does a 32-month prohibition on development constitute a compensable taking under Lucas by depriving the owner of all economically beneficial use?

Rule: No, by a 6-3 majority. The regulation was temporary in nature, and thus *Lucas* did
not apply. Moratoria are analyzed under *Penn Central,* and the challenger had admitted that there was no taking under *Penn Central*. If moratoria last longer than a year, they may deserve "special skepticism." Here, the combined 32-month moratoria were justified
on the factual circumstances.

Analysis: The "essentially ad hoc, factual" analysis of *Penn Central* applied. Looking at the parcel as a whole, full use of the property returned at the end of the moratoria and thus all use was not taken. While the Court has long stated that protecting property owners from bearing public burdens "which, in all fairness and justice, should be borne by the public as a whole" is a principal purpose of takings law, deeming a temporary loss to be a complete deprivation of value would be neither fair nor just. Moratoria involve a clear reciprocity of advantage. However, a moratorium that drags on too long could constitute a taking. "Too long" is determined by the good faith evidenced in and scope of the planning effort, the reasonable expectations of the property owner, and the extent of the moratorium's actual impact on property value. The balance weighs more strongly in favor of the moratorium when it is directed to a broad range of properties rather than singling out one property owner for delay. A *per se* time limit could work to rush the process such that interested parties would be denied their opportunity for input into the plan, because regulations would need to be quickly completed before additional property owners develop and thereby evade regulation. However, moratoria lasting more than one year may deserve special skepticism.

mental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, and programs adopted under the authority of this Act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property. Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must be determined in a judicial action…..

The Legislature also has adopted the "**Bert J. Harris, Jr., Private Property Rights Protection Act,"** Chapter 70, Florida Statutes, which expands property rights in Florida and addresses how property rights are to be treated in the planning and growth management process.

1. *The Legislature recognizes that some laws, regulations, and ordinances . . ., as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance . . ., as applied, unfairly affects real property.*

When ***a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief*** *…..*

(3)(a) The existence of a "vested right" is to be dete mined by applying the principles of equitable estoppel or substantive due process under the

common law or by applying the statutory law of this state.

(3)(b) The term "existing use" means an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

The Bert Harris Act provides a property owner's right to seek compensation for governmental actions that inordinately burden the use of property, after first filing a claim with the government and allowing the government the opportunity to change its mind and provide regulatory relief in lieu of compensation.

(3)(d) The term "action of a governmental entity" means a specific action of a governmental entity which affects real property, including action on an application or permit.

(3)(e) The terms "inordinate burden" or "inordinately burdened" mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. The terms "inordinate burden" or "inordinately burdened" do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.

(4)(a) Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity . . . . The property owner must submit, along with the

claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property.

(4)(c) ….., the governmental entity shall make a written settlement offer to effectuate:

1. *An adjustment of land development or permit standards or other provisions controlling the development or use of land.*
2. *Increases or modifications in the density, intensity, or use of areas of development.*
3. *The transfer of developmental rights.*
4. *Land swaps or exchanges.*
5. *Mitigation, including payments in lieu of onsite mitigation.*
6. *Location on the least sensitive portion of the property.*
7. *Conditioning the amount of development or use permitted.*
8. *A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.*
9. *Issuance of the development order, a variance, special exception, or other extraordinary relief.*
10. *Purchase of the real property, or an interest therein, by an appropriate governmental entity.*
11. *No changes to the action of the governmental entity.*

There are many defenses to Harris Act claims: they do not apply to temporary restrictions such as moratoria, to actions taken prior to May 11, 1995, or to actions related to transportation facilities, for example.

Primacy of the Comprehensive Plan in Florida

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. 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 planning agency, the Department of Community Affairs, all actions related to planning and growth management, including the regulation of land use and development, must be consistent with the comprehensive plan.

The Florida Supreme Court defined the role of the local comprehensive plan in relation to zoning in the *Board of County Commissioners of Brevard County v. Snyder (see insert).* The court held that a property owner who is seeking rezoning or development approval must demonstrate that its application is consistent with the comprehensive plan and complies with the land development regulations. Once the owner has met this legal requirement, the burden shifts to the local government to demonstrate that denial of the petition accomplishes a legitimate public purpose and is not arbitrary, discriminatory or unreasonable. A tie goes to the local government. If the record contains substantial competent evidence in favor of the local government and in favor of those opposing the local government's action, and the action is reasonable, the local government's judgment will be upheld.

In *Yusem*, the Court later clarified that all amendments to the comprehensive plan are legislative, even if they only affect a small number of properties.

Martin County v. Yusem, 690 So. 2d 1288
Supreme Court of Florida, 1997

Facts: Yusem sought to change the plan designation for his 54 acres from Rural Density to Estate Density and concurrently obtain approval of a rezoning from A-1 to PUD. The County denied the request.

Issue: Is a plan amendment affecting only one parcel legislative?

Rule: All plan amendments are legislative decisions subject to fairly debatable standard of review, regardless of size.

Analysis: Decisions about the plan are legislative because they set policy. That policy is then implemented by quasi-judicial zoning decisions.

Brevard County v. Snyder, 627 So. 2d 469
Supreme Court of Florida, 1993

Facts: The Snyders applied to rezone their half-acre property on Merritt Island from general use (GU) (one single-family unit) to medium density multi-family residential development (RU-2-15) (7.5 multi-family units). The planning and zoning board and the County planning staff supported the rezoning, but the County Commission denied it without stating a reason for the denial.

Issue: Is the decision whether to rezone the Snyders' property legislative or quasi-judicial? Does a property owner that seeks to rezone their property have the burden of proving that the application is consistent with the city's plan and that it complies with all aspects of the zoning ordinance?

Holding: The formulation of the general rule of policy is in adoption of the comprehensive plan. Because Florida adopted mandatory comprehensive planning in 1985 and zoning decisions are now required to be consistent with the plan, zoning decisions applicable to a limited number of persons or properties should no longer be considered legislative and instead should be treated as quasi-judicial applications of plan policy to specific circumstances. Consistency with the plan must be judged strictly, but local governments are not required to immediately grant the full rights available under the land use designation because comprehensive plans anticipate gradual and orderly growth over a long period of time. However, comprehensive, city-wide rezonings may still be considered as formulating policy and treated as legislative; the character of the hearing is a relevant factor. In a quasi judicial hearing on a rezoning, a property owner has the burden to prove that its application is consistent with the comprehensive plan and land development regulations. If it does, then he burden will shift to the County to demonstrate that maintaining the existing zoning classification accomplishes a legitimate public purpose, and is not arbitrary, discriminatory or unreasonable. If the County meets this burden, the rezoning should be denied. If any of several zoning categories would be consistent with the plan, then the County's decision will be upheld if reasonable. The property owner is entitled to a hearing before an unbiased decisionmaker, to present its case, and to cross-examine witnesses. Findings of fact and conclusions of law are not required; rather, there must be substantial competent evidence in the record supporting the local government's decision.

Pinecrest Lakes v Shidel
4th District Court of Appeals (2001)

Facts: In 1981, Pinecrest Lakes, Inc. bought 500 acres of land which they developed into the 10-phased Pinecrest Lakes development. In 1986, the Shidels bought a one-acre lot in Phase 1 and built their home. Phases 1 thru 9 were single family detached homes on large lots. Phase 10 consisted of 21 acres and was designated in the Martin County Comprehensive Plan for "medium density" allowing attached housing with a maximum of 8 units per acre. Phase 10 - the Villas at Pinecrest Lakes—was transferred to a separate entity in 1997. The developer requested approval of 136 multi-family units at 6.5 units per acre. Martin County approved the application. The Comprehensive Plan allowed a maximum of 168 units, but also required that "for structures immediately adjacent, any new structures must be comparable to and compatible with those already built." The residents, including the Shidels, filed suit, alleging that the approved development was inconsistent with the comprehensive plan because the multi family phase was "immediately adjacent" and not "comparable to or compatible with" the prior single family, large lot phases.

Procedure: The trial court dismissed residents' suit, ruling that the development was consistent with the County's comprehensive plan. The residents appealed. In the meantime, the developer proceeded with the construction of 5 of the planned 19 multi-family buildings at its own risk as the litigation proceeded. The appeals court reversed and sent the case back to the trial court. The trial court then ruled that the apartments were in violation of the comprehensive plan. As a remedy, the residents demand removal of the 5 buildings. In response, the developer offered to construct a buffer. On July 6, 1999, the trial court granted the residents' remedy and ordered destruction of the 5 apartment buildings, and the developer appealed the remedy. In February 2000, the residents and the developer settle for $400,000. The Shidels, however, did not settle. On September 26, 2001, the appeals court upheld the remedy and ordered the buildings torn down. On September 5, 2002, the buildings were torn down.

Issue: When a developer proceeds at its own risk to construct buildings that are the subject of litigation, can a court order the buildings to be demolished when the developer is ultimately unsuccessful in the litigation and the buildings are determined to be inconsistent with the comprehensive plan?

Holding: Yes. If the buildings are inconsistent with the plan, removal is an appropriate remedy. Implementation of the plan, whether through rezonings or approvals of individual developments, is quasi-judicial. The planning statute allows affected individuals, broadly defined, to challenge such decisions on the basis of inconsistency with the plan, and the County's decision must be reviewed by strict scrutiny.

Zoning

Zoning is the division of a city or county into districts for the purpose of regulating the use of private land

Zoning is the division of a city or county into districts for the purpose of regulating the use of private and, in some cases, public land. Such zones are mapped and, within each district, the text of the zoning ordinance will typically specify the permitted principal and accessory uses, the bulk of buildings, the required yards, the necessary off-street parking and other prerequisites for development. Florida's growth management statute requires that the land development regulations adopted by local governments include a zoning component.

Zoning was first found to be constitutional by the US Supreme Court in 1926 in *Village of Euclid v Ambler Realty Co* (see insert). Prior to that case, there were scattered efforts on the part of communities to regulate the use of land. While ordinances to control height in designated areas had been upheld, the regulation of uses in specified blocks of a municipality had been less successful when challenged in the courts. Zoning represented the first effort on the part of the public to regulate all private land in a comprehensive fashion.

Zoning is an exercise of the police power i.e. the power to regulate activity by private persons for the health, safety and general welfare of the public

Zoning is an exercise of the "police power:" the power to regulate activity by private persons for the health, safety and general welfare of the public. As noted in the constitutional excerpts above, county governments enjoy no such home rule or police power authority except as it may be delegated to them by the state. Charter counties and municipalities, however, do possess home rule police powers to regulate in any manner they see fit, as long as the regulation is not inconsistent with general law (such as a statute). In general, charter counties and municipalities can be stricter than general law and still be considered consistent with it, unless it is determined that an entire field of regulation has been preempted to the state or federal government (such as gun control).

Village of Euclid v. Ambler Realty Co.
U.S. Supreme Court (1926)

Facts: The Village of Euclid, Ohio enacted zoning regulations affecting Ambler's 68 acre tract of land. Ambler sought an injunction restraining the enforcement of the ordinances. The ordinance establishing a "comprehensive zoning plan," based upon 6 classes of use, 3 classes of height and 4 classes of area regulations. Euclid was one of the earliest suburbs. It was located near the edge of Cleveland and zoning was adopted to prevent the expansion of Cleveland into Euclid. The zoning was cumulative; for example, each more liberal zone contained within it all the uses permitted in the more restrictive zones. This is where the term "euclidean" zoning originates. Ambler claimed that this ordinance substantially reduced the market value of the property by limiting its use and violated the Fourteenth Amendment because it deprived the owner of liberty and property without due process of law and denied it the equal protection
of the law. Ambler offered no evidence that any specific part of the regulation actually had any appreciable effect on the value or marketability of its lands, but instead attacked the ordinance as it might apply to anyone.

Issue (s): Does zoning violate the due process and equal protection clauses of the Fourteenth Amendment on its face? Is it unreasonable and confiscatory?

Holding: No. In general, zoning is adopted for the public health, safety and welfare and represents a proper use of the police power. However, depending on the circumstances and conditions, a specific zoning ordinance might be unconstitutional if it had no rational basis and failed to protect a legitimate governmental interest. Euclid's ordinance was constitutional on its face. The ordinance did not pass the bounds of reason and assume the character of merely arbitrary fiat, and was therefore not constitutional.

Subdivision Regulation

Subdivision regulations provide standards and a set of procedures for dividing land into separate parcels, which are intended to assure minimum public safety, health, welfare and amenity standards. The regulation of subdivisions is based on the police power, similar to zoning. Local government regulation of subdivisions must be in accordance with, but can be stricter than state enabling legislation if the local government is a home rule jurisdiction.

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

The original, and still an important, function of subdivision regulation is to accurately and legally define each parcel of land to permit transfer of the lots form one owner to another, and to allow each owner

to be clear about, and have legal claim to, exactly what is owned. Through surveying and the recording of a plat, subdivision regulations help to avoid land disputes between neighbors as well as assign responsibility and ownership for each parcel of land.

From this original purpose, subdivision regulations have come to serve many other purposes. Modern regulations provide detailed standards governing the geometric shape, sizes and configuration of lots; required levels of access to surrounding roads; the minimum width and design of streets; whether curbs, sidewalks, and gutters will be built and to what specification; required water and sewer lines; requirements for street lights and trees; and the dedication of land for public use. In addition to protecting public safety, subdivision regulations serve an increasingly complex set of planning goals.

Subdivision regulations have also been expanded to include environmental and local government fiscal concerns. Regulations typically contain requirements for the prevention of flooding, water quality control, the provision of roads to handle increased traffic, and the provision of school and park sites, and may also require the establishment of special districts or homeowners associations to assume responsibility for the care and maintenance of the amenities of the development, thereby protecting the taxpayers at large from being subject to this expense.

Growth Management

Growth management programs address the timing and sequence of development, and the adequacy of public infrastructure and services to serve new development. Florida's "top-down" planning approach depends heavily upon growth management concepts.

Growth management refers to a community's use of a wide range of techniques to determine the amount, type and rate of development desired by the community and to direct that growth into designated areas. Growth management policies can be implemented through future land use planning, zoning, capital improvement programming, adequate public facilities ordinances, urban service areas, urban growth boundaries, level of service standards and other programs.

In *Golden v Planning Board of Town of Ramapo (1972) (see insert),* the US Supreme Court held that local governments may condition development approval on the provision of public services and facilities. Notably, the Town of Ramapo based its program on a comprehensive plan and an 18 year capital improvement program designed to provide infrastructure throughout the community.

As discussed above, the regulatory "takings" issue is critical in growth management programs. A "takings" issue may arise when a growth management program temporarily delays development. The US Supreme Court addressed this issue in *Tahoe-Sierra Preservation Council v Tahoe Regional Planning Agency (2002) (see insert),* holding that a delay in development during a moratorium is not a categorical *per se* taking. However, it left open the possibility that a moratorium could be a regulatory taking as applied to individual circumstances.

The preservation of lands for future public use, such as transportation corridors and greenways, while critically important for effective growth management, are especially problematic. Like moratoria, an official map, for example, can present an "as-applied" takings problem if a landowner is not able to make any use of the property for a period of time. But also like moratoria, if properly done,

official maps can be a useful tool for controlling growth. The Florida Supreme Court in *Palm Beach County v Wright (see insert)* held that an unrecorded county thoroughfare plan adopted as part of a mandatory county plan was not a facial taking, even though it prohibited all development in a transportation corridor that would impede future highway construction. *Palm Beach County* suggests that a corridor preservation law may withstand a "takings" challenge if it provides alternative development options that can avoid severe restrictions on development while preserving a highway corridor from damaging development.

Golden v Planning Board of Town of Ramapo
New York Court of Appeals (1972)

Facts: The Town of Ramapo adopted a growth management program deferring development in the community the community for as long as eighteen years. It implemented the program through a residential development permit system which allowed development only if adequate facilities were available. The plaintiff objected that the plan as implemented through the permit system was a taking because development could be deferred in some areas for the eighteen year growth management period.

Issue: Does a zoning ordinance which requires a special permit, only available when public facilities and services are deemed adequate, in order to subdivide property step outside of the authorized objectives of zoning enabling legislation?

Holding: The zoning ordinance is valid and its objectives are within those defined by the zoning enabling legislation.

Rationale: The court examined the effects of the scheme as a whole and its role in producing viable land use and planning policy. This ordinance provides for sequential and orderly development. The objectives of the zoning enabling legislation are as follows: secure safety, avoid undue concentrations of people and ensure adequate provision of transportation, water, sewerage, schools and parks. Based on this, the challenged ordinances are proper zoning techniques.

Plaintiffs argue that timing controls are not authorized since they prohibit subdivision without action by the Town. The Planning Board may not completely deny the right to subdivide. However, a plan is in place to ensure action by the Town. Protection from abuse of this mechanism comes from the mandatory on-going planning and development requirement.

Some properties will not be able to be developed for 18 years according to the general plan. They still are not valid as takings. Landowners are still able to put the property to some use, maybe not the most profitable one (single family residences are allowed). Reducing the value of property does not amount to confiscation unless it is unreasonable or the value is diminished to nearly nothing. These restrictions, while harsh, are not absolute. The court must assume that the Town will act on their plan. If this assumption is shown later to be unwarranted, the restrictions may be undone.

The court uses presumption of validity and cast the burden of proving invalidity to those challenging the action. Legitimate public purpose is forwarded by the ordinance as it ensures all new homes will have adequate public services. It is not exclusionary, instead it enables a cohesive community and efficient utilization of land. Population is not frozen but instead growth is maximized through efficient land use.

Palm Beach County v Wright
Florida Supreme Court (1994)

Facts: Wright claimed that a map reserving land for future road development through his property as (part of Palm Beach County's comprehensive development plan) was a taking under all circumstances. This map protected Wright's property (amongst others) from being developed with certain land uses that would later make it more difficult to and increase the cost of building out the roadway network.

Issue: Does a map which reserves land for future uses constitute a taking if the owner is denied substantially all of the economic benefits and productive use of the land?

Holding: The Supreme Court ruled that a map which reserves land for future use is not on its face unconstitutional but that such a map may make certain properties useless and thus result in individual takings. The adoption of the map was legal, but its impact on Wright's parcel could have constituted a taking under the Fifth Amendment and some Florida laws in particular circumstances.

Rationale: Each owner has the opportunity to conduct an inverse condemnation proceeding to determine if its particular circumstance is a taking. The map is constitutional in the same way that setbacks for potential roadway expansions are constitutional. However, if the filing of the map produces demonstrable loss of all economic benefit or productive use, then the owner has the right to seek just compensation at the time the map is adopted.

Due Process

Due process has two components. **Substantive due process** is the fundamental right to be free from arbitrary, capricious, and irrational legislation.

Procedural due process is the right to notice and a hearing when governmental action is taken affecting property rights.

Decisions rendered by *planning officials* must satisfy the standards of (1) substantive due process and 2) procedural due process

Legislative land use decisions by elected officials must satisfy the standards for substantive due process and procedural due process.

Quasi-judicial decisions need only satisfy the requirements of procedural due process. *Lewis v. Brown,* 409 F.3d 1271, 1273 (11th Cir. 2005).

Substantive Due Process

Substantive due process is concerned with the overall propriety of the action taken, or the limits of the "police power" in general.

Substantive due process issues involve (1) the proper exercise of the "police power", (2) the "vagueness" inquiry and (3) the "nexus" issue.

Does the regulation seek to achieve a "legitimate public purpose"?

In most cases, planning enactments seek to protect stated community values; the "object" or "purpose" of the planning effort will be deemed legitimate. For example, regulations aimed at protecting public health and water quality seek to achieve a legitimate public purpose.

Is there a rational basis to think that the means used to accomplish the lawful purpose are "reasonably related" to achieving that purpose?

Even when a stated aim is proper, courts will examine whether the means chosen are appropriate. In protecting neighborhood values, for example, a municipality might decide to require modern construction techniques and adequate storage before permitting modular housing in a community. The municipality could be challenged, however, if it assumes that modular housing is always inferior (a demonstrably false assumption), and seeks to ban modular housing or "mobile homes" to "protect the

quality of single-family neighborhoods."

While not strictly required as part of the substantive due process inquiry, it is appropriate for governments to try to balance its interests with those of the regulated property owner. The greater the public harm, up to a point, the greater the public intrusion warranted in solving the harm. The greater the intrusion on the use of the property, the closer the scrutiny required. Would a less intrusive alternative would have accomplished the same result? Is it fair to make the property owner bear the burden of solving a community problem?

Exactions-The Nexus Issue

All land use regulation must have a rational basis. There must be a logical connection between the problem the community is trying to solve and the limitation, regulation or exaction sought by municipal action.

Exactions are requirements that an individual developer provide as a part of its development, or contribute, something in relation to receiving approval of that development. Examples include a requirement to dedicate land for roadways or for a school, build a lift station, or contribute to a fund for beautification of the nearby medians of public streets. A particular type of rational basis review applies to such exactions, known as the nexus requirement. If the nexus requirement is not satisfied, as set forth in the Nollan and Dolan cases, then the exaction may be deemed to be a taking.

The "nexus" doctrine arose in a United States Supreme Court case known as *Nollan*. There, the California Coastal Commission sought to require a property owner to dedicate a beach front public walkway as a condition to a request to remodel and increase the size of a home for the expressed public purpose of protecting the ability of the public to see the ocean from the public roadways and areas landward of the Nollans' lot. The court noted that a municipality could acquire a beach front walkway at any time by condemnation. The question in the case is whether the municipality could require the owner to dedicate the walkway without compensation, based on the owner seeking a permit to remodel the house. The court's answer was

"no."

In deciding the case, the court said ***there must exist some logical connection between the problem identified, the municipal interest expressed, and the solution proposed***. Thus, a municipality could require setbacks from side yards for safety or aesthetic reasons, because construction of a house raises both issues. But appropriation of a walkway across a back yard for public use did not solve the problem of the decreased visual access to the ocean created by construction of the house. It only contributed to solving a separate public need, i.e. a linear park along the waterfront to increase public access along the shoreline. **Since there was no connection between the purpose of the regulation and the exaction sought, the exaction could not be required no matter how important the purpose was to the community.** The question is not the importance of the public need, but the relationship between the requirement and the purpose it served.

Nollan was incomplete because it merely stated that a nexus was required without giving any indication of how close the fit must be between the legislative end and the regulatory means. The "nexus" requirement was further developed in *Dolan*. There**,** the municipality imposed conditions on a building permit requiring the applicant to permanently dedicate a portion of its land for storm drainage and as a pedestrian/ bicycle path. The applicant argued that the City failed to adequately justify the conditions with the required *Nollan* "nexus." The United States Supreme Court agreed with the applicant/ property owner. The court reaffirmed *Nollan***,** and added that the "nexus" test also asks whether there is a **"rough proportionality**" between the condition imposed and the impact intended to be mitigated by that condition. *Dolan* required local governments to prove that there was not only a nexus between the end and the means, but also that they were roughly proportionate in scope.

It is important to note that the courts have generally not applied *Nollan* and *Dolan* to **legislative** requirements for growth to contribute to the impact of development. For example, an impact fee is de-

veloped and adopted legislatively. A study is prepared, looking at the level of service of a particular facility or service that is provided to the existing community (i.e., roads or parks) and then deriving a fee based on the cost of requiring each unit (i.e., a dwelling unit or 1000 square feet of nonresidential development) of growth to pay to receive the same level of service. Once in place, all development participates equally in paying for the system to serve growth. Such an approach is less likely to result in arbitrary, excessive or discriminatory charges, and ensures equal treatment for all development of the same type.

There must exist some logical connection (a "nexus" and a "rough proportionality") between the problem identified, the government interest, and the solution proposed.

Instead, impact fees must be justified as fees rather than unauthorized taxes. In order to show that the fee is not an unauthorized tax, local governments must demonstrate that there is a special benefit to development resulting from the payment of the fee. The courts have described this as the requirement there be a dual rational nexus: a nexus between the need for the facilities to be provided and the impact of the development on the one hand, and the expenditure of the fee revenues and the benefits that development receives on the other. See, e.g., *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976). In practice, there is not much difference. Both the exactions cases and the impact fee cases look to whether there is enough of a relationship between development's impacts and what development is being asked to do.

Procedural Due Process

The Vagueness Inquiry

Procedural due process applies to both legislative and quasi judicial governmental actions, and is satisfied by the provision of notice and a hearing, regardless of any concerns about whether the action makes sense or is effective.

An important corollary of procedural due process, particularly for legislative actions, is the vagueness doctrine, which states that any law is facially invalid if persons of "common intelligence must necessarily guess as at its meaning and differ as to its application." In other words, if the law does not plainly state its scope, persons are not put on no-

Nollan v. California Coastal Commission, 483 U.S. 825
US Supreme Court (1987)
Exactions: rational relationship

Facts: The appellants leased, with option to buy, a 504 square-foot bungalow in Ventura County which they rented to summer vacationers. In order to purchase the property, they were required to demolish the bungalow and replace it. The California Coastal Commission granted a permit to appellants to replace the structure with a larger house upon the condition that they allow the public an easement to pass across their beach, which was located between two public beaches.

Issue: Does the California Coastal Commission's condition requiring an easement for public access serve a valid public purpose and represent a proper exercise of the police power? Or is it a taking?

Holding: The regulatory purpose must have a rational nexus with the regulatory requirement. The stated rationales for requiring the easement – (a) protecting the public's ability to see the beach, assisting the public in overcoming a perceived psychological barrier to using the beach below the timeline, which is public property, and (b) preventing beach congestion – did not relate to the easement's effect, which was to enhance pedestrian access along the shoreline for those already on the beach. California's comprehensive program for providing a continuous strip of accessible beach for the public purpose may be valid, but California chose the wrong means to bring it about.

Dolan v. City of Tigard, 512 U.S. 374
US Supreme Court (1994)
Exactions: Roughly Proportionate

Facts: Florence Dolan owned a plumbing and electric supply store in the Central Business District of Tigard, Oregon. Fanno Creek runs through the southwest corner of her property, which is located on Main Street. The City enacted several requirements to implement Oregon's statewide planning goals, including an open space and bikeway requirement in the Central Business District and a drainage plan along Fanno Creek. When Dolan sought a permit to redevelop her site, the Planning Commission granted her request, subject to the following conditions: 1) dedicating the portion of her property lying within the 100 year floodplain for improvement of a storm drainage system, and 2) dedicating an additional 15 foot strip of land next to the flood plain for a bicycle/pedestrian path. Together, these conditions constrained the use of about 10% of plaintiff's property, and could be counted towards the mandatory 15% open space requirement. The drainage plan specified that costs should be shared, resting more heavily on owners along the floodplain such as Dolan, as they would benefit most from flood mitigation it provided.

Issue: Do these conditions constitute a taking? Does the *Nollan* "essential nexus" exist between the "legitimate state interest" and the permit condition exacted by the city and, if so, what is the required degree of connection between the exactions and the projected impact of the proposed development?

Holding: *Nollan* was satisfied. The Court found a legitimate public interest in the City's desire to prevent flooding and reduce traffic congestion. It also found a nexus between those interests and the conditions imposed upon the permit -- the plaintiff's expansion of her store would increase the impervious surface of the property and increase the amount of storm water runoff, and it makes sense to limit development within the floodplain. Also, a bicycle/pedestrian path may reduce traffic congestion that may be a result of the increased number of trips predicted by the new development (about 500 a day).

However, when the Court turned to look at whether the degree and nature of the exactions bore the "required relationship" to the projected impact of the project, it did not defer to the City's findings (as the Oregon Supreme Court had). Instead, the Court determined that the proper level of scrutiny in cases of this type was whether the findings presented by the city showed a "reasonable relationship", in the Court's words, a **"rough proportionality"** between the projected impact and the conditions of the permit.

"No precise mathematical calculation is required, but the city must make some sort of **individualized determination** that the required dedication is related both in nature and extent to the impact of the proposed development." The burden of proof is on the city, because the permit conditions are an adjudicative decision on whether to approve Dolan's redevelopment of her site.

tice of its potential impacts on them, and thus are not motivated to take advantage of any hearing provided to raise their concerns, or may unintentionally violate it. Vague drafting also leaves the door open to arbitrary and discriminatory enforcement. Thus, it is not only good practice to ensure that a code of ordinances is written in plain English so it is easier to administer and enforce, it is also required by the Constitution.

If a land use regulation is to be enforceable, it cannot be unconstitutionally vague. People enforcing the regulation, and those affected by it, must have a sense of the nature and extent of the regulation and the conduct it permits or prohibits. For example, a city adopted a design review ordinance that called for buildings to be "in good relationship" with the surrounding views, have "appropriate proportions" and "harmonious colors," and be "interesting." In the transition between the old town and a nearby development area, the court found the design review commission could not express the code requirements in anything other than personal preferences. As such, the code as applied to the building in question was unenforceable.

If a local government is to avoid a claim of vagueness, it must create a standard (in words and pictures, if needed) that permits those involved in the process to understand what is expected or required.

An even higher decree of clarity is demanded when the law in question threatens First Amendment or other fundamental constitutional rights.

Courts will always try to find a way to avoid the constitutional issue if possible, but in cases of vagueness, doubts are resolved in favor of the person affected by the law. Sometimes, the court can narrow the effect of a law by a clarifying interpretation, to cure a vagueness problem that appears on the face of the statute, but governments should not rely on this happening.

Procedural Due Process in Quasi-Judicial Decision Making

Procedural due process is intended to ensure

that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals. Broad concepts like "fundamental fairness" frequently become the basis for challenging land use decisions.

Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making quasi-judicial decisions.

Essential elements to ensure fairness of a quasi-judicial hearing or decision:

- adequate notice;
- an unbiased decision-maker;
- an opportunity to be heard;
- the right to present evidence;
- prompt decision-making;
- a record of the proceeding; and
- a written decision based on the record and supported by reasons and findings of fact.

Quasi – Judicial Land Use Hearings

Most of the decisions made by *planning officials* are quasi judicial in nature. As noted in the discussion of *Snyder* above, once the decision is made on the applicable comprehensive plan policies and land use map designation, all zoning, subdivision and other decisions related to approving development on a parcel are legally considered to be quasi judicial.

The manner in which procedures and meetings are conducted and the basis for decisions are critical issues for quasi judicial land use decisions. In particular, a quasi-judicial proceeding must address the following elements if it is to withstand scrutiny under the requirements of procedural due process:

Ex Parte Communication
Substantial Competent Evidence
Conduct of the Hearing

Findings of Fact

Ex Parte Communication

An ex parte communication is a one-on-one communication between an interested party and the decisionmaker, outside the presence of the other interested parties and outside of the hearing. An example might be the developer meeting with a member of the City Council privately and outside the presence of the neighbor who opposes the development (or vice versa – the councilwoman meeting with the neighbor without the developer present). The law presumes such communications to be prejudicial, because they allow the decisionmaker to be exposed to information that may be incorrect in such a manner that other interested parties will not have a chance to correct the error before the decision is made. See, e.g., *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3rd DCA 1991).

Ex parte communication is permissible in relation to a quasi judicial proceeding only in accordance with procedures adopted by a local government pursuant to Chapter 256, Florida Statutes. The Legislature adopted a statute that attempts to remove the *presumption of prejudice* resulting from any ex parte communication related to a quasi-judicial matter *"if the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made part of the record before the final action on the matter."* If the communication is disclosed, then other parties have the chance to correct any errors or offer an alternative viewpoint, and ensure that the decision is based on correct information and full exposure to all points of view.

If your community does not have an ordinance establishing guidelines for ex parte communications during quasi-judicial proceedings, you should discuss the adoption of such an ordinance with your city or county attorney. Inappropriate actions in the realm of ex parte communication can potentially invalidate quasi-judicial decisions made by your community and, of equal importance, create an appearance of impropriety and prejudice.

Substantial Competent Evidence

Ex Parte communication is generally not permissible in quasi judicial proceeding

In Florida, the quasi-judicial decisions made by *planning officials* are to be based on *substantial competent evidence* and must be consistent with the comprehensive plan.
One definition of competent evidence is *"evidence a reasonable mind could accept as adequate to support a conclusion".* Competent evidence is generally testimony based on personal observation or testimony by an "expert" who has special knowledge of a relevant topic. For example, when addressing a question of traffic concurrency, the professional opinion of a traffic engineer is competent and may be relied upon as a basis for the decision. The opinion of a lay person who lives near a proposed development is not competent, and may not be relied upon. Neighbor testimony based on personal observation or on facts about which they have relevant knowledge is competent and, in some cases, critical to the decision. ("I have coffee on my porch every morning at 7:30, and consistently observe that the traffic backs up from the intersection to my driveway, a half mile away"). See, e.g., *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598 (Fla. 3d DCA 1995).

Both expert and layperson witnesses must testify to the factual basis of their positions and not to their subjective preferences. Florida's courts have also established a strict standard for consistency with the comprehensive plan. Consequently, some evidence accepted as a basis for decision must have bearing on the application's consistency with the comprehensive plan. Evidence relating to specific plan requirements, such as transportation concurrency, is clearly relevant. More ethereal issues, such as how the application might affect local quality of life, may not be relevant unless the comprehensive plan has policies specifically addressing that issue.

Conduct of the Hearing

Quasi-judicial proceedings provide procedural due process protections not available in legislative proceedings. While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include (1) notice, (2) a hearing before a neutral decision-maker, (2) presentation of evidence, (4) sworn

testimony and (5) the questioning of witnesses.

Information related to a quasi-judicial proceeding should be available in a timely manner and accessible to all the parties throughout the process. Many communities use an "application file" for this purpose. The application file is a public document that is made available to the public during business hours. The file contains a complete record of the application, including all information submitted by the applicant, all staff reports, all comments and information submitted by other parties interested in the decision, and all actions taken by reviewing or decision-making agencies.

Decisions must be based on "substantial competent evidence

In a quasi-judicial hearing before a collegial body such as a City Council, the Mayor or Chair often has a challenging task of ensuring that all parties are adequately heard in a fair and equitable manner, while facilitating an efficient hearing and avoiding repetitive testimony or public comment that is off the topic and not relevant to the criteria governing the decision. While the Chair should adhere to established procedure, he or she does not have to be rigid. Rather, the hearing should be sufficiently flexible to provide a fair hearing for all parties, including lay persons who may be new to the land use process.

Uniform time limits for general comment are permissible, but the applicant, local government planning staff, and any other persons who demonstrate that they are affected parties and wish to provide evidence should be provided sufficient time to put on their case.

Although there may be some debate and the cases are not conclusive, most attorneys agree that constitutional due process requires the swearing of witnesses. Consequently, most local governments follow this practice. A mass swearing of witnesses at the beginning of the hearing will suffice.

The Florida Supreme Court has also ruled that, in a quasi judicial hearing, all affected parties must be "given a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine witnesses, and the judgment of the agency or board should be contingent upon the showing

made at the hearing." Hearings should be conducted to ensure that cross examination of witnesses is controlled and that the public is not discouraged from testifying while ensuring that all affected parties, as well as the decision-makers, have the opportunity to bring out and explore all relevant facts and testimony. Some communities require all questioning to be through the Chair of the proceedings, in order to assure that it does not become abusive.

Findings of Fact

The Florida courts do not specifically require "findings of fact" to be included in the record of every quasi-judicial decision. However, because quasi-judicial decisions must be based on substantial competent evidence and will be reviewed for strict compliance with the comprehensive plan, *Snyder* suggests that after-the-fact rationales may not be persuasive to a reviewing court. To assist applicants, interested persons and reviewing courts in determining the factual basis for a decision, the basis for the quasi-judicial decision should be clearly established at a public hearing.

Very often, this is accomplished by moving approval or denial of the item in accordance with the staff report and recommendation, which should contain within it the relevant facts and legal standards for making the decision and may also provide a professional planning recommendation to support the action.

If there is no staff report or the decision maker disagrees with the staff report, then the motion and explanation of the action must be more extensive and provide a proper factual and legal basis, on which the local government can rely in defending its action in court if needed. Such a basis may be found in evidence offered by the applicant or a third party such as an environmental or neighbor group, or in the decision maker's own analysis and interpretation of the facts and legal standards before it at the hearing.

In any case, it is very important to ensure that any relevant commitments by the developer are reflected in the conditions of approval, so that the decision maker does not rely on an oral represen-

tation and later find, to its disappointment, that it is unenforceable.

Quasi judicial proceedings provide due process protections not available in legislative proceedings. While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include (1) notice, (2) a hearing before a neutral decision-maker, (3) presentation of evidence, (4) sworn testimony and (5) the questioning of witnesses

Decisions made by Planning Officials should be documented and supported by "findings of fact"

Chapter Three - The Ethics of Planning

Ethics is a set of principles or values that govern the actions of an individual or a group. The principles must be commonly accepted by the group, coherently expressed, and uniformly applied if the group wishes to act in an ethically responsible manner.

Ethics is a set of principles or values that govern the actions of an individual or a group. The principles must be commonly accepted by the group, coherently expressed, and uniformly applied if the group wishes to act in an ethically responsible manner.

Why Ethics Is Important for the Planning Official

Serving as a planning official is *a public trust.*

Serving as a planning official requires treating the office as a public trust. Planning officials have been given public authority and must use that authority with integrity and honor. Today, planning officials have a special role in the political process and want to know how to do the right thing in the context of that role. However, it is not always clear what the right thing is, and sometimes doing the right thing entails risk to one's position as a planning official.

While no single, absolute set of rules has emerged to guide planning officials in dispatching their sometimes difficult duties, consensus has emerged on the purpose of planning – to serve the broad interests of the community in developing thoughtfully into the future. This chapter explores the various rules, statutes and codes that serve as a guide for ethical conduct.

Conduct of the Planning Official

As a *planning official* - you are a public official. As such your actions are sure to be under scrutiny by members of the public and by your local media. A misstep in how you deal with ethical issues has the potential to flare up into controversy.

Financial Disclosure

Local officers are required by statute to disclose their financial interests and clients they represent before public agencies. The term *local officer* specifically in-

Planning officials are required by state law to disclose financial interests and clients represented before agencies.

cludes those persons serving on *(1)* A board having the power to enforce local code provisions and (2) a planning or zoning board, board of adjustment, board of appeals, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision.

Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment.

Each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year.

Your city or county should have an established procedure for properly filing the necessary disclosure documents. Check with your planning director or attorney if you have questions.

Florida's Government in the Sunshine Law

Florida's "Sunshine Law" provides a right of access to public proceedings. _Planning officials_ are subject to the Sunshine Law.

Florida's Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will come before that board for action.

The Sunshine Law requires that meetings be open to the public, reasonable notice is given and minutes are taken.

The three basic requirements are:

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

Are all public agencies subject to the Sunshine Law? The Sunshine Law applies to "any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision." Florida courts have stated that it was the Legislature's intent to extend application of the Sunshine Law so as to bind "every board or commission of the state, or of any county or political subdivision over which it has dominion and control.

Are advisory boards which make recommendations or

committees established for fact-finding only subject to the Sunshine Law? Advisory boards whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way are subject to the Sunshine Law. There is no "government by delegation" exception to the Sunshine Law, and public agencies may not avoid their responsibilities or conduct the public's business in secret by use of an alter ego.

Presume that any action you may take as a *planning official* is subject to the Sunshine Law

This definition clearly extends to all boards and commissions – state, regional and local – engaged in planning decisions. If you – as a *planning official* – have any doubt about the application of the Sunshine Law, the following steps are recommended:

- Presume that your action is subject to the Sunshine Law
- Seek legal advice from your city or county attorney
- If any doubt remains, presume that your action is subject to the Sunshine Law

After all, government-in-the-sunshine is not only required by Florida law – it is good public policy

Public Records

Every person has the right to inspect any public record made in connection with public business.

The citizen's access to public records is established by the Florida State Constitution. *"Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf,"*

"All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public"

"The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section"

What materials are "public record"? The state statutes define "public records" as: *"all documents, papers, letters, maps, books, tapes photographs, films, sound re-*

cordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with official business by any agency."

The term "public record" is not limited to traditional written documents. Also as technology changes, the means by which public agencies communicate, manage, and store information, public records will take on increasingly different forms. Yet the comprehensive scope of the term "public records" will continue to make the information open to inspection.

When are notes or nonfinal drafts of agency proposals considered "public records"? There is no "unfinished business" exception to the public inspection and copying requirements established by state statute. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in a final form or the ultimate product of an agency.

Treat all materials as a "public record". Seek advice to understand the procedures used by your jurisdiction for the handling of public records.

Accordingly, any agency document, however prepared, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. The fact that the records are part of a preliminary process does not detract from their essential character as public records.

It is also important to emphasize, however, that a nonfinal document need not be communicated to anyone in order to constitute a public record. So called "personal" notes are public records if they are intended to perpetuate or formalize knowledge of some type.

Accordingly, it is only those uncirculated materials which are merely preliminary or precursors to final documents, and which are not in and of themselves intended to serve as final evidence of the knowledge to be recorded, which fall outside of the definitional scope of public records.

How long should public records be kept? All agencies are required to maintain its public records in accordance with state statues and rules. The criteria for records maintenance and their eventual disposal are complex and not the responsibility
of individual officials.

Recommended guidelines for planning officials regarding public records

- Assume all communication related to your job as a *planning official* is a "public record"
- Encourage your agency to develop clear policies and procedures for the handling of public records.
- Do not destroy any record that may be deemed a public record
- Seek legal advice from your city or county attorney.

Ex Parte Communication

Ex parte contacts are those communications that occur outside the public forum. The literal meaning of the term "ex parte" is "one-sided." This, of course, suggests that when you engage in an ex-parte contact, you are engaging in a one sided discussion, without providing the other side an opportunity to respond and state their case.

Ex parte communications are generally not allowed in quasi judicial proceedings. In 1991, the Third District Court of Appeals in *Jennings vs. Dade County* held that communications between a party to a pending development proposal and an official who will be voting on the proposal can invalidate the subsequent decision. In 1993, the Florida Supreme Court in the *Snyder vs Board of County Commissioners of Brevard County* prohibited individuals from lobbying local officials on petitions regarding "quasi-judicial" decisions. The Court included zoning changes affecting specific parcels, conditional uses and variances in this definition but did not extend this prohibition to large-scale, jurisdiction-wide rezonings that involve policy making on a general scale.

Ex parte communication presents a dilemma for the *planning official*. The best advice is to avoid such contacts.

Nonetheless, ex parte contacts are permissible in Florida. In 1995, the Florida Legislature authorized local governments to adopt ordinances that permit lobbying so long as the lobbying is disclosed in the public hearing and the opponents have an opportunity to respond. If your community has not adopted such an ordinance, discuss it with your legal counsel. Having a clear set of rules and guidelines about ex parte communications is good public policy.

For the *planning official*, ex parte communication presents a murky legal and ethical dilemma and one that

will frequently and continuously present itself.

While no one is asking you to abandon your values, beliefs, and political orientations when you become a planning official, you are accepting allegiance to certain principles that transcend your personal political beliefs and these principles have clear ethical and legal implications.

When you agree to serve on a planning commission or board you accept the obligation to treat all persons fairly, even if those persons happen to have radically different viewpoints than you.

Clearly there is a benefit in public knowledge of matters before the planning commission. However, you should not provide certain information to one group while withholding it from another, or selectively encourage participation only by those who share your views.

A local government may adopt an ordinance establishing a process to disclose ex parte communications related to quasi judicial proceedings.

While there is nothing wrong with your encouraging public participation, it is often best, if you have a planning director or staff planner, that they be the ones principally responsible for ensuring that all segments of the community are aware of pending or future items that may be of interest.

Is there a problem with your working behind the scenes to assist certain groups or individuals on matters pending before the commission? In a word, yes. Invariably that involvement comes out, often in the form of rumors and innuendo. A commissioner's greatest asset is credibility; once damaged, that credibility may be impossible to restore.

An even more serious problem raised when a commissioner becomes a "behind the scenes" advocate is that it implies that the commissioner has taken a position on a particular issue before it has been aired through the public hearing or review process.

From a due process standpoint, planning commissions must provide equal access to information to all interested parties. If you are going to consider information in making a decision, then that information must be in the public realm, so that anyone has the opportunity to agree or dispute it.

The concern is more with the appearance of impropriety. The integrity of your commission is paramount, and it does not take much for that integrity to be damaged.

Another mistake is to accept something as confidential information. Planning officials are, in fact, public officials. Any public official, including those serving on commissions, should as a general rule consider information provided to them to be public information. If information you obtained through a confidential discussion ends up having relevance to a public matter before the commission, you will have an ethical obligation to disclose it.

Politely, Say *"No"*

Don't discuss a case privately and as a single member of a body with an applicant or objector prior to the filing and prior to the hearing if it can be politely avoided. In the event that it is not avoidable, and many times it is not, be very non-committal, ... explain that you are only one member of the body, that you have not had an opportunity to study the matter thoroughly, that you have not seen the staff recommendation, and that you have no way of knowing what opposition there may develop or what will occur at the public hearing.

Be certain that the person concerned understands that you cannot commit yourself in any manner, except to assure him that he may expect a fair and impartial hearing.

Conflict of Interest

Conflict of interest questions are part of the larger due process consideration of the impartiality of the planning board or commission. Simply stated, every party before your board is entitled to a fair hearing and decision, free from bias or favor. Having a conflict of interest can threaten that impartiality. Therefore, it is critical that conflicts be identified and dealt with in an appropriate manner.

The issue of conflicts of interest is particularly acute when a planning official has an interest in developable real estate. While none of us like to think that we have given up some right by agreeing to serve on the planning board, the most sensitive ethical area involves a perception that a planning board member is acting in a way to advance his own interests in private property development.

Florida’s statute defines a conflict of interest and tells you what to do about it:

In Florida, a conflict of interest exists if a special private gain or loss would inure to the planning official, a relative or a business associate

"No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss…. or …. would inure to the special private gain or loss of any principal (including corporate) by whom he or she is retained ……or … would inure to the special private gain or loss of a relative or business associate …... "

I think I have a conflict of interest. What do I do?

- **Acknowledge the potential conflict (When in Doubt, Disclose).** If you have any question or unease about a potential conflict of interest, do not hesitate to disclose it.
- **Seek a legal opinion (city or county attorney).** Your first and best point of inquiry about a conflict of interest is your city or county attorney.
- **If a conflict exists, publicly acknowledge it as required by statute.** *"Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes."*
- **Disqualify Yourself.** Don't fail to disqualify yourself if you have a conflict of interest under Florida law. Conversely, as a public official, you are expected to participate meet your responsibility as a decision-making and to vote except when a conflict of interest as defined by Florida law exists. That is why it is important that you consult your city or county attorney when in doubt.
- **Abstain from voting.** If a conflict of interest exists, you cannot cast a vote.
- **Do not participate in the discussion (leave the room).** Out of sight, out of mind. Continuing to sit silently with the commission or even moving to the audience is not good enough.
- **Err on the Side of Caution.** If you have any reason to believe that you have a conflict of interest, do not hesitate to consult your legal counsel.

Conflicts of Interest are serious matters. Err on the side of caution in disclosing potential conflicts of interest.

And do it well before the item comes before your commission or board for review. You want to be the one who raises the conflict – not an applicant or effected citizen.

American Institute of Certified Planners Code of Ethics and Professional Conduct

Professional planners, subscribe to AICP's Code of Ethics and Professional Conduct. Highlights of the code are outlined below (see Appendix C for the full text)

The principles to which professional planners subscribe derive from the special responsibility of the profession to serve the public interest with compassion for the welfare of all people and an obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles espoused under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

Certified Planners are also members of the American Planning Association and share in the goal of building better, more inclusive communities. Professional planners want the public to be aware of the principles by which the profession is practiced in the quest of that goal.

A: Principles to Which Professional Planners Aspire

Overall Responsibility to the Public

The planning profession's primary obligation is to serve the public interest. Allegiance is owed to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. Professional planners shall strive to achieve high standards of professional integrity, proficiency, and knowledge. To comply with its obligation to the public, the profession aspires to the following principles:

a. Always be conscious of the rights of others.

b. Have special concern for the long-range consequences of present actions.

c. Pay special attention to the interrelatedness of decisions.

The AICP Code of Ethics provides a sound foundation for the conduct of the *planning official*

d. Provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

e. Give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.

f. Seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.

g. Promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

The planning profession's primary obligation is to serve the public.

h. Deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

Responsibility to Clients and Employers

Professional planners shall strive to achieve high standards of professional integrity, proficiency and knowledge

Certified planners owe diligent, creative, and competent performance of the work done in pursuit of a client or employer's interest. Such performance, however, shall always be consistent with faithful service to the public interest.

a. Exercise independent professional judgment on behalf of clients and employers.

b. Accept the decisions of a client or employer concerning the objectives and nature of the professional services unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.

c. Avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

Responsibility to the Profession and Colleagues

Certified planners shall contribute to the development

Certified planners owe diligent, creative and competent performance of work done consistent with faithful service to the public interest

of, and respect for, the profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

a. Protect and enhance the integrity of our profession.

b. Educate the public about planning issues and their relevance to our everyday lives.

c. Describe and comment on the work and views of other professionals in a fair and professional manner.

d. Share the results of experience and research that contribute to the body of planning knowledge.

e. Examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation.

f. Contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.

g. Increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.

h. Continue to enhance professional education and training.

i. Systematically and critically analyze ethical issues in the practice of planning.

j. Contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

Should Your Commission Adopt Its Own Code of Ethics?

Some planning commissions adopt their own code of ethics and conduct. The Hillsborough County City-County Planning Commission follows this practice.

Certified planners shall contribute to the development of , and respect for, the planning profession

Oath of Office
Planning Commissioner
Hillsborough County City-County Planning Commission

I, (state your name), a Planning Commission appointee of the (local government name), do solemnly swear or affirm that I will faithfully perform the duties of my appointed office, and will support and honor to the best of my ability all applicable laws of the State of Florida, Hillsborough County, (the City of name if applicable) as well as the bylaws, beliefs, vision, mission, policies, procedures, code of ethics and code of conduct of the Hillsborough County City-County Planning Commission. I hereby through this oath affirm that I will perform the duties of this public trust in a fair, equitable and ethical manner befitting the dignity and responsibilities of the office.

_____
Planning Commissioner Signature

_____
Planning Commissioner Printed Name

Sworn before me this _____ day of _____, 20__

_____ Seal
Name (Clerk of the Court or Designee

_____
Witness

Code of Ethics

Hillsborough County City-County Planning Commission

MEMBERS SHALL ETHICALLY SERVE THE PUBLIC INTEREST BY MAKING DECISIONS AND TAKING ACTIONS WHICH WILL ENHANCE THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE REGION AND THE CITIZENS SERVED BY THE PLANNING COMMISSION AND BY PROMOTING PUBLIC CONFIDENCE IN THE INTEGRITY, INDEPENDENCE, ABILITY AND IMPARTIALITY OF THE PLANNING COMMISSION

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the Planning Commission and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with Planning Commission business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with the applicant or their representative about specific upcoming Planning Commission agenda items. If a Member receives a private written, telephonic or electronic communication about an agenda item, the Member will promptly forward the information to the Executive Director so that it may be shared with all other members. Members shall refrain from any private discussion of Planning Commission business with other Members per the requirements of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Member during the Planning Commission proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. A Member who announces or files as a candidate for public office shall resign immediately from the Planning Commission. No Member shall solicit funds from any other Member in support of any person's campaign for election for local or state public office.
7. Members shall refrain from participating in any proceeding in which their impartiality may be reasonably questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the Planning Commission shall seek advice and counsel of the Planning Commission Attorney, if such relationship could conceivably influence the Member's impartiality during the Planning Commission's discussion of the subject. The provisions of Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Planning Commission by-laws, policies and mission statement.

Code of Conduct

Hillsborough County City-County Planning Commission

RECOGNIZING THAT PERSONS HOLDING A POSITION OF PUBLIC TRUST ARE UNDER CONSTANT OBSERVATION, AND RECOGNIZING THAT MAINTAINING THE INTEGRITY AND DIGNITY OF THE PUBLIC OFFICE IS ESSENTIAL FOR MAINTAINING HIGH LEVELS OF PUBLIC CONFIDENCE ON OUR INSTITUTIONS OF GOVERNMENT, EVERY MEMBER OF THE PLANNING COMMISSION PLEDGES TO ADHERE TO THE FOLLOWING

CODE OF CONDUCT

1. Regularly attend all scheduled meetings of the Planning Commission as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the Planning Commission.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meetings of the Planning Commission.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens or staff.
7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Hillsborough County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the Planning Commission.

The performance of the Planning Commission and Planning Commissioners in meeting this Code of Conduct is affirmed by the following signatures:

_____	_____
Name	Name
_____	_____
Name	Name

Chapter Four - Making Planning Work

Effective Planning Officials

As a *planning official,* there are techniques and practices that will make you more effective:

- **Roll up your sleeves.** Being an effective *planning official* is hard work. Get to know your comprehensive plan and your land development regulations. Read books and articles about planning. And take the time to know about the matters coming before you for decisions. The job of a *planning official* requires more than attendance at monthly meetings.

- **Prepare for meetings**. Public meetings are the window of planning to the community. It is in this forum that the business of planning is conducted. Spend some time to prepare for each meeting no matter how routine.

- **Take advantage of staff briefings**. The planning staff is an extension of you. They conduct the necessary analysis that serves as the foundation for your decisions. Do not miss an opportunity for staff input.

- **Listen – engage & stay on target.** Listen to all the people and not just to those who fit into a neat stereotype of "desirable citizens". It is important to give attention to everyone. Those appearing before you have probably spent hours preparing and rehearsing their arguments. You owe them your consideration. At the time, stick to the issues at hand.

- **Seek input and ask questions.** The only dumb question is the "one not asked". Ask questions at your board meetings. Don't be reluctant to ask questions of other board members and the planning staff.
- **Know the protocol for moving the meeting along.** Learn the rules that govern your meetings and do your part in creating an efficient meeting environment.

- **Check the record for accuracy.** The accuracy of records is very important to the planning process and everyone involved bears responsibility for maintaining this accuracy. Check the minutes and don't hesitate to questions apparent discrepancies in supporting material and testimony.

- **Reap dividends by getting training; travel to other cities & meet your peers.** Find out what your peers are doing in other communities. There is no subject related to planning that other communities have not encountered and taken steps to resolve.

- **Keep the "Vision" - The vision of your community belongs in the forefront of everything you do as a commissioner**. The *planning official* that understands the community's vision and is committed to achieving that vision has a *leg up* in the effectiveness category. This *sense of direction* is extraordinarily powerful as a catalyst for positive change.

Building Relationships

Planning officials work with, and independently of, a variety of groups and people. Key among them are the petitioner seeking action, the planning staff, other governmental staff or agencies, the local legislative body, official and unofficial citizen groups, individual citizens, and the courts. The relationship of the *planning official* the local legislative body and to the professional staff are discussed here.

Getting Along With the Elected Officials

The commission's relationship to the legislative body may be the most significant single reason for strong planning ethics. The legislative body is political. Legislative representatives are responsive to constituents' interests and subject to election campaigns that encourage attention to immediate concerns rather than to long range problems.

Planning commissions and boards exist independently to balance this tendency. They do so by emphasizing the long range interests of the community. Much of the work of commissions and boards is making recommendations to the legislative body that makes the final decision.

A delicate balance exists in the relationship between elected officials and their advisory boards that inevitably surrounds local land use issues. Often it is rooted in a lack

of clarity about their different roles.

A misunderstanding of roles is the most frequent barrier to a positive relationship between councils and planning boards. What are the roles? The Council begins with the responsibility of appointing the members of the Board. It is the Council's job to create a capable Board with a balance of experience and expertise. However, the Council then needs to leave the Board to do its job.

A positive and productive working relationship between the Council and the Planning Commission requires a clear understanding of their different roles, a regular communications system and a healthy understanding of, appreciation and respect for each other's jobs.

The two groups have distinctly different jobs. Elected officials are policy makers. They are elected by and are responsive to the public whom they represent in all its various constituencies. The Board members, on the other hand, are not policy makers. They are appointed to work within the policies and ordinances adopted by the legislative body. They work within already established policy and do not change policy based on public comment. Even if the room is packed with citizens arguing that a permitted use be denied in a site plan hearing, it is not the Planning Board's role to change what is or is not permitted. It is their role to apply the given ordinance. If the public does not like what the ordinance permits, then the Council is the place to get it changed. Similarly, if the Board is concerned about the impacts of applying a given ordinance, their option is to recommend changes to the Council.

Even in the process of rewriting or developing new ordinances, the Council is still the policy maker. The Board functions like a technical consultant to the Council recommending effective ways to accomplish the general community goals requested by the Council. The Council gives a sense of direction to the Board. The Board then uses its specialized background and expertise to make recommendations back to the Council. The recommendations may be creative and far reaching. They may be more complex or technically innovative than the Council ever imagined. But, it is the Council that makes the final decision with whatever political considerations it deems appropriate. Each role is vital to a smoothly functioning community. But they are separate. If the Board tries to set policy or the Council tries to interfere with the application of the ordinance or fails to value the technical advice of the Board, confusion and trouble will follow.

Effective and appropriate communication is important to a positive relationship.

When and how should the Council and the Board com-

municate? Should elected officials lobby Board members as the Board carries out its work? Should Board members consult with individual elected officials before making decisions or recommendations? Neither is likely to be helpful. There needs to be a way for the Council to provide collective guidance, rather than disjointed or individual points of view which might not represent the view of the whole. There needs to be a way for the Board to share with the Council the background and thought process that leads up to a recommendation for a zone change or a new ordinance. Although much of the work in small towns seems to get done around people's kitchen tables or in the aisles of the grocery store, clear and formal avenues of communication are important.

Some specific steps that should enhance communication:

- A yearly workshop to review and agree on roles, to discuss common community goals, and to establish the general work agenda for the year.
- A regular update letter or progress report from the Board to the Council and vice versa on issues of mutual interest.
- Facilitated joint workshops on issues that have created or have the potential to create difficulties between the two groups.
- Agreement on ground rules for joint meetings, public statements and informal workshops which include mutual respect.
- Development review processes that provide for early community input, thus reducing the likelihood of conflict.

What to Expect From Staff?

In those communities where there is a permanent planning staff or a regular consulting planner, the commission or board and the staff or consultants must work together to establish an effective framework. Citizens' first contact with the planning process will often be with the planning staff and the planning staff represents the Planning Board's primary source of information and professional advice.

Planning commissions should be staffed by individuals

who will provide them with objective analyses. Commissions help define the objectives and nature of planning work through adoption of plans, work programs, and studies. This does not mean, however, that commissioners and board members should defer to staff or minimize their own responsibility to plan. But planning officials should not steer the planning staff toward a single finding or reject conclusions that are out of sync with a common community value simply because they are unpopular.

The Planning Director and staff are the *planning official's* primary source of professional and technical support. This staff should meet high ethical and professional standards.

The planner has a responsibility to serve the public interest, particularly in terms of the long-range consequences of present actions and the interrelatedness of decisions. Serving the public interest also means striving to expand choice and opportunity for everyone. The code requires planners to establish rules and procedures that guide the operation of the planning office. This means, in a practical way, that facts should not be adjusted to meet someone's political objectives, and rules cannot be changed according to the political or social status of applicants.

Several characteristics are paramount in defining the nature of the relationship between the Planning Director and his/her staff, planning bodies, and the larger community:

- High ethical standards
- Full, clear, and accurate information.
- Independent professional judgment
- A fair and open input process
- Courtesy, frankness, forthrightness, responsiveness, accountability
- Work program
- Standard Operating Procedures
- Informal retreats or scoping meetings

Engaging the Public

What is Citizen Participation?

Citizen participation in community affairs is as old as democracy and is an indispensable element of any effective planning program.

Citizen participation in local government involves the people, in some fashion, in land use decisions. The traditional roots of contemporary participation are found in the town hall form of direct democracy. The fundamental justification for citizen participation is the prem-

ise that people have a right to participate in decisions that affect them.

Citizen participation means different things to different people. Some view it as the task of electing representatives and voting on specific issues. Others define it as having an active voice in influencing local government decisions.

In planning activities citizens can testify at a public hearing; attend a workshop to create goals for the community comprehensive plan; serve a term on the planning commission; or answer a public opinion survey to identify community planning priorities. In other words, citizen participation in local government involves the people, in some fashion, in land use decisions.

Citizen participation is an indispensable element of an effective planning program. People have a right to participate in decisions that affect them.

Citizen participation is an established part of the land use planning and regulatory process in Florida. State planning laws require citizen participation through public hearing before plans or regulations are adopted, or before granting land development permits. Chapter 163.3181 F.S. states:

It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. …… local planning agencies and local governmental units are directed to adopt procedures designed to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property.

……. ***the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.***

Rule 9J-5 FAC expands on the requirement for citizen participation. The local governing body and the local planning agency must adopt procedures to :

...provide for and encourage public participation in the planning process ……

The procedures shall include the following:

(a) ***Provisions to assure that real property owners are put on notice****, through advertisement in a newspaper of general circulation in the area or other method adopted by the local government, of official actions that will affect the use of their property;*
(b) Provisions ***for notice to keep the general public informed****;*

(c) Provisions to assure that there are ***opportunities*** *for the* ***public to provide written comments****;*

(d) Provisions to assure that the ***required public hearings are held****; and*

(e) Provisions to assure ***the consideration of and response to public comments****.*

Florida's planning and growth management laws mandate citizen participation.

Local governments are encouraged to make executive summaries of comprehensive plans available to the general public and should, while the planning process is ongoing, release information at regular intervals to keep its citizenry apprised of planning activities.

These requirements provide overall guidance, but leave local governments free to tailor a more detailed definition of citizen participation to fit community needs.

Community Visioning

Local governments are encouraged to develop a community vision that:

- provides for sustainable growth;
- recognizes its fiscal constraints; and
- protects its natural resources.

The 2005 Florida Legislature provided incentives for local governments to develop a community vision and to incorporate this vision into its comprehensive plan. Under the statute, a local government that has adopted a community vision and urban service boundary may subsequently adopt plan amendments without state or regional review.

To avail itself of this streamlined amendment process, a local government must develop its community vision in accordance with certain rules of procedure and must address key issues identified by the legislation. Most

Local governments are encouraged to develop a community vision that provides for sustainable growth, recognizes its fiscal constraints; and protects its natural resources.

notably, the process must involve stakeholder groups such as neighborhood associations, community organizations, businesses, private property owners, housing and development interests, and environmental organizations.

In preparing the community vision, the local government must, at a minimum, discuss at least five of the following topics:

- future growth in the area using population forecasts from the Bureau of Economic and Business Research;
- priorities for economic development;
- preservation of open space, environmentally sensitive lands, and agricultural lands;
- appropriate areas and standards for mixed-use development;
- appropriate areas and standards for high-density commercial and residential development;
- appropriate areas and standards for economic development opportunities and employment centers;
- provisions for adequate workforce housing;
- an efficient, interconnected multimodal transportation system; and
- land use patterns that accommodate the above elements.

The local government must discuss strategies for addressing the key issues:

- strategies to preserve open space and environmentally sensitive lands, and to encourage a healthy agricultural economy, including innovative planning and development strategies, such as the transfer of development rights;
- incentives for mixed-use development, including increased
- height and intensity standards for buildings that provide residential use in combination with office or commercial space;
- incentives for workforce housing;
- designation of an urban service boundary; and
- strategies to provide mobility within the community and to protect the Strategic Intermodal System.

And finally, the community vision must reflect the community's shared concept for growth and development of the community, including visual representations depicting the desired land-use patterns and character of

the community during a 10-year planning timeframe. The community vision must also take into consideration economic viability of the vision and private property interests.

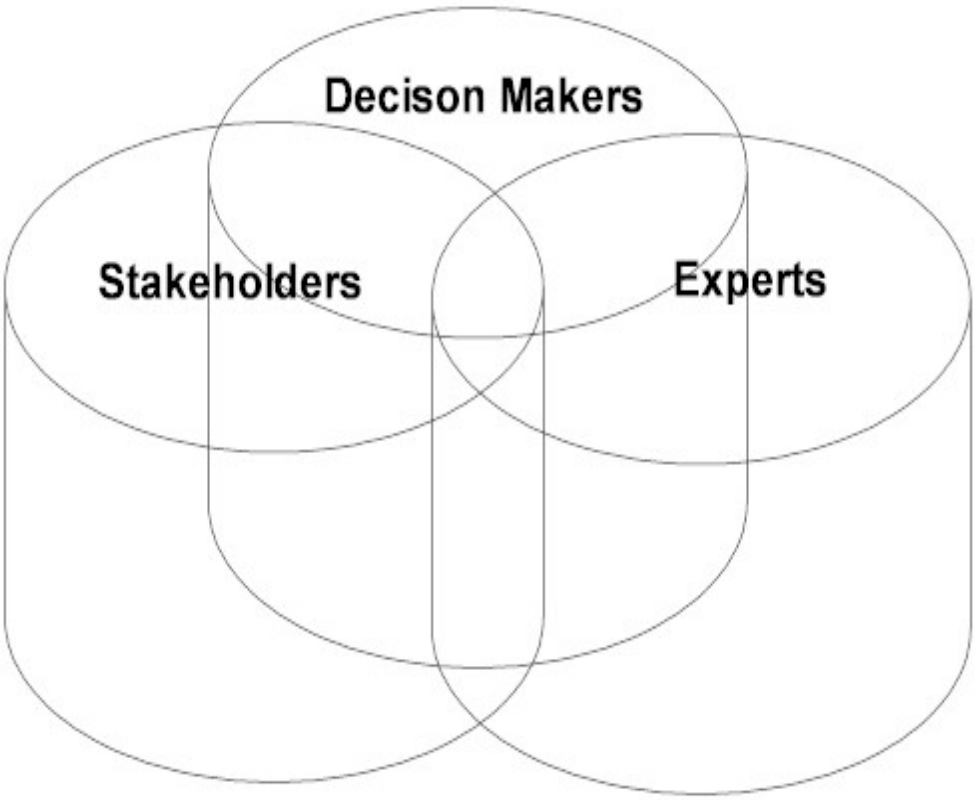
Who Should Be Involved?

State planning laws and local ordinances spell out the need to involve elected and appointed officials closely in local land use planning. A broad range of citizen groups and committed individuals must also be involved.

The public decision-making process involves three distinct groups:

- **Decision-makers**
- **Stakeholders**
- **Experts**
-

The public decision making process involves three groups:
(1) decision-makers,
(2) stakeholders and
(3) experts.
Each plays a distinct and essential role.



Decision makers include the elected and appointed officials who render the final decisions of planning matters. *Planning officials* - by definition – comprise this group.

City councils and boards of county commissioners set policy, make final decisions on plans and land development permits, adopt ordinances, approve budgets for planning, and appoint members of the planning commissions and boards.

Planning officials are volunteer citizens with a responsibility to review plans and projects. They may not make final decisions, but typically must make recommendations before elected officials can adopt comprehensive plans. Planning commissioners are non-partisan appointed officials who represent the general values of the community in land use decision making. They also serve as a sounding board for new ideas, promote community interest in planning, and furnish leadership in formal citizen participation programs.

Planning board members may make final decisions on quasi judicial decisions. Actions on special uses, appeals from administrative decisions, interpretations and variances often are delegated to such bodies.

Stakeholders include nearly everyone outside this formal structure who could be involved in the land use planning process. Citizens in a community are not a single homogeneous entity. They represent a broad spectrum of ideas and opinions, often with conflicting goals and values. The "citizens" are a diverse collection of individuals and groups: neighborhood associations; public interest groups, such as the local chapter of the Sierra Club; or special interest groups like the local chamber of commerce.

Experts include professional planners, engineers, attorneys and other specialists who provide advice, analysis, research and evidence to support the planning process.

Many cities and counties in Florida have a professional planning staff that brings technical expertise and knowledge to the planning process. In smaller communities without professional staff, consultants sometimes are hired to provide technical assistance. Historically, the planning staff serves as advisers to planning officials and planning commissions.

They conduct studies, administer planning regulations

and are a resource for the public on land use planning activities.

Expert input also is frequently offered by the staffs of governmental agencies especially in the comprehensive planning process and during the development review for large scale projects. For example, transportation specialists representing regional and state interests often supply traffic analysis and transportation impact projections. Testimony regarding water and environmental issues is frequently provided by the water management districts and the input of school districts is often routinely included in the background information available to the decision-makers.

Consultants are also frequent participants in the planning process and across a broad range of issues**.** Consultants are sometimes employed by government but most frequently enter the planning process on behalf of stakeholders.

Citizen Involvement: A Matter of Timing

As a general rule – the earlier citizen participation occurs in the process – the better

No matter when officials invite or recruit citizen participation in land use planning, it will not be soon enough for some interest groups. Others will complain that participation is starting too early. Controversy over the topic of when to invite or recruit citizen involvement can only be settled by local officials.

Citizen mistrust, or lack of support for plans and projects, often has more to do with a lack of opportunity to participate early in the project than on its merits.

Citizen Participation in the earliest stages of planning will save time in the long run. The longer participation is put off, especially in major planning or development issues, the more likely that rumor and misinformation will spread. When this happens, officials spend more time explaining what is not true than reviewing the pros and cons of the project.

Another good reason for early participation is to identify disagreements or conflicts. Conflicts are abundant in land use planning. A healthy airing of conflicting views early on encourages creative problem solving and productive conflict management. Delaying citizen participation does not reduce or avoid conflicts. Conflict can cause poor utilization of resources, delay important planning efforts, and result in the loss of desirable development projects.

Successful citizen participation involves (1)public information and (2) interaction

Methods for Encouraging Citizen Participation

Citizen participation must be carefully planned and organized. Activities should be simple, straightforward, and manageable by officials, planning commissioners and staff; and designed to fit local values and available resources.

The extent and intensity of any participation activity should match the importance of the issue. Widespread participation is desirable when comprehensive plans or land development ordinances are being created or updated. Participation efforts can be on a smaller scale if the issue mainly interests a particular neighborhood or area.

The best that can be done in any community is to see that citizen participation activities are open and accessible to anyone who wishes to be involved; that they do not require citizens to have special technical knowledge; and that there are clear lines of responsibility and accountability.

Two methods are key to successful citizen participation: **public information** and **interaction**. Public information methods are a time-honored way to inform citizens about land use plans and projects. Interactive methods create a dialog between citizens, elected and appointed officials, and professionals.

Creating an Effective Citizen Participation Program

Does your organization have a citizen participation strategy or program? Is citizen participation given considerable time and thought or is it something that just happens because someone scheduled a meeting? If you don't have such a strategy or program**, talk to your planning director** about creating one. Here are some simple guidelines you might follow:

Determine Objectives of the participation program. Write them down, in plain English, so everyone can understand the purpose of the program. In most cases you will have multiple objectives. For example, the citizen participation program for developing a "vision" or updating a "comprehensive plan may be quite different than that required for the review of a major land development.

Identify Who Should Be Involved by identifying

who will be impacted by the plan, ordinance, or project. These are the citizens who need an invitation to participate.

Decide When to Invite / Recruit Citizen Involvement. This step must be consistent with Step 1. For example, if the objective is to have citizens develop initial ideas for plans, people must be involved at the beginning of the process. If the objective is to have people review and comment, it will not be necessary to plan for involvement until draft proposals are available.

Identify and Evaluate a Variety of Methods that are appropriate to carry out the program objectives. Typical evaluation criteria are: the cost of the method; the ability of staff (volunteer and professional) to administer the method; the amount of time needed by citizens; the amount of time needed by staff to process data generated; and the quality of that data.

Effective citizen Participation programs do not simply happen. They are the result of thought and deliberate action with clear objectives in mind.

Select the Best Methods to achieve each program objective. Be sure they are within the resource capabilities, both financial and human, of the community.

Carry Out the citizen participation program.

Evaluate the Program when it has been completed. Decide if objectives have been met, list what went well and what could be changed or improved.

Public Information

Citizens need to be informed about land development plans and projects, and armed with the facts they need to participate constructively. Citizens must also be informed of specific opportunities for involvement and how their participation will influence land use decisions. Public information methods reach large audiences, stimulate interest in community planning, announce citizen participation activities and events provide notice of public hearings, and inform the public of actions and decisions.

The best way to select public information tools is to **identify the objective and audience to be informed**, and **choose the methods based on skills and available budget**. Local planning agencies should include **funding for public information activities** in their yearly budgets.

Planning agencies need to let their citizens know what they are doing. A systematic approach to this task may

contain the following elements.

Publish – Plans, studies and reports should be made available to the public. Make these reports available at cost and open for review in public places such as city hall and the public library. Prepare summaries for widespread distribution. Take advantage of technology such as electronic mail or Compact Disks (CD) for the distribution of large volume reports at low cost. Publish your comprehensive plan and land development code on a CD.

Planning agencies need to provide timely, relevant and accurate information to the public. Advances in technology have made this task much more cost-effective.

Websites – Almost all communities – even small ones – have websites. Websites provide an excellent way to publish important information and to keep it current. If your community doesn't have a website – lobby for one. If they have a website, make sure planning is well represented. Publish your agendas and your minutes on the website.

Television – Many Florida communities televise public meetings. If planning meetings are not being televised – lobby to have them televised. A juicy zoning controversy can compete with "Judge Judy" any day!). Video tape your meetings even if they are not televised live. These recordings make for invaluable records of the proceedings and can be used later in a variety of ways.

Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers and stakeholders

• **Ask the Media for Help –** Feature stories, editorials, news coverage and public service messages are all methods for communication through the media. Invite the media to cover planning issues but remember that you must be open and accessible and be willing to accept both favorable and unfavorable coverage.

Citizen Interaction

If citizen participation is to be effective and not simply "window-dressing" people need opportunities to:

- clarify values and attitudes
- express their opinions and priorities
- create proposals for plans and projects
- develop alternative approaches
- resolve conflict

Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers, experts and stakeholders who will be affected by those decisions. Some interactive methods, such as public meetings

and workshops, are effective throughout a planning process. Others, like surveys, are best limited to specific steps. Interactive methods most frequently used in Florida are public meetings and hearings, community workshops and community surveys.

Public Meetings

The public meeting is the forum where planning officials most frequently interact with the public. Designed to inform, educate, or facilitate extensive interaction and dialogue, public meetings are a widely used form of citizen participation. Information and educational meetings are a valid first step in any citizen participation process. Technical information can be distributed, along with an orientation to citizen participation opportunities and general or detailed descriptions of plans and projects.

Problems can occur when the purpose of a public meeting is not clearly stated. Citizens become frustrated and angry if they attend a meeting believing they will be able to express their views, only to discover that the meeting was designed to educate or inform them about plans or projects. The purpose of a public meeting must be announced openly and honestly in pre-meeting publicity.

Preparing For Public Meetings

Proper preparation for public meetings and workshops goes a long way toward ensuring their success. Here are a few important tips.

- Tell people the purpose of the meeting
- Have a written agenda.
- Make sure that the meeting date and time is convenient for the people who are being asked to attend.
- Notify people well in advance, approximately one to two weeks before the meeting date.
- The meeting site should be easy to get to, serviced by public transportation, and have ample parking.
- Select a meeting room that is appropriate for the size of the expected audience. Avoid rooms with pillars, other structural supports, and fixed seats.
- Make certain there is adequate lighting, ventilation, and a comfortable room temperature.
- Assure that people will be able to hear speakers and converse in small groups.

The public meeting is the forum where planning officials most frequently interact with the public

Proper preparation for public meetings goes a long way toward ensuring their success

Managing the Agenda.

All planning boards and commissions have some form of agenda. By treating it seriously, you will find it is an important tool toward orderly and productive meetings.

Who sets the agenda for your planning board meetings? How are decisions made about the order, public comment, and other important matters? Do you allot specific times or just go with the flow? In other words, does your agenda work for you as well as it should?

If your planning board uses its agenda as a tool to efficient and productive meetings, these questions may seem elementary and even trivial. But if you are one of many whose agenda is either inadequate or even an impediment to effective meetings, it may be wise to consider how it can be improved.

The agenda is the template for your meetings. It should be developed thoughtfully so that the planning board has adequate time for matters that require attention and/or decisions and less time for "housekeeping" or more routine subjects. It should delineate plainly when public comment is invited and the actions expected of each item (review only; action; referral, etc.).

Many commissions leave the agenda writing to staff and may see it for the first time when they come to the meeting. This does not serve you or the public well. The best approach is for the chair, or a committee of your board, to review the agenda before it is final and for commissioners to receive it and any backup materials several days in advance. Upcoming meeting agendas should also be posted in public places, such as public libraries and town or city halls. A growing number of communities also are posting agendas on their Web sites.

Allow ample and early time for issues which most concern the public. Too often, planners put them last or next to last on the agenda even though they are well aware of one or more matters certain to attract a big crowd. People get restless and cranky if they have to sit through several hours of deliberations that do not concern them. Put the contentious or controversial issues on the agenda early, and give them the time they deserve. Do not be offended if most of the crowd leaves as soon as you turn to other matters.

- Consider setting aside a general comment period

The agenda is the template for your meetings. It should be treated seriously.

where people can talk to you about any planning items that concern them. Fifteen minutes at the beginning of the agenda usually is adequate and can serve as a "safety valve" for testing the pulse of the community.

- Place together routine items that require little or no discussion on the agenda and consider them in a group. Some bodies call this the "consent agenda" and require one motion and one vote to approve them all. But be careful that they are, indeed, routine items and not anything controversial you can be accused of "sneaking through."

- Print the allotted time for each item on the agenda…7-7:05, Roll Call; 7:05-15, Correspondence; 7:15-7:45, Major item # l, Public Comment, etc. ... and follow the schedule as much as you can.

- Do everything possible to make the public comfortable. Print sufficient agendas for all to have one, with the aforementioned time allotments. Also, make sure there are sufficient copies of any graphics or explanatory material.

- At the start of the meeting, ask people who wish to speak on specific agenda items to sign up. This allows the chair to control the agenda and perhaps ask the board to extend the time if it is obvious the stated comment period is not sufficient for all the people who wish to be heard.

- Make sure the agenda is written in words and phrases easily understood by the public. How long did it take you, as a layperson, before you finally understood planning jargon? If you are expecting a turnout of non-English speaking citizens, translate the agenda into one or more other languages beforehand and engage interpreters to be available at the meeting. Put yourself in the shoes of the citizen who is attending his or her first meeting.

Public Hearings

A public hearing is a special meeting which allows the public to comment on proposed plans and projects before officials make a final decision. The purpose of a public hearing is to guarantee that citizens' comments on land use issues will be heard and a public record is made. Testimony is typically given under oath.

The structure of the agenda contributes greatly to orderly and productive meetings

Operating under a set of laws and formal procedures, it is an open public meeting. All citizens must be permitted to present their views for the official record, verbally and in writing, before the hearing body makes its decision.

Public hearings are conducted by city councils, boards of county commissioners, planning commissions, and, for certain designated zoning issues, the board of adjustment. Some jurisdictions in Florida have hearings examiners who conduct quasi-judicial public hearings related to land development orders and permits.

It is in the community's best interest to see that public hearings are carefully planned. In addition to the legal aspects of conducting a hearing, the points listed below can significantly increase the productivity of public hearings.

Before a hearing takes place:

- The responsible agency should carefully examine the proposal or application to see that it is complete, and that all procedures and regulations have been followed.
- All interested parties should receive ample notice of the hearing.
- At least several working days prior to the hearing, staff reports, environmental assessments, economic analysis, and any other documents relevant to the hearing should be available for members of the hearing body and the general public. Often this timeline is established by statute, ordinance or rules of procedure.
- Printed copies of the hearing body's rules and procedures should be on hand.

Members of the hearing body need to keep a fair and open mind until all testimony is presented. Citizens should be adequately prepared to testify, know the hearing rules and procedures, have a clear statement of purpose for their testimony, and back up their statements with solid information. It is also helpful to the hearing body if citizens prepare written testimony and present only summary remarks at the hearing.

The public hearing provides proponents and opponents of land development projects an opportunity to comment. However, legally required public hearings offer

only a limited opportunity for two-way communication. They are most effective if used in combination with other citizen participation methods. Public hearings are not a very expedient method for resolving conflict and can be counter- productive if used as a method to rubber-stamp plans or projects.

Public hearings are formal meetings required by law before officials can make a final decision. Rules of procedure and the making of a public record are paramount

Community Workshops

One of the most popular citizen participation methods is the community workshop. Encouraging extensive interaction, workshops offer a structure that typically divides many people into small work groups. The value in this method is the data citizens develop in the work groups. Each small group prepares a written report, communicated at the end of the workshop to all attendees. Data developed at community workshops can be used throughout the planning process. When people see the goals, priorities, and ideas they have developed in community workshops reflected in land use decisions, they are more likely to support local government plans and projects.

Proper preparation for a public hearing is necessary if the meeting is to meet its procedural and legal requirements

Other advantages of this method are: 1) everyone can participate at meetings; 2) it is an excellent means of developing community consensus; and 3) it is relatively inexpensive. To be successful, workshop managers must have good group facilitation and data management skills.

Public hearings are not a very effective method for resolving conflict and can be counter- productive if used as a method to rubber stamp plans or projects

Informal arrangements with chairs and tables for small groups are appropriate for workshops. Meeting sponsors often serve coffee, tea, or juice as a way to make people comfortable and help them become acquainted during meeting breaks. Having materials for people to look at and study prior to a meeting, and setting up audio visual equipment well in advance of me starting time are other simple ways to make meetings less stressful for organizers and participants.

Charrettes

Charrettes are a form of community workshop that has become increasingly popular in recent years.

Charrette is a French word that means "little cart." At the leading architecture school of the 19th century in Paris, students would be assigned a tough design problem to work out under pressure of time.

They'd continue sketching as fast as they could, even as little carts *(charrettes)* carried their drawing boards away to be judged and graded.

"Charrette" has come to describe the rapid, intensive, and creative work session, usually lasting several days or more, in which a design team focuses on a particular design problem and arrives at a collaborative solution. Charrettes are product-oriented and hands-on. The public charrette is fast becoming a preferred way to face the planning challenges confronting American cities and has been widely applied in Florida.

Community workshops are an excellent means of developing community consensus. Workshops facilitate extensive interaction and are relatively inexpensive

Charrettes typically require extensive preparation. Information – both statistical and graphic – is required by the participants if a competent product is to emerge from the charrette exercise. Consequently, the process can be expensive and require a high level of facilitation for success.

Community Surveys

A citizen survey is often used to gather information about citizen attitudes, values, and priorities. It can also gather data about a community's residents, such as age, income, and employment. Surveys are not a truly interactive participation method; citizens do not communicate directly with decision makers in a survey, but they can express their opinions on land use issues. Several types of surveys are used in land use planning.

- The formal scientific survey systematically measures community attitudes, values, and priorities. Data collected by scientific surveys can statistically represent all citizens' views in a quantifiable manner. Crucial elements in a formal scientific survey are properly designed questionnaires, careful tabulation of results, and a written analysis and interpretation of the data. Survey results must be reported in a straight- forward manner and be widely distributed throughout the community. If the local government staff is not experienced in survey design and analysis, they should seek assistance.

- The community self-survey is popular in smaller communities and neighborhoods. This method makes extensive use of community volunteers with a minimum of outside assistance. Citizens organize and conduct all aspects of the survey, from developing and distributing questionnaires to tabulating and distributing results to the community. The advantages of this type of survey are that it encour-

ages broad citizen participation and it collects information about community attitudes and priorities. Conducting a community self-survey is a large undertaking. This method should be chosen only if enough volunteers are available and when the survey results are not needed immediately.

- New methods, such as interactive computer simulations, interactive websites and cable television, are being introduced in citizen participation activities. In selecting among these, communities should be open to new and innovative techniques. However, they must carefully evaluate their ability to execute a particular method. Guiding factors in making a selection are I) match the appropriate method to each citizen participation objective; and 2) have the skills and resources to carry out the method properly.

The "Charrette" is a rapid, intensive and creative work session in which a design team develops a collaborative design solution or plan. The technique is "product oriented" and "handson"

Community Image Survey

The Community Image Survey uses visual images to educate local decision-makers and stimulate public participation in the planning process. The Community Image Survey is an extremely effective- and simple-tool that promotes lively discussion and analytical thinking by residents, business owners, staff, and officials alike. Because the Survey assumes that participants have no prior knowledge of sometimes complex urban design and planning principles, the Community Image Survey effectively allows everyone, regardless of their training or knowledge about the subject, to participate fully in the process.

"**A Picture Is Worth A Thousand Words!** By focusing on concrete visual images, instead of using words like "mixed use," - "human scale," "pedestrian-friendly," "higher density," and "transit-oriented" to describe development, survey participants are able to move beyond static arguments about use and density toward useful, and often intense, discussions about the specifics of a particular place. The process of identifying what makes a place feel welcoming, exciting or unique often helps formerly divided groups find common ground.

The Community Image Survey is a set of 40 to 100 slides that can be shown at as part of a conference, workshop, community meeting or website. Survey participants are asked to look at each slide, then assign it a number value (for example -10 to +10), based on how much they like or dislike the image, and its appro-

The Community Image Survey uses visual images to educate local decision-makers and stimulate public participation in the planning process

priateness for the area. The average "score" the group has given the different images are then tabulated and the slides are roughly paired based on subject for discussion purposes.

Next comes the most interactive and interesting part of the survey process: a facilitated discussion in which everyone is asked to participate. In what is often a lively process, participants brainstorm what they like about each image, as well as what they don't like. Participants are encouraged to go beyond the obvious, to focus on identifying all of the design details that make a place feel "safe," "comfortable," and "friendly", as well as "boring", "scary", and "unremarkable. These responses are all recorded on for all participants to see, and for later use as a product of the process.

The goal of the survey process is to help people begin to see and articulate the positive and negative details in each of the images. By using slides taken from throughout a region, the Community Image Survey encourages objectivity by presenting relevant examples that may be recognizable, but are not "too close to home."

Community surveys can be used to gather information about citizen attitudes, values, and priorities

PRINCIPLE #1

BEGIN WITH THE PUBLIC – IT MUST BE THE PLAN OF THE COMMUNITY.

Five Principles for Effective Planning

Principle #1 Begin With The Public

Effective planning can only be achieved if there is "ownership" by the community. This objective requires a commitment to public involvement.

- Acknowledge the community's **concern** by listening. There are issues that your community has and you need to listen and hear. Only then can you begin to build the trust necessary to proceed.
- Seek the real and meaningful **involvement** of interested parties in your community. Involvement is the means to dialogue, understanding and solutions.
- By showing concern and seeking involvement you will have built **acceptance** in the process. This is the first step in building a consensus.
- By the community accepting the process, a clear **direction** can be set to attack the problem.
- Having a clear direction leads to **buy-in** on the part of the community. This begins the process of problem solving.
- As a result of buy-in, the community obtains **ownership** of the process and thus the solutions.
- The mere acceptance of ownership leads to the **empowerment** of the community to work with you to find solutions.
- Empowerment on the part of the City means little without the **transfer of responsibility** to the community. More choices are not necessarily the answer if the groundwork is not laid to assume responsibility for their implementation of those choices. The plan is not the plan of the planner, the Mayor or the Council member; **it must be the plan of the community**. Neither the planner nor the local government can take responsibility for successful community building.

PRINCIPLE # 2 - DEVELOP A CLEAR *VISION* THAT IS SHARED BY THE COMMUNITY

Principle #2 Develop a Clear Community Vision

What Is a Vision?

A vision is a community based strategic planning effort in which citizens and leaders work together to identify a series of shared goals encompassing all aspects of community life. These goals can cover such areas of common concern as the natural and built environment, economic and community development, transportation, education, culture, recreation, sports, race relations and human needs.

In addition to community goals, the vision process defines specific strategies for each goal and, if desired, can outline a short -term action plan to jump-start the implementation phase of the vision.

The rewards of a grass-roots community-based vision process can be extraordinary, as has been demonstrated by the many communities that have undertaken similar efforts throughout the country.

An agreed-upon agenda for the future of a community will boost that community's ability to develop and grow in ways that are sustainable and in harmony with its unique cultural and physical identity. It will also develop the leadership potential of its citizens, generate community pride and expedite the implementation of projects and programs.

A vision requires re-defining the terms of public/private partnerships to include citizen input and support.

A vision requires a renaissance of the original concept of citizenship - the recognition that citizenship is both a privilege and a responsibility. It requires the re-positioning of the citizen as a pro-active participant in the decision-making process as well as in the implementation of programs.

The core ideas of visioning are:

- People are more likely to change if they articulate what they actually want, rather than discuss the problems that have created the current conditions.

- The future can not be predicted, but people can express what they desire for the future. By doing this, they are more likely to work together toward the desired condition.

Belief in these ideas has enabled communities of all sizes to develop a shared vision for the future, overcome the status-quo, and successfully implement agreed-upon projects and initiatives.

Benefits of Visions

Visioning has demonstrated the ability to accomplish objectives which are hard to achieve in any other way.

These include:

- **Creating shared goals** for a community's, a region's or a complex organization's future.
- **Identifying concrete strategies** for the long- and short term actions needed to accomplish the shared goals.
- **Building consensus and good will** between factions that are commonly perceived to be at odds with each other.
- **Spurring and facilitating action** by building consensus on projects and initiatives, and by creating a strong sense of "ownership" in them.
- **Energizing local networks** of special interest groups and civic organizations by bringing them into the vision process.
- **Developing new leadership** in communities by giving citizens an opportunity to become intimately involved in the decision making process.

The Principles of Smart Growth

American Planning Association – Principles of Smart Growth. Smart growth means using comprehensive planning to guide, design, develop, revitalize and build communities that:

- have a unique sense of community and place;
- preserve and enhance valuable natural and cultural resources;
- equitably distribute the costs and benefits of development;
- expand the range of transportation, employment and housing choices in a fiscally responsible manner;
- value long-range, regional considerations of sustainability over short term incremental geographically isolated actions; and
- promote public health and healthy communities

Core principles of Smart Growth include:

RECOGNITION THAT ALL LEVELS OF GOVERNMENT, AND THE NON-PROFIT AND PRIVATE SECTORS, PLAY AN IMPORTANT ROLE IN CREATING AND IMPLEMENTING POLICIES THAT SUPPORT SMART GROWTH.

The principles of "smart growth" provide a solid foundation for the development of a shared vision

Every level of government - federal, state, regional, county, and local -- should identify policies and practices that are inconsistent with Smart Growth and develop new policies and practices that support Smart Growth. Local governments have long been the principal stewards of land and infrastructure resources through implementation of land use policies. Smart Growth respects that tradition, yet recognizes the important roles that federal and state governments play as leaders and partners in advancing Smart Growth principles at the local level.

STATE AND FEDERAL POLICIES AND PROGRAMS THAT SUPPORT URBAN INVESTMENT, COMPACT DEVELOPMENT, AND LAND CONSERVATION.

State and federal policies and programs have contrib-

uted to urban sprawl and need to be re-examined and replaced with policies and programs that support Smart Growth, including cost effective, incentive-based investment programs that target growth-related expenditures to locally-designated areas.

PLANNING PROCESSES AND REGULATIONS AT MULTIPLE LEVELS THAT PROMOTE DIVERSITY, EQUITY AND SMART GROWTH PRINCIPLES.

Appropriate citizen participation ensures that planning outcomes are equitable and based on collective decision-making. Planning processes must involve comprehensive strategies that engage meaningful citizen participation and find common ground for decision-making.

INCREASED CITIZEN PARTICIPATION IN ALL ASPECTS OF THE PLANNING PROCESS AND AT EVERY LEVEL OF GOVERNMENT.

Appropriate citizen participation ensures that planning outcomes are equitable and based on collective decision-making. Planning processes must involve comprehensive strategies that engage meaningful citizen participation and find common ground for decision-making.

A BALANCED, MULTI-MODAL TRANSPORTATION SYSTEM THAT PLANS FOR INCREASED TRANSPORTATION CHOICE.

Land use and transportation planning must be integrated to accommodate the automobile and to provide increased transportation choices, such as mass transit, bicycles, and walking. Development must be pedestrian -friendly. All forms of transportation must be reliable, efficient and user-friendly, allowing full access by all segments of the population to housing, employment, education, and human and community services.

A REGIONAL VIEW OF COMMUNITY.

Smart Growth recognizes the interdependence of neighborhoods and municipalities in a metropolitan region and promotes balanced, integrated regional development achieved through regional planning processes.

ONE SIZE DOESN'T FIT ALL - A WIDE VARIETY OF APPROACHES TO ACCOMPLISH SMART GROWTH.

Customs, politics, laws, natural conditions, and other factors vary from state to state and from region to region. Each region must develop its own approach to problem solving and planning while involving the public, private and non-profit sectors. In some areas, this may require a significant change in perspective and culture, but such changes are necessary and beneficial in obtaining the results that Smart Growth aims to achieve.

EFFICIENT USE OF LAND AND INFRASTRUCTURE.

High-density development, infill development, redevelopment, and the adaptive re-use of existing buildings result in efficient utilization of land resources and more compact urban areas. Efficient use of public and private infrastructure starts with creating neighborhoods that maximize the use of existing infrastructure. In areas of new growth, sewers, water lines, schools and other infrastructure should be planned as part of comprehensive growth and investment strategies. Regional cooperation is required for large infrastructure investments to avoid inefficiency and redundancy.

CENTRAL CITY VITALITY.

Every level of government should identify ways to reinvest in existing urban centers, to re-use former industrial sites, to adapt older buildings for new development, and to bring new development to older, low-income and disadvantaged neighborhoods.

VITAL SMALL TOWNS AND RURAL AREAS.

APA recognizes that inefficient land use and low-density development is not confined to urban and suburban areas, but also occurs around villages and small towns. once thriving main streets are checkered with abandoned storefronts while a strip of new commercial springs up on the edge of town together with housing and public facilities. Programs and policies need to support investment to improve the economic health of small town downtowns, and rural community centers. The high cost of providing basic infrastructure and services in rural communities demands efficient use of existing facilities, and compact development. Housing choices in rural areas need to take into account changing needs resulting from shifting demographics, the cost

of services and infrastructure capacity, and must address upgrading of existing housing as an alternative or complement to new development. Smart Growth is critically important in rural and small town economic development initiatives because the limited availability of public funding means each dollar must accomplish more.

A GREATER MIX OF USES AND HOUSING CHOICES IN NEIGHBORHOODS AND COMMUNITIES FOCUSED AROUND HUMAN-SCALE, MIXED-USE CENTERS ACCESSIBLE BY MULTIPLE TRANSPORTATION MODES.

Mixed-use developments include quality housing, varied by type and price, integrated with shopping, schools, community facilities and jobs. Human-scale design, compatible with the existing urban context and quality construction contribute to successful compact, mixed-use development and also promote privacy, safety, visual coherency and compatibility among uses and users.

CONSERVATION AND ENHANCEMENT OF ENVIRONMENTAL AND CULTURAL RESOURCES.

Biodiversity, green infrastructure, and green architecture are integral to Smart Growth. Smart Growth protects the natural processes that sustain life; preserves agricultural land, wildlife habitat, natural landmarks and cultural resources; integrates biodiversity, ecological systems and natural open space (green infrastructure) into the fabric of development; encourages innovative storm water management; is less consumptive and more protective of natural resources; maintains or improves air quality, and enhances water quality and quantity for future generations. Energy conservation is a major benefit and result of Smart Growth, helping to create more sustainable development and allow people to meet current needs without compromising the needs of future generations. Green architecture incorporates environmental protection and reduced natural resource consumption into the design and construction of buildings, also enhancing the comfort and health of the occupants.

CREATION OR PRESERVATION OF A "SENSE OF PLACE".

A "sense of place" results when design and development protect and incorporate the distinctive character of a community and the particular place in which it is

located. Geography, natural features, climate, culture, historical resources, and ecology each contribute to the distinctive character of a region.

PRINCIPLE #3 – BE PROACTIVE

Principle # 3 Proactive Planning

The most effective way to achieve any planning objective is through the use of proactive planning. By engaging the community to define goals and means, specific design objectives can be achieved. By working with residents and property owners, town planning can lay the framework for the creation of totally integrated communities - integrated in the terms of jobs-housing balance, residential shopping and entertainment opportunities, environmental protection, and a balanced transportation framework. Planning projects must have at their base a clear understanding of the interrelationship between physical, social, and environmental elements. It is this balance that is critically important to establishing a long-term sustainable community.

Proactive planning is hard work. It is time-consuming and requires the commitment of considerable resources. More importantly, proactive planning requires an understanding that **planning is a continuous process** – one of constant evaluation and improvement.

Despite the rigorous requirements that Florida's planning and growth management system places upon its cities and counties, a community can satisfy the letter of the law without any meaningful commitment to the underlying principles. An effective public planning program requires more than response to a checklist and awaiting the next development proposal to appear for review.

PRINCIPLE #4 – BE THOROUGH AND CONSISTENT

Principle # 4 Be Thorough and Consistent

Every decision is important and will affect the community. Understand this and focus on the interrelationships. Begin by instituting a 'smart growth' culture in-house through training and setting the right example. Integration of planning policies and the actions of other departments such as public works, parks, water and sewer are especially critical.

*"**Every increment of construction should be done in such a way as to heal the city.**"* Christopher Alexander

Each planning decision should be weighed against the vision. This means that the requirement for "consistency" should be applied for each action taken at the local level. It does not mean that local officials have no discretion. Quite the contrary is true. The *planning official* has the responsibility of evaluating complex and often conflicting information in making decisions. Without a clear understanding of what the community is trying to accomplish and the direction it wishes to go, these decisions can become isolated and detached and subject t whim, to emotion and to the politics of the moment.

Insist on sound information and thorough analysis. As a *planning official,* you cannot make sound decisions without trustworthy and competent information. Your staff is the primary source for the "substantial competent evidence that you require and you should strive to create an environment that encourages objectivity and professional competence.

Be consistent and predictable. A shared vision offers – perhaps more than any other attribute of your planning program – an opportunity for the consistent and predictable application of planning principles. Almost every planning success story can point to the sustained application of a concept or principles over a period of time.

PRINCIPLE #5 – MAKE IT EASY TO DO THE RIGHT THING

Principle # 5 Make It Easy to do the Right Thing

How do we make the system work more effectively? We must find ways to better educate our *planning officials* and make it easier for developers to do the right thing.

It is important to recognize that the growth and development of any community is driven by private investment decisions. These decisions tend to follow a "path of least resistance" and despite good intentions will be negatively affected by uncertainty, excessive approval requirements and delay. Without realizing it, communities often penalize the best development by erecting procedural, regulatory and political barriers to the type of development that they want.

The use of administrative review procedures and clear understandable codes and practices can be successful. Too often we get lost in the details of code compliance and entirely miss that the fundamental purpose of plan review is to improve the quality of the overall environment. So, whether the issue is the need to provide a pedestrian interface, improve the building scale to fit with surrounding development or simply changes to the location and design of the stormwater system, strive to understand what the "right thing" is for your community and to ensure that the system rewards such actions.

Chapter Five - The Comprehensive Plan

All 67 counties and 410 cities in Florida must adopt a Comprehensive Plan

In Florida, all local governments are required by State law to adopt a comprehensive plan.

The Planning Process

The planning process involves a series of essential steps:

- Identify the Problem or the Opportunity
- Collect Information on the Problems and Opportunities
- Compare the Alternatives
- Select a Plan and Put It to Work
- Monitor Progress

The planning process is universal. Its basic steps form the framework for planning in Florida

The 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, objectives and policies, it provides both a broad perspective and a guide to short-term community decisions.

The Comprehensive Plan is the only public document that views the community as a whole.

In short, the comprehensive plan is:

- A public guide to community decision making
- An assessment of the community's needs
- A statement of community values, goals, and objectives
- A blueprint for the community's physical development
- A public document adopted by government
- Continuously updated as conditions change

The Comprehensive Plan forms a basis for how a community regulates development and how it invests in infrastructure and services

Three basic products emerge from the planning process

- The Comprehensive Plan
- Land Development Regulations
- Capital Improvement Programs

The purposes of planning and growth management are enunciated in state law. The authority for local government to engage in planning is guided by these statements of purpose

Purposes of Planning in Florida

Each local government shall prepare a comprehensive plan ….

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 handicaps; and*
- *deal effectively with future problems that may result from the use and development of land within their jurisdictions.*

Through the process of comprehensive planning, it is intended that units of local government

- *can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and 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; and*
- *conserve, develop, utilize, and protect natural resources within their jurisdictions.*

General Requirements of the Comprehensive Plan

The 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.

Mandatory Elements

The Community Planning Act requires that a local comprehensive plan contain certain elements:

The Comprehensive Plan must include and be based on supporting data and analysis, and be internally consistent

Future Land Use Element based on

- the amount of land required to accommodate anticipated growth;
- the projected permanent and seasonal population of the area;
- the character of undeveloped land;
- the availability of water supplies, public facilities and services;
- the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses;
- the compatibility of land uses in close proximity to military installations;
- the compatibility of uses on lands near airports;
- the discouragement of urban sprawl;
- the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy; and
- the need to modify land uses and development patterns within antiquated subdivisions.

The Future Land Use Element must provide for sufficient land to accommodate projected growth

The Community Planning Act mandates that the amount of land designated for future land use must (1) provide a balance of uses that foster *vibrant, viable communities and economic development opportunities* and *(2) allow the operation of real estate markets to provide adequate choices for residents and business.* At a minimum, sufficient land must be provided to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research for at least a 10 year planning period.

The Future land Use Element is comprised of a land use map or map series supplemented by goals, policies, and measurable objectives that

- designates proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land.

- Establishes standards for the control distribution of population densities and building and structure intensities.

The Future Land Use Element must also include criteria to:

- Achieve the compatibility of lands near military installations, and airports;
- Encourage the preservation of recreational and commercial working waterfronts for water dependent uses in coastal communities;
- Encourage the location of schools proximate to urban residential areas to the extent possible;
- Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services;
- Ensure the protection of natural and historic resources;
- Provide for the compatibility of adjacent land uses; and
- Provide guidelines for the implementation of mixed use development

Transportation Element addressing mobility issues. The purpose of the transportation element is *to provide for a safe, convenient multimodal transportation system* that is *coordinated with the future land use map or map series and designed to support all elements of the comprehensive plan.* The element must be *coordinated with the plans and programs of the metropolitan planning organization (MPO), transportation authority, 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.* If transportation corridors are designated, the local government may then adopt a transportation corridor management ordinance. The element must also contain a map or map series that depicts the existing and proposed features and coordinated with the future land use map.

Local governments within a metropolitan planning area designated as a MPO must also address:

- all alternative modes of transportation such as public transportation, pedestrian and bicycle travel;

- aviation, 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 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 correlated to guidelines for future land use and indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area.

The element must specifically address *water supply* by demonstrating consistency with the regional water supply plan.

Conservation Element prescribing the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources including factors that effect energy conservation.

The element must specifically assess the community's current and projected water needs and sources based on the demands for industrial, agricultural and potable water use and analyze the quality and quantity available to meet those demands.

Recreation & Open Space Element indicating a comprehensive system of public and private sites for recreation, including, but not limited to, natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, and other

recreational facilities.

Housing Element consisting of standards, plans, and principles to be followed in:

- *the provision of housing for all* current and anticipated future residents of the jurisdiction;
- *the elimination of substandard dwelling conditions;*
- *the structural and aesthetic improvement of existing housing;*
- *the provision of adequate sites for future housing, including housing for low-income, very low income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities;*
- *the provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement*;
- *the formulation of housing implementation programs;*
- *the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction*.

Coastal Management Element is required 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;*
- *preserve 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;

- *limit public expenditures that subsidize development in high-hazard coastal areas;*
- *protect human life against the effects of natural disasters;*
- *direct the orderly development, maintenance, and use of ports;*
- *preservation of historic and archaeological resources.*

As an option, a local government may adopt an *adaptation action area* including policies intended *to improve resilience to coastal flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise.*

Capital Improvement Element is designed to consider the need for and the location of public facilities.

The element must :

- outline principles for construction, extension, or increase in capacity of public facilities and principles for correcting existing public facility deficiencies;
- estimate public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities;
- provide standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service;
- provide a schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program.

Intergovernmental Coordination Element shows the relationships and states the 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 county,

adjacent counties, or the region.

The element must state principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element must describe joint processes for collaborative planning and decision making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement.

Optional Elements

Comprehensive plans may contain optional elements in addition to or as a supplement to the mandatory elements. Some examples are listed below.

- **Public School Facilities Element** was a required element until 2011. Consequently each local government in Florida has adopted such an element and may elect to retain it especially if school concurrency is retained as a local option.

- **Airport Master Plan** prepared for a licensed publically owned and operated airport may be incorporated into the comprehensive plan.

- **Public Buildings Element** showing locations and arrangements of civic and community centers, public schools, hospitals, libraries, police and fire stations, and other public buildings. This plan element should show particularly how it is proposed to effect coordination with governmental units having public development and service responsibilities, capabilities, and potential but not having land development regulatory authority.

- **Community Design Element** which may consist of design recommendations for land subdivision, neighborhood development and redevelopment, design of open space, and similar matters to serve as guides for future planning and development.

- **Redevelopment Element** consisting of plans and programs for the redevelopment of slums and blighted locations and for community redevelop-

ment, including housing sites, business and industrial sites, public buildings sites, recreational facilities, and other purposes.

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

- **Hazard Mitigation / Post Disaster Plans.** Local governments that are not required to prepare coastal management are strongly encouraged to adopt hazard mitigation/post disaster redevelopment plans. These plans establish policies regarding redevelopment, infrastructure, densities, nonconforming uses, and future land use patterns.

- **Historic and Scenic Preservation Element** setting out plans and programs for those structures or lands in the area having historical, archaeological, architectural, scenic, or similar significance.

- **Economic Element** setting forth guidelines for the commercial and industrial development, if any, and the employment within such areas. The element may detail the type of commercial and industrial development sought, correlated to employment needs of the area, and may set forth methods by which a balanced and stable economic base will be pursued.

Florida cities and counties may include optional elements in their comprehensive plan depending on their community's character and needs

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 target 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 some of these mandates, school planning is now well established as an important component of comprehensive planning.

The highlights of the current statutes and rules regarding school coordination are as follows:

School coordination is an issue of statewide concern. Current statutes and rules require a high degree of coordination among local governments and the school district and have significant implications for planning and how schools are treated in local comprehensive plans

- School concurrency is 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 levels of service can be reasonable 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 is optional for all local governments within a school district (with some exceptions for counties and municipalities not experiencing growth in school enrollment).

- The Future Land Use Element
  - must clearly identify the land use categories in which public schools are an allowable use;
  - must allocate sufficient land proximate to residential development to meet the projected needs;
  - must encourage the location of schools proximate to urban residential areas; and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible and to encourage the use of elementary schools as focal points for neighborhoods.

- The Intergovernmental Coordination Element
  - must state principles and guidelines for coordinating the adopted comprehensive plan with the plans of school boards.
  - must describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses.

- Public Schools Interlocal Agreement**.** The county and municipalities located within the geographic area of a school district must enter into an interlo-

cal agreement with the district school board that jointly establishes how plans and processes of are to be coordinated

Urban Sprawl

In 1994, Rule 9J-5 was 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.

The discouragement of urban sprawl accomplishes many related planning objectives. The presence and potential effects of multiple indicators are evaluated to determine whether they collectively reflect a failure to discourage urban sprawl.

Primary indicators. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl

- allows substantial areas to develop as low intensity, low-density, or single-use development;
- allows urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands;
- allows urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments;
- allows the premature or poorly planned conversion of rural land to other uses;
- fails to protect and conserve natural resources;
- fails adequately to protect agricultural areas and activities;
- fails to maximize use of existing and future public facilities and services.
- allows land use patterns that disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services;
- fails to provide a clear separation between rural and urban uses**;**

School coordination is an issue of statewide concern. Current statutes and rules require a high degree of coordination among local governments and the school district and have significant implications for planning and how schools are treated in local comprehensive plans

Discouraging the proliferation of urban sprawl serves many planning objectives

- discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities**;**
- fails to encourage an attractive and functional mix of uses**;**
- results in poor accessibility among linked or related land uses;
- results in the loss of significant amounts of open space.

Remedies. The local comprehensive plan will not be deemed to encourage urban sprawl if four of the following eight criteria are satisfied:

- Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems;
- Promotes the efficient and cost-effective provision or extension of public infrastructure and services;
- Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit;
- Promotes conservation of water and energy;
- Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.
- Preserves open space and natural lands and provides for public open space and recreation needs.
- Creates a balance of land uses based upon demands of residential population for the nonresidential needs of an area.
- Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative

development pattern such as transit-oriented developments or new towns as defined in s. 163**.**

Urban Infill and Redevelopment

The "Growth Policy Act" (Chapter 163.2511) 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 conversely, the deterioration of those urban cores negatively impacts the surrounding area
- Governments need to 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
    - incentives to promote urban infill and redevelopment

Local government comprehensive plans and implementing land development regulations must include strategies which 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 for the purpose of targeting 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 of the Comprehensive Plan and must include:

- a collaborative and holistic community participation process that encourages communities to participate in the design and implementation of the plan, in-

cluding a "visioning" of the urban core;

- ongoing involvement of stakeholder groups including community-based organizations, neighborhood associations, financial institutions, faith organizations, housing authorities, financial institutions, existing businesses, businesses interested in operating in the community, schools, and neighborhood residents;

- the neighborhood participation process must include a governance structure whereby the local government shares decision making authority with communitywide representatives.

A local government seeking to designate an urban infill and redevelopment area must prepare a plan demonstrating the local government and community's commitment to comprehensively address the urban problems. The plan must:

- identify activities and programs to accomplish locally identified goals

- identify enterprise zones, community redevelopment areas, community development corporations, brownfield areas, downtown redevelopment districts, safe neighborhood improvement districts, historic preservation districts, and empowerment zones or enterprise communities

- identify a memorandum of understanding with the district school board regarding public school facilities

- identify each neighborhood within the proposed area

- state community preservation and revitalization goals and projects identified through a collaborative and holistic community participation process

- identify how the local government and community-based organizations intend to implement affordable housing programs
- identify strategies for reducing crime.

- identify and adopt a package of financial and local government incentives such as*:*

  - waiver of license and permit fees

Urban infill and redevelopment is necessary to maintain healthy urban centers. Florida's planning process emphasizes the importance of infill and redevelopment and provides techniques and incentives to achieve this objective

  - exemption of sales from local option sales surtaxes
  - waiver of delinquent local taxes or fees
  - expedited permitting
  - lower transportation impact fees
  - prioritization of infrastructure spending
  - local government absorption of developers' concurrency costs.

- Identify the governance structure

The 2005 Florida Legislature provided additional incentives for the designation of urban infill and redevelopment areas. Notably, development within a designated urban infill and redevelopment area is exempt from Development of Regional Impact (DRI) review provided (1) the local government has entered into a binding agreement with the Department of Transportation and with impacted jurisdictions to mitigate impacts and state and regional facilities and (2) has adopted a proportionate share methodology.

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 firmly linked with the water management districts' regional water supply plans. Local plans include availability of water supplies and public facilities to meet existing and projected water use demands;

- local plans include a work plan for building public, private and regional water supply facilities to meet projected needs;

- local plans identify alternative water supply projects, including conservation and reuse, 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;

- in addition to the treatment and distribution facilities being ready for new development, a confirmed source of raw water is identified to send to the facilities;

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 DCA by letter on its determination. DCA publishes a schedule indicating to 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 to DCA within one year of the determination.

If the local government fails to either timely notify DCA 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 DCA to update comprehensive plans will be reviewed through the *state coordinated process*.

Amending the Comprehensive Plan

The Community Planning Act significantly altered the process for amending the local government comprehensive plan. The Act eliminated the "twice-a-year" restriction and established three distinct review procedures:

- Expedited State Review Process
- State Coordinated Review Process
- Small Scale Amendments

Expedited State Review

Local comprehensive plans are required to consider the Regional Water Supply Plan and to include a ten-year work plan for constructing water supply facilities.

Most comprehensive plan amendments are expected to follow the Expedited State Review 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 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.

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 within 180 days of receipt of agency comments. If adopted (by ordinance), the Local Government transmits the adopted amendment package to the State Land Planning Agency. The State Land Planning Agency has 5 days to determine completeness of the adopted amendment package.

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

State Coordinated Review

Types of amendments that must follow the State Coordinated Review guidelines include

1. Areas of Critical State Concern
2. Rural Land Stewardship

Every local government is required to evaluate their progress toward implementing their comprehensive plan at least once every seven years.

3. Sector Plans
4. Comprehensive Plans based on Evaluation and Appraisal Reports
5. A new plan for newly incorporated municipalities

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 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—Within 60 days of receipt 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 within 180 days of 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. The State Land Planning Agency has 5 days to determine completeness of the adopted amendment package.

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

Step 7—Effective Date—Within 45 days of receipt of a

complete adopted plan amendment, the State Land Planning Agency issues 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.

Small Scale Amendments

Local governments may adopt small scale amendments under the following conditions:

1. The proposed amendment involves a use of 10 acres or fewer;

2. 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.

3. 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. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

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.

Chapter Six - Implementing the Comprehensive Plan

The Florida legislature intends that the Comprehensive Plan be implemented. The Plan must describe how programs, activities and land development regulations will be initiated, modified or continued to implement the Comprehensive Plan

Each local government in Florida is required to adopt and enforce land development regulations that are consistent with the Comprehensive Plan

Land Development Regulations

Relationship of comprehensive plan to exercise of land development regulatory authority.- *-It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area.*

Plan Implementation Requirements*. Recognizing that the intent of the Legislature is 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 in a consistent manner****…..*

Land development regulations

……. each county and each municipality shall adopt …. and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

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

- ***subdivision of land;*** *must meet the requirements of Chapter 177, Part I, F.S., and include review procedures, design and development standards, provisions for adequate public facilities, mitigation of development impacts, land dedications,*

fees, and administrative provisions.

- ***the 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, including identified cones of influence, in order to protect the potable water supply*.

- ***seasonal and periodic flooding …. provide for drainage and stormwater management;*** *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, in order to provide for drainage and stormwater management and mitigate the impacts of floods, including loss of life and property damage. Adequate drainage facilities may be provided to control individual and cumulative impacts of flooding and nonpoint source pollution in drainage basins existing wholly or in part within the jurisdiction*.

- ***protection of environmentally sensitive lands ….;*** *The protection of environmentally sensitive lands, as designated in the comprehensive plan, 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*** *meet or exceed the standards established in the capital improvements element …… and are available when needed for the development, ….(concurrency): Provisions assuring that development orders shall 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.

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

The Community Planning Act also encourages the use of innovative land development regulations. Examples cited in the statute include *the transfer of development rights*, *incentive zoning*, *inclusionary zoning, planned unit development, impact fees and performance zoning.*

Criteria for Determining Consistency of Land Development Regulations with the Comprehensive Plan.

The Land Development Regulations must be *"consistent"* with the Comprehensive Plan

The Land Development Regulations must be *"compatible with"*, *"further"* and *"implement"* 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. Factors which will be considered include:
  - Type of land use;
  - Intensity and density of land use;
  - Location of land use;
  - Extent of land use; and
  - Other aspects of development
- 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 take action in the direction of realizing goals or policies of the comprehensive plan.

- Whether the land development regulations include provisions that implement those objectives and policies of the comprehensive plan that require imple-

menting regulations to be realized, including provisions implementing the requirement that public facilities and services needed to support development be available concurrent with the impacts of such development.

The Elements of the Land Development Regulation

The Land Development Regulation will contain the following elements.

1. Title, Authority and Purpose. This section identifies the specific state enabling provision which 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. The statement of purposes links the rules and regulations listed in the ordinance to the community's values and goals.

2. General Provisions. General provisions include the overriding rules that apply to all land uses and all parcels throughout the community (rather than a single district) and would answer such questions as, "What if a conflict existed between the zoning ordinance and other regulations adopted by the village?"

The Land Development Regulations will contain some essential elements. The Planning Official should understand how the LDR is organized and the purpose of the components.

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

4. Subdivision Regulations. Standards and procedures governing the subdivision of land.

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

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

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

8. Interpretations, Exceptions, Equitable Relief and Enforcement. Establishes procedures and criteria for variances, interpretations and enforcement.

9. 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.

Zoning

Zoning may be 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.*

While zoning is plain in concept and easy to understand, it is often complex and difficult in application. Of the decisions that planning officials make, there are few that will equal zoning in terms of the day-to- day impact on the health, safety, and welfare of ordinary people.

Zoning divides a Jurisdiction into districts within which permissible uses are prescribed along with standards for their development.

In making zoning decisions, the first thing for members of planning commissions and zoning boards of appeal to recognize is that a good zoning decision is full of the possibility of long-lasting, great achievement. Poor zoning decisions, on the other hand, often establish protracted conflict and result in a diminished quality of health, safety, and welfare.

There are two pieces in the zoning puzzle:

- **A zoning text**
- **A zoning map**

Zoning Text
The zoning text explains the rules that apply to each of the districts. These rules typically establish a list of land uses that govern lot size, height of building, required yards and setbacks from front property lines, and so forth. (If a use is not permitted in a district, it is generally prohibited unless allowed
under special circumstances).

In the zoning text, each zoning district is typically organized around the following scheme. First, there is a

statement of public purpose or intent that relates specifically to the district.

The second segment includes **a list of land uses that are permitted in the district** and **a list of land uses that may be permitted under special conditions.**

The zoning ordinance consists of a zoning text and a zoning map

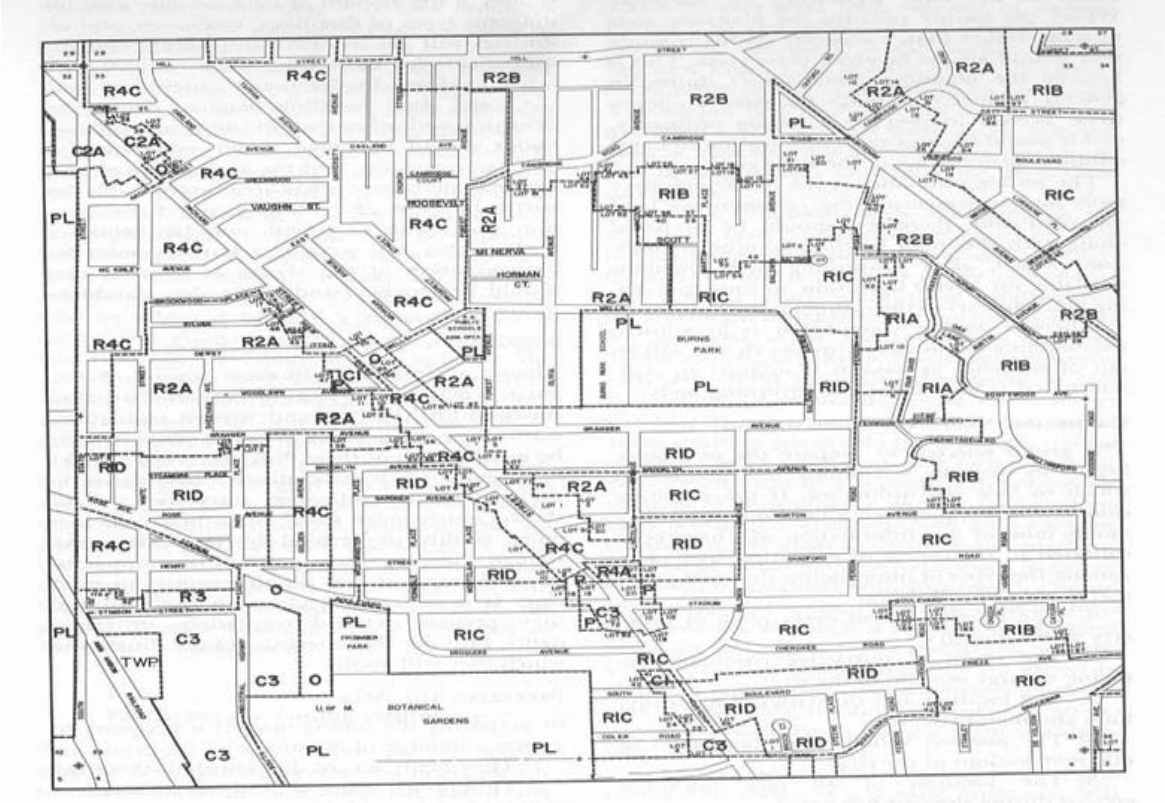
The third **segment sets forth the rules that apply to each of the permitted uses or conditional uses that are provided for in that district.** Each of these special uses must be treated as a unique case. To do so requires the careful evaluation of the proposed use itself as well as the particular site under consideration.

The Zoning text includes a statement of intent specific to each district, a list of uses permitted in each district and a list of "special" or "conditional" uses permitted in each district

So what's an example of a special use? For example, a city has a zoning district that is called "residential suburban." It is designed for single-family detached homes on lots with a minimum size of 7,200 sq. ft. Single-family homes are, of course, a permitted use in this district. But there are special uses such as convalescent homes, day care facilities , commercial stables, and agricultural uses. these are special uses because they may or may not belong in a specific neighborhood. Consider, for example, the special use "convalescent home." In a typical subdivision, a large convalescent home on a small lot would likely lead to land-use conflicts due to increased traffic around the clock, late night/early morning emergency vehicle operation, and outdoor lighting. Such a use would not be appropriate. However, if the proposed convalescent home were located on a large estate carefully screened from its neighbors and with good access drives, the special use permit may be appropriate.

Zoning Map

The zoning map simply illustrates how the entire area of a community is classified and divided up into distinct zoning districts. Every parcel of land within the community may be identified as being at least in one zoning district. The common zoning districts are residential, commercial, industrial, and agricultural.



Typical Zoning Map

Subdivision Regulations

Subdivision regulations provide standards for dividing land into separate parcels. Subdivision regulations deal with converting vacant land into land uses

The municipal and county authorization for 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 establishment of new streets and alleys, additions, and resubdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.

Subdivision regulations and zoning ordinances are the most important local land -use control mechanisms. One way of differentiating the two - think of zoning as an ordinance that controls what can be on a lot that was created through subdivision regulations.

Subdivision regulation (1) legally defines land parcels to facilitate the transfer of title, (2) ensures that public infrastructure is provided and meets minimum standards, (3) ensures that new development properly relates to its surroundings, (4) ensures that land is developed consistent with the Comprehensive Plan

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 may be seen as those regulations that deal with converting 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 transfer of the lots from one owner to another, and to allow each owner to be very clear about, and have legal claim to, exactly what is owned. This still remains a primary function of subdivision regulations.

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. And, in some cases, to provide funds for off-site and on-site infrastructure and community facility development.

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

Design Standards and Improvement Requirements

The Land Development Regulation also establishes design standards and improvement requirements for development.

The following components are typically included:

- **Density and Intensity of Land Development.** The density or intensity of land development permitted within the jurisdiction is specified generally by reference to zoning districts. Residential density may be expressed in dwelling units per acre or indirectly regulated through a "minimum lot size" standard. Non-residential intensities are typically expressed as a Floor Area Ratio (FAR).

- **Height and Bulk Regulation.** While the nature of zoning has evolved over time, one prominent fixture of zoning that has undergone little change is the regulation of height and bulk. Height simply deals with the heights of structures that are permitted on a parcel. Bulk is a clumsy term that deals with the relationship between buildings on a parcel and the size of the parcel itself and is normally expressed by setbacks, maximum lot coverage, and

so forth.

- **Infrastructure Design and Improvement Standards.** The general dimensions and design standards for public infrastructure notably streets, water and sewer systems, drainage systems and other facilities typically associated with the subdivision process are prescribed.

- **Transportation System Standards.** Off-street parking standards, driveway and access design, and internal circulation standards are prescribed**.** Typically, parking standards vary by the land use, so that when a use is permitted in more than one zoning district, the parking requirements remain the same.

- **Stormwater Management/ Floodplain Protection** In Florida, the management of stormwater receives high priority and generally involves review by the respective Water Management District in addition to local government. This section of the LDR establishes the standards for local review and are often identical or similar to the rules of the Water Management District.

- **Protection of Environmentally Sensitive Lands.** Wetlands, wildlife habitat, aquifer recharge areas and other natural resources.

- **Wellfield Protection.** Specific rules governing land development in the vicinity of wellfields that supply potable water

- **Signs.** Signs are highly varied by type and size of land use. In this section of the ordinance, sign regulations are established for each of the land-use districts and often include restrictions on size, location, height, projection, lighting, and so forth.

- **Landscaping.** Requirements for landscaping including rules pertaining to fences or walls.

- **Architectural and Design Guidelines.** Design standards typically applied to specifically identified areas such as historic districts or to development types such a large scale retail.

- **Supplemental Standards for Special Uses.** Standards applied to determine if Special or Conditional uses are permissible in various zoning districts.

Concurrency – Adequate Public Facilities

Florida law requires that adequate public facilities must be in place or programmed at the time development occurs. This provision is referred to as "concurrency".

The key provisions are:

….development orders shall 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. Unless public facilities and services which meet or exceed such standards are available at the time the development permit is issued, development orders shall be specifically conditioned upon availability of the public facilities and services necessary to serve the proposed development.

The following public facilities are subject to concurrency on a statewide basis i.e. mandatory:

- **sanitary sewer**
- **solid waste**
- **drainage,**
- **potable water,**

The local Comprehensive Plan must establish levels of service for purposes of managing concurrency.

The application of concurrency is optional for

- **transportation**
- **public schools**
- **parks and recreation**

If concurrency is to be applied by local governments for optional elements, levels of service must be established in the Comprehensive Plan and it must be demonstrated that levels of service can be reasonable met.

Planned Unit Development

Planned development provisions – typically referred to as "planned unit developments" or simply "planned developments" - are included in most land development codes. The provisions are intended to encourage more creative and imaginative design than generally is possible under conventional land development regulations. The procedures allow a specific plan to be submitted and, if approved, to serve as the basis for the land development regulations pertaining to that property i.e. the planned development restrictions substitute for the conventional standards.

Planned development provisions are included in most land development codes to encourage better design.

Under this procedure, project-specific plans – if approved by the jurisdiction – substitute for conventional land development regulations.

The advantages of this approach are obvious. 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 i.e. a "rezoning". PD's also involve a "zoning text" amendment by the inclusion of regulations specific to the property and that implement the specific plan.

Traditional Neighborhood Development

In recent years, Traditional Neighborhood Development or TND 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.

Many land development codes now contain regulations designed to implement these concepts. Unlike conventional zoning and subdivision regulation, these regulations require that (1) uses be mixed rather than segregated, (2) the street system be interconnected, (3) buildings especially within and near commercial area be placed close to the street and (4) that parks and open space by open and accessible to the public. Such

ordinances will rely less a 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 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.

Traditional Neighborhood Development (TND) encourages mixed use, compact development, walkability, and interconnected street systems with residences, shopping, employment and recreational uses in close proximity to each other.

Special Uses

Special uses – sometimes referred to as "special exceptions", "conditional uses" or "provisional uses" – are permitted within specified zoning districts provided that prescribed conditions are met. The manner in which "special uses" are applied varies widely among jurisdictions and can represent a broad range of regulation within a single community. Consequently, there is no universal process for the approval of "special uses", their review will fall into one of three categories:

- **administrative approval** typically involving staff review and approval in the form of a permit. This category normally involves very straightforward conditions leaving little room for interpretation. For example, a church may be permitted in a residential area but with the required minimum lot size is larger than the minimum lot size required for a single-family residence. Such actions do not require public notice nor public hearings.

- **approval by appointed body.** Special uses that involve a degree of discretion are often decided by a planning commission, board of adjustment, zoning board, historical review board, hearing officer or other body authorized by the land development code. Compatibility with the surrounding neighborhood and the potential impact of the special use and traffic and the environment are typical issues to be considered by the approving body. Notice to the public and adjoining property owners is generally required and decisions are made on the basis of staff recommendations and the findings obtained at

a public hearing.

- **approval by governing body.** Special uses that are highly complex or have a potential for significant impact require approval by the city or county commission. Although these approvals are not technically considered "rezonings", they will normally follow the same procedure. For example, "borrow pits" may be permitted as a special use in an agricultural zone. Because such facilities have the potential for significant environmental harm and are potentially disruptive to surrounding uses, they may be afforded a higher level of public scrutiny.

Special uses are permitted within zoning districts provided certain prescribed conditions are met. Planning officials may be serve in a recommending capacity or be delegated the approval authority for special uses depending on the jurisdiction's land development code.

The Administration Section of the Land Development Code is especially important for Planning Officials. This section describes their role in the Development review process, outlines the steps to be followed and clarifies the criteria to be used for decision-making.

Administration and Procedures

The Administration portion of the Land Development Code describes the administrative procedures, to be applied and establishes the roles and responsibilities of planning officials—both elected and appointed – and the roles and responsibilities of administrative personnel such as the planning director, zoning administrator and others. This is an important section of the Land Development Code since it: (1) details the work or job of the key actors in the development review process, (2) outlines the exact steps that must be taken in carrying out the work, and (3) clarifies the criteria that planning commissioners, zoning board members, zoning administrators, and elected officials must use in making development decisions.

The administration of the Land Development Code involves two types of decisions: ministerial and quasi-judicial.

The vast majority of land development decisions are ministerial and are made by administrative personnel such as the zoning administrator or other administrative officials. These duties involve the direct application of the provisions of the LDR to specific development applications normally in the form of permits (building permits, sign permits, etc.) Typically these decisions allow very little discretion or involve professional discretion within the administrator's field of expertise (for example, the extent of a wetland, compliance with an engineering standard, etc).

The decisions made by Planning Officials will be predominately "quasi-judicial" (there is no reason for decisions that involve no discretion should be placed before a board or commission).

Rezoning

The amendment of the zoning map – generally referred to as **rezoning** - is perhaps the most common decision before planning officials. Typically these decisions involve a change in the zoning designation for a particular property e.g. a rezoning from residential to commercial.

The administration section of the Land Development Code will prescribe the procedures to be followed in

processing a rezoning or special use approval. This process will normally include the following steps:

- a pre-application meeting with the staff (this meeting may be required or may be informal)
- a formal application for rezoning (or other action) notice to the public and to affected property owners
- a professional review and recommendation
- a public hearing and recommendation by the Planning Commission (or hearing officer)
- a public hearing by the governing body.

Rezoning is an amendment of the Zoning map and its approval requires an action of the governing body.

Planning officials often serve an important role as a recommending agency.

It is important to remember that rezoning decisions in Florida are "quasi-judicial". At the same time they are often very controversial and the tendency to respond through emotion or personal preference can be very strong. So what are the right questions to ask? Here are some suggestions.

- Is the proposed rezoning consistent with the comprehensive plan and its land-use plan map? If not, should the Comprehensive Plan be modified before the rezoning proceeds. If the rezoning is consistent, proceed.

- Any rezoning will affect other zoning districts. Identify all abutting zoning districts and ask yourself if the proposed rezoned area is generally compatible with surrounding districts. A useful technique here is to compare lists of the permitted and special uses in each district.

- Often an applicant will seek a specific map amendment for the purpose of operating one specific type of business. Be careful. When you approve a rezoning you are approving *any* of the permitted uses for that district, and you are opening the door for any of the special uses for that district. It is poor practice to approve a rezoning for the purpose of allowing a particular permitted use unless one is fully prepared to accept any of the permitted or special uses for that newly rezoned area.

While land use generally changes slowly over time, land uses do change, and rezoning is a fact of planning life. There are new technologies, shifting lifestyles, and long-term economic forces that lead to changes of the zoning. Remember that planning matters first, zoning second. In considering a rezoning, ask yourself wheth-

er this application represents a substantive shift in land -use planning. If there have been several such applications, it is likely that the matter needs to be considered first in the context of the comprehensive plan.

Variances

A variance is a minor exception to the zoning rules that if granted by proper authority, allows an applicant to do what could not otherwise be legally done. The key phrase is *minor exception.*

A "variance" is a minor adjustment to the provisions of the land development code. To be granted, its must meet certain prescribed criteria enunciated in the code

Typical zoning rules are spelled out so that an applicant either meets the zoning rules or does not. A lot either meets the minimum lot size specified in the zoning ordinance or it does not. A building height is either at or below the maximum zoning height or it is not.

Variances, or minor exceptions to the zoning rules, are designed to deal with the myriad cases in which some proposal nearly or just about meets the zoning rules, but not quite. Obviously, it would be unreasonable, in most cases, to reject a zoning application featuring, say, a lot size of 8,499 sq. ft. In a zone requiring a minimum lot size of 8,500 sq. ft. The variance process allows you to grant minor relief from strict zoning standards under specific conditions.

Evaluating Variances

Your Land Development Code should spell out both the process that must be used in treating variances and the standards that must be used in evaluating variances. The process used in treating variances is usually spelled out in great detail and must be followed to the letter.

The standards for evaluating variances are also spelled out but they often leave considerable room for interpretation. Since the substance of the normal variance application is usually close to meeting zoning standards, the question becomes, how close is it to meeting those standards?

What are some typical standards and things to consider? While there are differences between states, the overriding theme is this: variances may be granted only for minor changes to zoning standards.

The word "minor" means small, almost trivial, changes to the zoning standards. Thus, variances cannot be given to "uses" within districts-that is, if some use is not a permitted or special use in a zoning district, then the variance procedure cannot be used to allow a use that would otherwise be prohibited. In addition to this theme of minor changes, there are other common considerations.

- Unique: The hardship caused by zoning standards is unique to the property and is not shared by neighbors and other similar properties.
- Effect: The effect of the zoning standards is to deny a property owner reasonable use of the property.
- Self-imposed: The applicant did not bring the burden upon himself or herself through some action, but instead had the burden imposed upon them.
- Consequence: The variance should not be nonconforming, nor should it be used to allow a nonconforming land use or parcel to continue.

In addition to these common considerations, local officials should also consider whether the applicant has shown that:

- The variance would comply with the statement of public purpose or intent for the zoning ordinance generally and the zoning district under consideration specifically.
- The variance will not harm nearby properties.
-
- The variance will not harm people associated with nearby properties.
- The variance will not change the character of the nearby area.
- The variance is the minimum necessary to permit reasonable use of the property.

Nonconforming Uses and Lots

Zoning ordinances are adopted to bring order, stability, and predictability to land uses within a community.

This doesn't happen overnight because new zoning rarely, if ever, starts with a clean slate-some development preceded it. This means that as soon as the ordinance is adopted, the problem of nonconformance exists.

Nonconformance may also be created when a community rezones from one district to another. In either case, the new zoning creates nonconformities because something preexisting does not comply with new limitations on use (e.g. residential only) or dimensions (e.g. minimum lot size or width).

Nonconformities (uses and dimensions) are often created when land development codes are adopted or amended. If the condition preexisted, it creates a "legal" nonconformity.

The land development code will contain provisions describing the treatment of nonconformities.

This nonconformity occurs in two primary ways- first, **a "use" nonconformity** may occur when someone is using the land for a purpose that is not permitted in the relevant zoning district. For example, in a newly zoned residential area, there may be a barber shop or diner, neither of which is permitted in a residential district. Thus the barber shop or diner would be a nonconforming use. Indeed, any use that is not permitted in the district by right or a special! conditional use is a nonconforming use. If the use is otherwise legal (i.e. not violating some other law), **it is a legal nonconforming use.**

In the same residential district, there are two homes on lots that have 30-foot front yards instead of the 40 feet required for the zoning district.

These two lots are nonconforming. Each parcel in our community must meet all of the zoning standards governing such things as lot size, lot width, lot depth, and setbacks, or the lot becomes legally nonconforming. So we have two basic types of nonconformance: nonconforming uses and nonconforming lots.

What's to be done about these legally nonconforming uses and lots? Generally, the following rules underpin the treatment of non-conformities.

Rule 1: Don't let them expand.

Rule 2: Help them contract.

Rule 3: Avoid deterioration by encouraging maintenance and repair.

Rule 4: No stops and starts.

Remember, for a legal nonconforming situation to occur, the use or lot must be nonconforming and legal at the time the zoning ordinance was first adopted or later amended. Anything else is a zoning violation.

Subdivision Review

The subdivision process typically includes the following **three steps: (1) pre-application conference (often with sketch plan), (2) preliminary plat submission, and (3) final plat submission.** This 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.

Although most jurisdictions utilize these three steps, the review and approval process can vary widely. The only absolute requirement is that **the governing body accept the final plat and by so doing accept dedication of roadways, water and sewer systems and other public facilities**. **They may delegate other aspects of the review to their professional staff and/or to an appointed body**. Planning commissions have traditionally played an important role in subdivision review.

Frequently a distinction is made between "minor" and" major" subdivisions based on the number of parcels or some other criteria, in which case a streamlined process may be allowed. The following example illustrates the differences:

- Minor Subdivision. Any subdivision containing not more than three lots fronting on an existing street, not involving any new street or road, or the extension of municipal facilities or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the master plan, official map, zoning ordinance, or these regulations.

- Major Subdivision. All subdivisions not classified as minor subdivisions, including but not limited to subdivisions of four or more lots (or some other threshold established by the LDR), or any size subdivision requiring any new street or extension of the local government facilities or the creation of

any public improvements.

Each city and county must ensure that adequate facilities are in place to support development.

Fiscal management and the financing of infrastructure to support anticipated growth are important planning issues.

Fiscal Tools

The planning process must concern itself with fiscal matters in addition to its regulatory role. 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 buildings it will need to support its growth.

As previously discussed, each city and county must have a "concurrency management system" to assure that adequate facilities are in place to support development. This system is based on "levels of service" specified in the comprehensive plan and it is closely tied to fiscal management tools and techniques utilized by local government.

In the fiscal arena, the *planning official* needs to have a general knowledge of the primary fiscal tools and techniques related to planning and growth management.

- **Capital improvement programs** and the **capital improvement element**
- **Development impact fees**
- **Fiscal impact analysis**
- **Development agreements**
- **Community development districts**

Capital Improvements Programming

The *capital improvements program (CIP)* is the multi-year scheduling of public infrastructure (physical improvements). 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 adopted for 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). MPO's 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.

The Capital Improvements Element (CIE) links the comprehensive plan to CIP. The CIE is a required element of the comprehensive plan. The Community Planning Act provides as follows:

- *……The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities and set forth:*

- *……[will include] a component which outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component which outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5- year period.*

- *…..[will include] estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.*

- *…..[will include] Standards to ensure the availability of public facilities and the adequacy of those facilities including acceptable levels of service.*

- *…..[will include] A schedule of capital improvements which includes publicly funded projects, and which may include privately funded projects …… necessary to ensure that adopted level-of-service standards are achieved and maintained. For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by … an enforceable development agreement …*

- *The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program to the extent that such improvements relied upon to ensure concurrency and financial feasibility. The schedule must also be coordinated with applicable metropolitan planning organization's long -range transportation plan.*

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

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. Impact fees are generally imposed as a condition for development approval. As such, they fall within the general system of land development regulation as contrasted with revenue-raising (taxation) programs.

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 and EMS, law enforcement, public buildings and schools.

In Florida, there is no specific state statute directly authorizing their use or governing their application. Rather, the application of development impact fees has arisen as a legitimate exercise of government through case law. The Florida Supreme Court found that development impact fees are permissible provided that:

1. There must be a reasonable connection between the need for additional facilities and the growth resulting from new development.

2. The fees charged must not exceed a proportionate share of the cost incurred or to be incurred in accommodating the development paying the fee.

3. There must be a reasonable connection between the expenditure of the fees collected and the benefits received by the development paying the fees.

Fiscal Impact Analysis

***Fiscal Impact Analysis Model (FIAM)* is available for application by local government for planning and land use decisions.**

In 2002, the Florida Department of Community Affairs commissioned the development of a *Fiscal Impact Analysis Model* (FIAM) designed to improve local government land use decision-making. The model provides a tool to quantify the fiscal impact (cost and revenue effects) of land use decisions. The model is available for application by local governments.

Development Agreements

Local governments may enter into *development agreements* with land owners for public improvements and other conditions associated with land developments. These agreements may be in force for up to 30 years during which time the developer is vested against regulatory changes.

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 a 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 (a maximum of thirty years),
- 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

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 but most importantly is vested against changes in regulations for the duration of the agreement.

Community Development Districts

Florida has enabled the creation of community development districts (CDDs) that can provide number of

Community Development Districts **are frequently used in Florida to provide a broad range of facilities and services to new development.**

CDD's require local government consent and are typically created during the development review process for large scale projects.

services usually associated with large new developments, including the construction and operation of systems for water supply, wastewater management, stormwater management, streets, and street lighting. With the consent of the local governing body, the district might also provide recreational facilities, fire protection, school buildings, security facilities and services, solid waste management, and mosquito control. CDDs have been able to respond to pressures of growth that have strained the economic and growth management capacities of Florida's local governments.

Because CDD's require the consent of the local government and are normally associated with new development, planning officials are likely to encounter this particular type of special district.

Infill and Revitalization

The Florida Legislature has recognized that

- fiscally strong urban centers are beneficial to regional and state economies and resources and for the reduction of future urban sprawl.

The Florida Legislature has recognized that healthy urban centers are beneficial and has established mechanisms that promote infill and facilitate redevelopment.

- health and vibrancy of the urban cores benefit their respective regions. Conversely, the deterioration of those urban cores negatively impacts the surrounding area.
- respective governments need to 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
- infill development and redevelopment are recognized to be important components and useful mechanisms for promoting and sustaining urban cores.

Florida statutes provide two important techniques for addressing infill and redevelopment: (1) Community Redevelopment Areas and (2) Urban Infill and Redevelopment Areas.

Community Redevelopment Areas

The Community Redevelopment Act of 1969 grants unique Powers to local government to facilitate redevelopment of urban areas

The Community Redevelopment Act of 1969 authorizes the primary redevelopment powers for Florida cities and counties. These unique redevelopment powers include;

- The ability to buy property for resale to another private person or organization. When land use patterns or construction do not allow for modern use and development, the authority may acquire properties for consolidation or reconfiguration to enable private, market-based development to occur. No other local public agencies are so directly and actively involved in the private real estate market.

- The authority to use the power of eminent domain (condemnation) to acquire private property. Eminent domain is a powerful tool that redevelopment agencies use with great caution. Although every property is subject to governmental exercise of "eminent domain" for public purposes, redevelopment authority goes further by authorizing the use of this power to "take" private property, upon the paying of a fair market price. The agency may then resell the property to another private organization so long as the subsequent use carries out the redevelopment plan. This power is sparingly used in Florida because of its controversial nature and the high cost of condemnation.

- The power to collect property tax "increment" to finance redevelopment activities. A redevelopment agency has no power to levy a tax of any kind nor does it have any power to affect the distribution of property tax dollars. Rather, the property taxes within the defined "community redevelopment area" are frozen and the increase or "increment" of property taxes collected after that date may be diverted for redevelopment purposes.

Four steps are required to utilize the redevelopment powers authorized under the Community Redevelopment Act of 1969:

- **A community redevelopment area (CRA) must be established**. The powers granted under the act only apply within this prescribed area or district.

- There must be a **"finding of necessity".** The exercise the extraordinary powers granted for redevelopment, the local government must show that the need for redevelopment exists. The statutes contains a list of conditions that may meet this test and a detailed study is typically conducted to document the presence of these conditions within the redevelopment area.

- A **Community Redevelopment Authority** must be created to oversee the redevelopment activities.

- A **Community Redevelopment Plan** must be adopted before the redevelopment powers may be exercised.

The Urban Infill and Redevelopment Plan is a powerful and comprehensive mechanism for the revitalization of urban areas.

Urban Infill and Redevelopment Areas

A local government may designate a geographic area or areas within its jurisdiction as an *urban infill and redevelopment area* for the purpose of targeting 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.

This mechanism can include "community redevelopment areas" with the attendant redevelopment powers described previously but is intended as **a more comprehensive planning technique.** Its key elements include:

- **a collaborative and holistic community participation process** that encourages communities to participate in the design and implementation of the plan, including a "visioning" of the urban core. This process requires the ongoing involvement of stakeholder groups including community-based organizations, neighborhood associations, financial institutions, faith organizations, housing authorities, financial institutions, existing businesses, businesses interested in operating in the community, schools, and neighborhood residents. In addition, the neighborhood participation process must include a governance structure whereby the local government shares decisionmaking authority with communitywide representatives.

- **an urban infill and redevelopment plan** that demonstrates the local government and community's commitment to comprehensively address the urban problems. This plan must:

  - identify activities and programs to accomplish locally identified goals such as code enforcement; improved educational opportunities; reduction in crime; neighborhood revitalization and preservation; provision of infrastructure needs, including mass transit and multimodal linkages; and mixed-use planning to promote multifunctional redevelopment to improve both the residential and commercial quality of life in the area.

- identify enterprise zones, community redevelopment areas, community development corporations, brownfield areas, downtown redevelopment districts, safe neighborhood improvement districts, historic preservation districts, and empowerment zones or enterprise communities

- execute a memorandum of understanding with the district school board regarding public school facilities

- identify each neighborhood within the proposed area

- identify how the local government and community-based organizations intend to implement affordable housing programs and reduce crime.

- **provide guidelines for the adoption of land development regulations**

- **financial and regulatory incentives.** The urban infill and redevelopment plan must also identify financial and regulatory incentives such as the *waiver of license and permit fees, exemption of sales made in the urban infill and redevelopment area from local option sales surtaxes, waiver of delinquent local taxes or fees, expedited permitting, lower transportation impact fees, prioritization of infrastructure spending, and local government absorption of developers' concurrency costs.*

Growth Management Techniques

Urban Service Areas

Many Florida Communities designate *urban service areas* in their comprehensive plans. The urban service area boundaries Represent the outer limits of urban development over the planning period and include enough land to accommodate anticipated growth

Urban service areas refers to those areas in and around existing communities which are deemed most suitable for urban development and capable of being provided with a full range of urban services. Urban service areas are typically designated by the comprehensive plan.

Urban services include the public services normally provided or needed in urban areas. Transportation facilities, public water supply and distribution systems, sanitary sewerage systems, higher levels of police and fire protection, solid waste collection, urban stormwater management systems, recreation facilities, schools and public buildings all require public investment to maintain levels of service as an urban area expands.

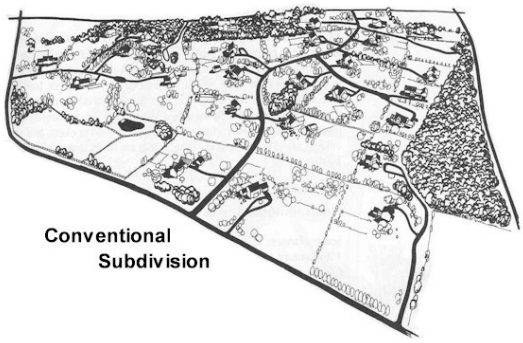
The urban service area boundaries represent the outer limits of planned urban growth over the long-term planning period and include enough to accommodate anticipated growth.

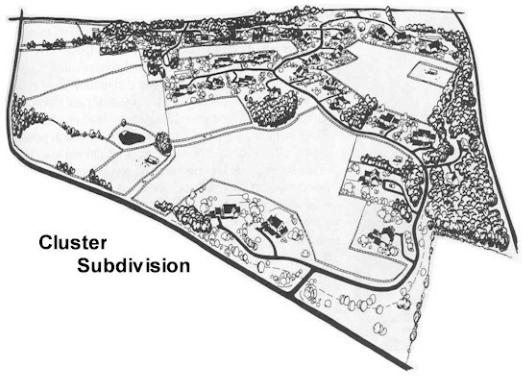
Local governments that adopt an urban service boundary in combination with a community vision may adopt comprehensive plan amendments (within the designated area) without state or regional review. Developments within the urban service boundary are also exempt from DRI review.

Cluster development can preserve open space and natural resources while reducing development costs .

Clustering – On-Site Density Transfer

Clustering or "on-site density transfer" relocates development away from a particularly sensitive portion of the site to a location more capable of accommodating development impacts. The rationale for cluster development is grounded in environmental and economic concerns. When clustering is permitted, development is placed on that portion of the land parcel that can be developed with the least disturbance. At the same time, developers realize significant savings because shorter roads and utility extensions are required to serve the clustered homes. The advantages of clustering can be achieved at any scale.





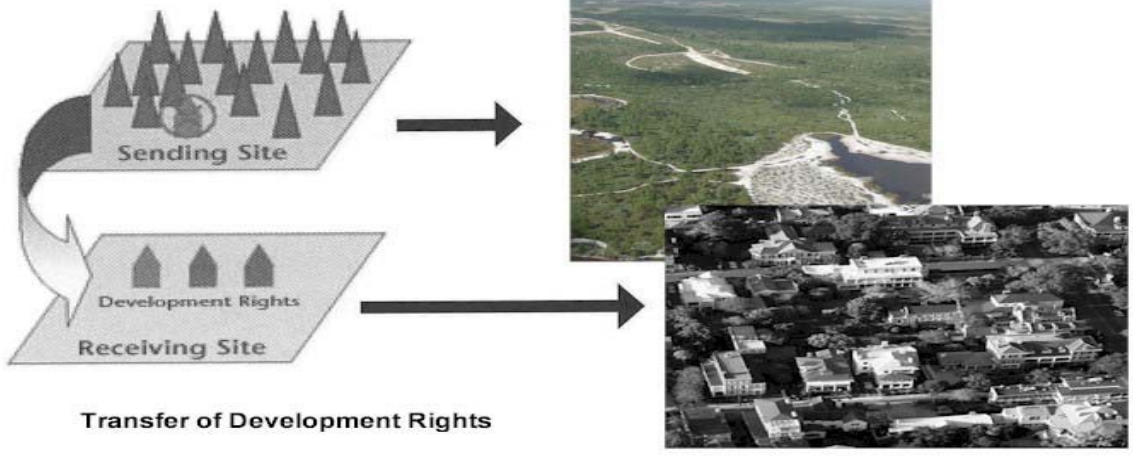
The 'transfer of Development rights" (TDR) allows the transfer of development rights from "sending areas" to "receiving areas" through a real estate market transaction. This technique Allows the market to furnish "fair compensation" for rights relinquished through regulatory restrictions

Transfer of Development Rights

The Transfer of Development Rights (TDR) concept allows landowners in restricted areas (or "sending areas") to transfer densities and other development rights to landowners in areas appropriate for higher densities (or "receiving areas").

The usual purpose of TDRs is to ameliorate the harshness of regulatory restrictions. TDRs give planners an alternative to purchasing the land outright or abandoning any attempt to enforce carrying capacity by allowing the market to furnish "fair compensation" for rights relinquished through regulatory restrictions.

Once a landowner sells or transfers the rights for development to another landowner, the land becomes open space at no cost to the local government. The owner is permanently barred from ever building commercial or residential developments on that land, with the same restraint applying to the landowner's heirs or transferees.
There are two basic types of TDR programs. The most



Transfer of Development Rights

common allows the landowner to sell development rights on a piece of property in a sending zone to a developer who then increases the density on another piece of property in the receiving zone (for example, going from one unit per acre to four units per acre). The higher the density that developers are able to realize, the greater the incentive for them to buy development rights.

A second method allows a local government to establish a TDR bank. In this method, property owners who wish to develop at a higher density purchase development rights from the TDR bank, often administered by the local government. The local government can then use these funds to purchase development rights of properties in areas that it wants to protect from urban development.

Rural Land Stewardship Areas provide a mechanism for the establishment of "transfer of development right (TDR) programs for the preservation of rural areas

Rural Land Stewardship

Rural land stewardship areas are designed to establish a long-term incentive based strategy to guide the allocation of land to accommodate land uses in a manner that protects the natural environment, stimulates economic growth, and diversification, 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) for the benefit of the state's citizens and natural environment while maintaining and enhancing the asset value of their landholdings.

The process is initiated by written request of landowners or a private sector initiated amendment to the local government.

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 shall 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 ru-

ral 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

Sector Plans provide a conceptual overlay plan for an area. These plans when adopted under an agreement with the State may substitute for the DRI approval process.

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 local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and facilities.

Sector planning encompasses two levels: a conceptual long-term master plan within the comprehensive plan and detailed specific area plans that implement the conceptual long-term master plan and authorize 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 submitted to DCA, based on the procedures for a DRI development order. 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.
Upon approval of the long-term master plan for the Sector:

- the Metropolitan Planning Organization long-range transportation plan must be consistent with the long-term master plan;
- the water supply projects shall be incorporated into the regional water supply plan;
- a landowner may request a consumptive use permit for the long-term planning period.

Appendix A: Definitions

Administration commission means the Governor and the Cabinet.

Amendment means any action of a local government which has the effect of amending, adding to, deleting from or changing an adopted comprehensive plan element or map or map series.[1]

Capital budget means the portion of each local government's budget which reflects capital improvements scheduled for a fiscal year.[2]

Capital improvement means physical assets constructed or purchased to provide, improve or replace a public facility and which are large scale and high in cost. [3]

Capital improvement program (CIP) means the multiyear scheduling of public infrastructure

Clustering means the grouping together of structures and infrastructure on a portion of a development site.[4]

Coastal area means the 35 coastal counties and all coastal municipalities within their boundaries designated coastal by the state land planning agency.[5]

Community development district means a local unit of special-purpose government which is created pursuant to this act and limited to the performance of those specialized functions authorized by this act; the boundaries of which are contained wholly within a single county; the governing head of which is a body created, organized, and constituted and authorized to function specifically as prescribed in this act for the delivery of urban community development services; and the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law.[6]

Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. [7]

Concurrency means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur. [8]

Concurrency Management System means the procedures and/or process that the local government will utilize to assure that development orders and permits are not issued unless the necessary facilities and services are available concurrent with the impacts of development.[9]

Density means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre.[10]

Developer means any person, including a governmental agency, undertaking any development as defined Chapter 380.04 F.S. [11]

Development means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.[12]

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.

"Development order" means any order granting, denying, or granting with conditions an application for a development permit. [13]

Development of Regional Impact means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. Chapter 380.06 FS

Development permit includes any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development as defined in this chapter. [14]

Environmentally sensitive lands means areas of land or water which are determined necessary by the local government, based on locally determined criteria, to conserve or protect natural habitats and ecological systems.[15]

Evaluation and appraisal report means an evaluation and appraisal report as adopted by the local governing body in accordance with the requirements of Section 163.3191, F.S.

Fiscal impact analysis means an assessment of the costs incurred and the revenues received by a local government (or other level or entity of government) as the result of a development approval or some other action.

Floor Area Ratio (FAR) means the gross floor area of all buildings or structures on a lot divided by the total lot area.

Goal means the long-term end toward which programs or activities are ultimately directed. [16]

Governing body means the board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government. [17]

Governmental agency means: [18]
(a) The United States or any department, commission, agency, or other instrumentality thereof;
(b) This state or any department, commission, agency, or other instrumentality thereof;
(c) Any local government, as defined in this chapter, or any department, commission, agency, or other instrumentality thereof;
(d) Any school board or other special district, authority, or other governmental entity.

Incentive zoning means the granting of additional development capacity in exchange for the developer's provision of a public benefit or amenity.

Inclusionary zoning means regulations that increase housing choice by the establishment of requirements and providing incentives for the construction of housing to meet the needs of low and moderate-income households.

Improvements may include, but are not limited to, street pavements, curbs and gutters, sidewalks, alley pavements, walkway pavements, water mains, sanitary sewers, storm sewers or drains, street names, signs, landscaping ……or any other improvement required by a governing body.[19]

Intensity means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services. [20]

Land means the earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land. [21]

Land development regulation commission means a commission designated by a local government to develop and recommend, to the local governing body, land development regulations which implement the adopted comprehensive plan and to review land development regulations, or amendments thereto, for consistency with the adopted plan and report to the governing body regarding its findings. The responsibilities of the land development regulation commission may be performed by the local planning agency.[22]

Land development regulations include local zoning, subdivision, building, and other regulations controlling the development of land. [23]

Land use means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or land development code.[24].

Level of service means an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility. [25]

Local comprehensive plan means any or all local comprehensive plans or elements or portions thereof prepared, adopted, or amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, as amended.[26]

New town means a new urban activity center and community designated on the future land use map and located within a rural area or at the rural-urban fringe, clearly functionally distinct or geographically separated from existing urban areas and other new towns. A new town shall be of sufficient size, population and land use composition to support a variety of economic and social activities consistent with an urban area designation. New towns shall include basic economic activities; all major land use categories, with the possible exception of agricultural and industrial; and a centrally provided full range of public facilities and services.[27]

Objective means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.[28]

Parcel of land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.[29]

Policy means the way in which programs and activities are conducted to achieve an identified goal.[30]

Public facilities means major capital improvements, including, but not limited to, transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and spoil disposal sites for maintenance dredging in waters of the state.[31]

Public utility includes any public or private utility, such as, but not limited to, storm drainage, sanitary sewers, electric power, water service, gas service, or telephone line, whether underground or overhead.[32]

Purchase of development rights means the acquisition of a governmentally recognized right to develop land which is severed from the realty and held or further conveyed by the purchaser. [33]

Regional planning agency means the agency designated by the state land planning agency to exercise responsibilities under this chapter in a particular region of the state.[34]

Revenue bonds means obligations which are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and which do not pledge property, credit, or general tax revenue.[35]

Right-of-way means land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies.[36]

Special district means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[37]

State land development plan" means a comprehensive statewide plan or any portion thereof setting forth state land development policies.[38]

State land planning agency means the Florida Department of Community Affairs.[39]

Street includes any access way such as a street, road, lane, highway, avenue, boulevard, alley, parkway, viaduct, circle, court, terrace, place, or cul-de-sac, and also includes all of the land lying between the right-of-way lines as delineated on a plat showing such streets, whether improved or unimproved, but shall not include those access ways such as easements and rights-of-way intended solely for limited utility purposes, such as for electric power lines, gas lines, telephone lines, water lines, drainage and sanitary sewers, and easements of ingress and egress.[40]

Structure" means anything constructed, installed, or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. "Structure" also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.[41]

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 establishment of new streets and alleys, additions, and resubdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.[42]

Suitability means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. [43]

Transfer of Development Rights means a governmentally recognized right to use or develop land at a certain density, or intensity, or for a particular purpose, which is severed from the realty and placed on some other property. [44]

Urban service area means those areas in and around existing communities which are deemed most suitable for urban development and capable of being provided with a full range of urban services. Urban service areas are typically designated by the comprehensive plan.

Water management district means a special taxing district which is a regional water management district created and operated pursuant to chapter 373 or chapter 61-691, Laws of Florida, or a flood control district created and operated pursuant to chapter 25270, Laws of Florida, 1949, as modified by s. 373.149.[45]

Endnotes for Definitions

[1] Rule 9J-5 FAC
[2] Rule 9J-5 FAC
[3] Rule 9J-5 FAC
[4] Rule 9J-5 FAC
[5] Chapter 163.3164 F.S.
[6] Chapter 190.003 F.S.
[7] Rule 9J-5 FAC
[8] Rule 9J-5 FAC
[9] Rule 9J-5 FAC
[10] Rule 9J-5 FAC
[11] Chapter 380.031 F.S.
[12] Chapter 380.04 F.S.
[13] Chapter 380.031 F.S.
[14] Chapter 380.031 F.S.
[15] Rule 9J-5 FAC
[16] Rule 9J-5 FAC
[17] Chapter 163.3164 F.S.
[18] Chapter 380.031 F.S
[19] Chapter 177.031 F.S.
[20] Rule 9J-5 FAC
[21] Chapter 380.031 F.S.
[22] Chapter 163.3164 F.S.
[23] Chapter 380.031 F.S.
[24] Chapter 163.3164 F.S.
[25] Rule 9J-5 FAC
[26] Chapter 380.031 F.S.
[27] Rule 9J-5 FAC
[28] Rule 9J-5 FAC
[29] Chapter 380.031 F.S
[30] Rule 9J-5 FAC
[31] Chapter 186.403 F.S.
[32] Chapter 177.031 F.S.
[33] Rule 9J-5 FAC
[34] Chapter 380.031 F.S.
[35] Chapter 190.003 F.S.
[36] Chapter 177.031 F.S.
[37] Chapter 186.403 F.S.
[38] Chapter 380.031 F.S.
[39] Chapter 380.031 F.S.
[40] Chapter 177.031 F.S.
[41] Chapter 380.031 F.S.
[42] Chapter 177.031 F.S.
[43] Rule 9J-5 FAC
[44] Rule 9J-5 FAC
[45] Chapter 186.403 F.S.

Appendix B: Acronyms

APA – American Planning Association

AICP – American Institute of Certified Planners

CIE – Capital Improvements Element

CIP – Capital Improvements Program

CNU – Congress for the New Urbanism

CRA – Community Redevelopment Authority or Community Redevelopment Area

DCA – Florida Department of Community Development

DEP – Florida Department of Environmental Protection

DRI – Development of Regional Impact

FAICP – College of Fellows: American Institute of Certified Planners

FAPA – Florida Chapter of the American Planning Association

FDOT - Florida Department of Transportation

FHBA – Florida Homebuilders Association

FIOG – Florida Institute of Government

FPZA – Florida Planning and Zoning Association

FQD – Florida Quality Development

LDR – Land Development Regulation. Synonymous with **ULDR** or **ULDC** sometimes used to indicate a “Unified Land Development Regulation” or “Unified Land Development Code”

MPO – Metropolitan Planning Organization. Synonymous with **TPO** sometimes used to indicate a “Transportation Planning Organization”

PUD – Planned Unit Development. Synonymous with **PDD** or **PD** sometimes used to indicate a “Planned Development District”.

RPC - Regional Planning Council

TIP – Transportation Improvements Program

TND – Traditional Neighborhood Development

WMD – Water Management District

Appendix C: AICP Code of Ethics and Professional Conduct

Adopted March 19, 2005
Effective June 1, 2005

The Executive Director of APA/AICP is the Ethics Officer as referenced in the following.

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into three sections:

> Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.
>
> Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.
>
> Section C contains the procedural provisions of the Code. It (1) describes the way that one may obtain either a formal or informal advisory ruling, and (2) details how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

A: Principles to Which We Aspire

1. Our Overall Responsibility to the Public

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

a) We shall always be conscious of the rights of others.

b) We shall have special concern for the long-range consequences of present actions.

c) We shall pay special attention to the interrelatedness of decisions.

d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.

f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.

g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

2. Our Responsibility to Our Clients and Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

a) We shall exercise independent professional judgment on behalf of our clients and employers.

b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.

c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

3. Our Responsibility to Our Profession and Colleagues

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

a) We shall protect and enhance the integrity of our profession.

b) We shall educate the public about planning issues and their relevance to our everyday lives.

c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.

d) We shall share the results of experience and research that contribute to the body of planning knowledge.

e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.

f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.

g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.

h) We shall continue to enhance our professional education and training.

i) We shall systematically and critically analyze ethical issues in the practice of planning.

j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

B: Our Rules of Conduct

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.

2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.

3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.

5. We shall not, as public officials or employees; accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.

8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.

10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.

11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.

12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.

13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.

14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.

15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.

16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.

17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.

20. We shall not unlawfully discriminate against another person.

21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.

22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.

23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.

24. We shall not file a frivolous charge of ethical misconduct against another planner.

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

C: Our Code Procedures

The code procedures adopted by AICP are not included in this appendix. These procedures may be found at http://www.planning.org.

Appendix D: Principles of Smart Growth[1]

Create Range of Housing Opportunities and Choices

Providing quality housing for people of all income levels is an integral component in any smart growth strategy. Housing is a critical part of the way communities grow, as it is constitutes a significant share of new construction and development. More importantly, however, is also a key factor in determining households' access to transportation, commuting patterns, access to services and education, and consumption of energy and other natural resources. By using smart growth approaches to create a wider range of housing choices, communities can mitigate the environmental costs of auto-dependent development, use their infrastructure resources more efficiently, ensure a better jobs-housing balance, and generate a strong foundation of support for neighborhood transit stops, commercial centers, and other services.

No single type of housing can serve the varied needs of today's diverse households. Smart growth represents an opportunity for local communities to increase housing choice not only by modifying their land use patterns on newly-developed land, but also by increasing housing supply in existing neighborhoods and on land served by existing infrastructure. Integrating single- and multi-family structures in new housing developments can support a more diverse population and allow more equitable distribution of households of all income levels across the region. The addition of units -- through attached housing, accessory units, or conversion to multi-family dwellings -- to existing neighborhoods creates opportunities for communities to slowly increase density without radically changing the landscape. New housing construction can be an economic stimulus for existing commercial centers that are currently vibrant during the work day, but suffer from a lack of foot traffic and consumers in evenings or weekends. Most importantly, providing a range of housing choices allow all households to find their niche in a smart growth community – whether it is a garden apartment, a rowhouse, or a traditional suburban home – and accommodate growth at the same time.

Create Walkable Neighborhoods

Walkable communities are desirable places to live, work, learn, worship and play, and therefore a key component of smart growth. Their desirability comes from two factors. First, walkable communities locate within an easy and safe walk goods (such as housing, offices, and retail) and services (such as transportation, schools, libraries) that a community resident or employee needs on a regular basis. Second, by definition, walkable communities make pedestrian activity possible, thus expanding transportation options, and creating a streetscape that better serves a range of users -- pedestrians, bicyclists, transit riders, and automobiles. To foster walkability, communities must mix land uses and build compactly, and ensure safe and inviting pedestrian corridors.

Walkable communities are nothing new. Outside of the last half-century communities worldwide have created neighborhoods, communities, towns and cities premised on pedestrian access. Within the last fifty years public and private actions often present created obstacles to walkable communities. Conventional land use regulation often prohibits the mixing of land uses, thus lengthening trips and making walking a less viable alternative to other forms of travel. This regulatory bias against mixed-use development is reinforced by private financing policies that view mixed-use development as riskier than single-use development. Many communities -- particularly those that are dispersed and largely auto-dependent -- employ street and development design practices that reduce pedestrian activity.

As the personal and societal benefits of pedestrian friendly communities are realized – benefits which include lower transportation costs, greater social interaction, improved personal and environmental health, and expanded consumer choice -- many are calling upon the public and

private sector to facilitate the development of walkable places. Land use and community design plays a pivotal role in encouraging pedestrian environments. By building places with multiple destinations within close proximity, where the streets and sidewalks balance all forms of transportation, communities have the basic framework for encouraging walkability.

Encourage Community and Stakeholder Collaboration

Growth can create great places to live, work and play -- if it responds to a community's own sense of how and where it wants to grow. Communities have different needs and will emphasize some smart growth principles over others: those with robust economic growth may need to improve housing choices; others that have suffered from disinvestment may emphasize infill development; newer communities with separated uses may be looking for the sense of place provided by mixed-use town centers; and still others with poor air quality may seek relief by offering transportation choices. The common thread among all, however, is that the needs of every community and the programs to address them are best defined by the people who live and work there.

Citizen participation can be time-consuming, frustrating and expensive, but encouraging community and stakeholder collaboration can lead to creative, speedy resolution of development issues and greater community understanding of the importance of good planning and investment. Smart Growth plans and policies developed without strong citizen involvement will at best not have staying power; at worst, they will be used to create unhealthy, undesirable communities. When people feel left out of important decisions, they will be less likely to become engaged when tough decisions need to be made. Involving the community early and often in the planning process vastly improves public support for smart growth and often leads to innovative strategies that fit the unique needs of each community.

Foster Distinctive, Attractive Places with a Strong Sense of Place

Smart growth encourages communities to craft a vision and set standards for development and construction which respond to community values of architectural beauty and distinctiveness, as well as expanded choices in housing and transportation. It seeks to create interesting, unique communities which reflect the values and cultures of the people who reside there, and foster the types of physical environments which support a more cohesive community fabric. Smart growth promotes development which uses natural and man-made boundaries and landmarks to create a sense of defined neighborhoods, towns, and regions. It encourages the construction and preservation of buildings which prove to be assets to a community over time, not only because of the services provided within, but because of the unique contribution they make on the outside to the look and feel of a city.

Guided by a vision of how and where to grow, communities are able to identify and utilize opportunities to make new development conform to their standards of distinctiveness and beauty. Contrary to the current mode of development, smart growth ensures that the value of infill and greenfield development is determined as much by their accessibility (by car or other means) as their physical orientation to and relationship with other buildings and open space. By creating high-quality communities with architectural and natural elements that reflect the interests of all residents, there is a greater likelihood that buildings (and therefore entire neighborhoods) will retain their economic vitality and value over time. In so doing, the infrastructure and natural resources used to create these areas will provide residents with a distinctive and beautiful place that they can call "home" for generations to come.

Make Development Decisions Predictable, Fair and Cost Effective

For a community to be successful in implementing smart growth, it must be embraced by the private sector. Only private capital markets can supply the large amounts of money needed to meet the growing demand for smart growth developments. If investors, bankers, developers, builders and others do not earn a profit, few smart growth projects will be built. Fortunately, government can help make smart growth profitable to private investors and developers. Since the development industry is highly regulated, the value of property and the desirability of a place is largely affected by government investment in infrastructure and government regulation. Governments that make the right infrastructure and regulatory decisions will create fair, predictable and cost effective smart growth.

Despite regulatory and financial barriers, developers have been successful in creating examples of smart growth. The process to do so, however, requires them to get variances to the codes – often a time-consuming, and therefore costly, requirement. Expediting the approval process is of particular importance for developers, for whom the common mantra, “time is money” very aptly applies. The longer it takes to get approval for building, the longer the developer’s capital remains tied up in the land and not earning income. For smart growth to flourish, state and local governments must make an effort to make development decisions about smart growth more timely, cost-effective, and predictable for developers. By creating a fertile environment for innovative, pedestrian-oriented, mixed-use projects, government can provide leadership for smart growth that the private sector is sure to support.

Mix Land Uses

Smart growth supports the integration of mixed land uses into communities as a critical component of achieving better places to live. By putting uses in close proximity to one another, alternatives to driving, such as walking or biking, once again become viable. Mixed land uses also provides a more diverse and sizable population and commercial base for supporting viable public transit. It can enhance the vitality and perceived security of an area by increasing the number and attitude of people on the street. It helps streets, public spaces and pedestrian-oriented retail again become places where people meet, attracting pedestrians back onto the street and helping to revitalize community life.

Mixed land uses can convey substantial fiscal and economic benefits. Commercial uses in close proximity to residential areas are often reflected in higher property values, and therefore help raise local tax receipts. Businesses recognize the benefits associated with areas able to attract more people, as there is increased economic activity when there are more people in an area to shop. In today's service economy, communities find that by mixing land uses, they make their neighborhoods attractive to workers who increasingly balance quality of life criteria with salary to determine where they will settle. Smart growth provides a means for communities to alter the planning context which currently renders mixed land uses illegal in most of the country.

Preserve Open Space, Farmland, Natural Beauty and Critical Environmental Areas

Smart growth uses the term “open space” broadly to mean natural areas both in and surrounding localities that provide important community space, habitat for plants and animals, recreational opportunities, farm and ranch land (working lands), places of natural beauty and critical environmental areas (e.g. wetlands). Open space preservation supports smart growth goals by bolstering local economies, preserving critical environmental areas, improving our communities quality of life, and guiding new growth into existing communities.

There is growing political will to save the "open spaces" that Americans treasure. Voters in 2000 overwhelmingly approved ballot measures to fund open space protection efforts. The reasons for such support are varied and attributable to the benefits associated with open space protection.

Protection of open space provides many fiscal benefits, including increasing local property value (thereby increasing property tax bases), providing tourism dollars, and decreases local tax increases (due to the savings of reducing the construction of new infrastructure). Management of the quality and supply of open space also ensures that prime farm and ranch lands are available, prevents flood damage, and provides a less expensive and natural alternative for providing clean drinking water.

The availability of open space also provides significant environmental quality and health benefits. Open space protects animal and plant habitat, places of natural beauty, and working lands by removing the development pressure and redirecting new growth to existing communities. Additionally, preservation of open space benefits the environment by combating air pollution, attenuating noise, controlling wind, providing erosion control, and moderating temperatures. Open space also protects surface and ground water resources by filtering trash, debris, and chemical pollutants before they enter a water system.

Provide a Variety of Transportation Choices

Providing people with more choices in housing, shopping, communities, and transportation is a key aim of smart growth. Communities are increasingly seeking these choices -- particularly a wider range of transportation options -- in an effort to improve beleaguered transportation systems. Traffic congestion is worsening across the country. Where in 1982 65 percent of travel occurred in uncongested conditions, by 1997 only 36 percent of peak travel occurred did so. In fact, according to the Texas Transportation Institute, congestion over the last several years has worsened in nearly every major metropolitan area in the United States.

In response, communities are beginning to implement new approaches to transportation planning, such as better coordinating land use and transportation; increasing the availability of high quality transit service; creating redundancy, resiliency and connectivity within their road networks; and ensuring connectivity between pedestrian, bike, transit, and road facilities. In short, they are coupling a multi-modal approach to transportation with supportive development patterns, to create a variety of transportation options.

Strengthen and Direct Development Towards Existing Communities

Smart growth directs development towards existing communities already served by infrastructure, seeking to utilize the resources that existing neighborhoods offer, and conserve open space and irreplaceable natural resources on the urban fringe. Development in existing neighborhoods also represents an approach to growth that can be more cost-effective, and improves the quality of life for its residents. By encouraging development in existing communities, communities benefit from a stronger tax base, closer proximity of a range of jobs and services, increased efficiency of already developed land and infrastructure, reduced development pressure in edge areas thereby preserving more open space, and, in some cases, strengthening rural communities.

The ease of greenfield development remains an obstacle to encouraging more development in existing neighborhoods. Development on the fringe remains attractive to developers for its ease of access and construction, lower land costs, and potential for developers to assemble larger parcels. Typical zoning requirements in fringe areas are often easier to comply with, as there are often few existing building types that new construction must complement, and a relative absence of residents who may object to the inconvenience or disruption caused by new construction.

Nevertheless, developers and communities are recognizing the opportunities presented by infill development, as suggested not only by demographic shifts, but also in response to a growing awareness of the fiscal, environmental, and social costs of development focused disproportionately on the urban fringe. Journals that track real estate trends routinely cite the investment appeal of the “24-hour city” for empty nesters, young professionals, and others, and developers are beginning to respond. A 2001 report by Urban Land Institute on urban infill

housing states that, in 1999, the increase in housing permit activity in cities relative to average annual figures from the preceding decade exceeded that of the suburbs, indicating that infill development is possible and profitable.

Take Advantage of Compact Building Design

Smart growth provides a means for communities to incorporate more compact building design as an alternative to conventional, land consumptive development. Compact building design suggests that communities be designed in a way which permits more open space to preserved, and that buildings can be constructed which make more efficient use of land and resources. By encouraging buildings to grow vertically rather than horizontally, and by incorporating structured rather than surface parking, for example, communities can reduce the footprint of new construction, and preserve more greenspace. Not only is this approach more efficient by requiring less land for construction. It also provides and protects more open, undeveloped land that would exist otherwise to absorb and filter rain water, reduce flooding and stormwater drainage needs, and lower the amount of pollution washing into our streams, rivers and lakes.

Compact building design is necessary to support wider transportation choices, and provides cost savings for localities. Communities seeking to encourage transit use to reduce air pollution and congestion recognize that minimum levels of density are required to make public transit networks viable. Local governments find that on a per-unit basis, it is cheaper to provide and maintain services like water, sewer, electricity, phone service and other utilities in more compact neighborhoods than in dispersed communities.

Research based on these developments has shown, for example, that well-designed, compact New Urbanist communities that include a variety of house sizes and types command a higher market value on a per square foot basis than do those in adjacent conventional suburban developments. Perhaps this is why increasing numbers of the development industry have been able to successfully integrate compact design into community building efforts. This despite current zoning practices – such as those that require minimum lot sizes, or prohibit multi-family or attached housing – and other barriers - community perceptions of “higher density” development, often preclude compact design.

[1] Source: Smart Growth Network; www.smartgrowth.org . In 1996, the U.S. Environmental Protection Agency joined with several non-profit and government organizations to form the Smart Growth Network (SGN). The Network was formed in response to increasing community concerns about the need for new ways to grow that boost the economy, protect the environment, and enhance community vitality. The Network's partners include environmental groups, historic preservation organizations, professional organizations, developers, real estate interests; local and state government entities.

Appendix E: Charter for the New Urbanism[1]

The Congress for the New Urbanism views disinvestment in central cities, the spread of placeless sprawl, increasing separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of society's built heritage as one interrelated community-building challenge.

We stand for the restoration of existing urban centers and towns within coherent metropolitan regions, the reconfiguration of sprawling suburbs into communities of real neighborhoods and diverse districts, the conservation of natural environments, and the preservation of our built legacy.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework.

We advocate the restructuring of public policy and development practices to support the following principles: neighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions; urban places should be framed by architecture and landscape design that celebrate local history, climate, ecology, and building practice.

We represent a broad-based citizenry, composed of public and private sector leaders, community activists, and multidisciplinary professionals. We are committed to reestablishing the relationship between the art of building and the making of community, through citizen-based participatory planning and design.

We dedicate ourselves to reclaiming our homes, blocks, streets, parks, neighborhoods, districts, towns, cities, regions, and environment.

We assert the following principles to guide public policy, development practice, urban planning, and design:

THE REGION: METROPOLIS, CITY, AND TOWN

1. Metropolitan regions are finite places with geographic boundaries derived from topography, watersheds, coastlines, farmlands, regional parks, and river basins. The metropolis is made of multiple centers that are cities, towns, and villages, each with its own identifiable center and edges.

2. The metropolitan region is a fundamental economic unit of the contemporary world. Governmental cooperation, public policy, physical planning, and economic strategies must reflect this new reality.

3. The metropolis has a necessary and fragile relationship to its agrarian hinterland and natural landscapes. The relationship is environmental, economic, and cultural. Farmland and nature are as important to the metropolis as the garden is to the house.

4. Development patterns should not blur or eradicate the edges of the metropolis. Infill development within existing urban areas conserves environmental resources, economic investment, and social fabric, while reclaiming marginal and abandoned areas. Metropolitan regions should develop strategies to encourage such infill development over peripheral expansion.

5. Where appropriate, new development contiguous to urban boundaries should be organized as neighborhoods and districts, and be integrated with the existing urban pattern. Noncontiguous development should be organized as towns and villages with their own urban edges, and planned for a jobs/housing balance, not as bedroom suburbs.

6. The development and redevelopment of towns and cities should respect historical patterns, precedents, and boundaries.

7. Cities and towns should bring into proximity a broad spectrum of public and private uses to support a regional economy that benefits people of all incomes. Affordable housing should be distributed throughout the region to match job opportunities and to avoid concentrations of poverty.

8. The physical organization of the region should be supported by a framework of transportation alternatives. Transit, pedestrian, and bicycle systems should maximize access and mobility throughout the region while reducing dependence upon the automobile.

9. Revenues and resources can be shared more cooperatively among the municipalities and centers within regions to avoid destructive competition for tax base and to promote rational coordination of transportation, recreation, public services, housing, and community institutions.

THE NEIGHBORHOOD, THE DISTRICT, AND THE CORRIDOR

1. The neighborhood, the district, and the corridor are the essential elements of development and redevelopment in the metropolis. They form identifiable areas that encourage citizens to take responsibility for their maintenance and evolution.

2. Neighborhoods should be compact, pedestrian-friendly, and mixed-use. Districts generally emphasize a special single use, and should follow the principles of neighborhood design when possible. Corridors are regional connectors of neighborhoods and districts; they range from boulevards and rail lines to rivers and parkways.

3. Many activities of daily living should occur within walking distance, allowing independence to those who do not drive, especially the elderly and the young. Interconnected networks of streets should be designed to encourage walking, reduce the number and length of automobile trips, and conserve energy.

4. Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community.

5. Transit corridors, when properly planned and coordinated, can help organize metropolitan structure and revitalize urban centers. In contrast, highway corridors should not displace investment from existing centers.

6. Appropriate building densities and land uses should be within walking distance of transit stops, permitting public transit to become a viable alternative to the automobile.

7. Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes. Schools should be sized and located to enable children to walk or bicycle to them.

8. The economic health and harmonious evolution of neighborhoods, districts, and corridors can be improved through graphic urban design codes that serve as predictable guides for change.

9. A range of parks, from tot-lots and village greens to ballfields and community gardens, should be distributed within neighborhoods. Conservation areas and open lands should be used to define and connect different neighborhoods and districts.

THE BLOCK, THE STREET, AND THE BUILDING

1. A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use.

2. Individual architectural projects should be seamlessly linked to their surroundings. This issue transcends style.

3. The revitalization of urban places depends on safety and security. The design of streets and buildings should reinforce safe environments, but not at the expense of accessibility and openness.

4. In the contemporary metropolis, development must adequately accommodate automobiles. It should do so in ways that respect the pedestrian and the form of public space.

5. Streets and squares should be safe, comfortable, and interesting to the pedestrian. Properly configured, they encourage walking and enable neighbors to know each other and protect their communities.

6. Architecture and landscape design should grow from local climate, topography, history, and building practice.

7. Civic buildings and public gathering places require important sites to reinforce community identity and the culture of democracy. They deserve distinctive form, because their role is different from that of other buildings and places that constitute the fabric of the city.

8. All buildings should provide their inhabitants with a clear sense of location, weather and time. Natural methods of heating and cooling can be more resource-efficient than mechanical systems.

9. Preservation and renewal of historic buildings, districts, and landscapes affirm the continuity and evolution of urban society.

[1] Source: Congress for the New Urbanism; www.cnu.org. For additional information see: Congress for the New Urbanism. **Charter of the New Urbanism: Region / Neighborhood, District, and Corridor / Block, Street, and Building**. New York: McGraw-Hill Books, 1999.

Appendix F: Information Sources

The organizations listed below provide a broad array of information about planning and the role of the *planning official.*

American Planning Association – www.planning.org

Florida Chapter of the American Planning Association – www.floridaplanning.org

Florida Planning and Zoning Association – www.fpza.org

University of Florida, Department of Urban & Regional Planning – www.dcp.ufl.edu/urp

Florida Atlantic University, Department of Urban & Regional Planning – www.fau.edu/divdept/caupa/durp

Florida State University, Department of Urban & Regional Planning – www.fsu.edu/~durp

MyFlorida.com – The Official Portal of the State of Florida – www.myflorida.com

Florida Department of Community Affairs – www.dca.state.fl.us

Florida Department of Transportation – www.dot.state.fl.us

Florida Department of Environmental Protection – www.dep.state.fl.us

Florida Institute of Government – www.fsu.edu/~iog

Regional Planning Councils – www.myflorida.com (click on Government / Regional Councils & Districts)

Water Management Districts – www.myflorida.com (click on Government / Regional Councils & Districts)

County Governments - www.myflorida.com (click on Government / Local Government)

City Governments - www.myflorida.com (click on Government / Local Government)

Planning Commissioner's Journal – www.plannersweb.com

The Smart Growth Network – www.smartgrowth.org

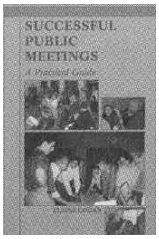
The Urban Land Institute – www.uli.org

The Congress For The New Urbanism – www.cnu.org

Florida Homebuilders Association - www.fhba.org

Appendix G: The Planning Officials Essential Library

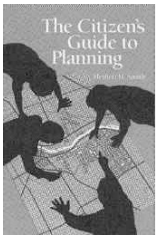
The following references are offered as an essential library for *planning officials.* Ask your planning director if these publications are available. If not, take steps to procure them for your city or county.



Successful Public Meetings

2nd ed. Elaine Cogan. 2000. 134 *pp.*
(APA Planners Press.) www.planning.org/publications

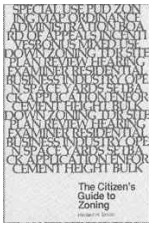
Use this comprehensive guide to plan and conduct productive meetings that leave nothing to chance. Cogan identifies the components of a successful meeting, lists crucial tasks, explains how to avoid or over- come disasters, and reveals tactful; but effective, ways to manage difficult participants. True stories of public meetings enliven the narrative, and step-by-step checklists cover every aspect of meetings. This updated edition encompasses e-mail and the Internet.



Citizen's Guide to Planning

3rd ed. Herbert H. Smith. 1993.267 *pp.*
(APA Planners Press.) www.planning.org/publications

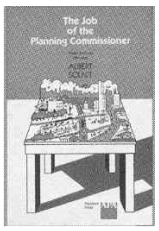
This perennial best seller will help both laymen and aspiring professionals understand the basics of planning. Smith explains the different roles of planning commissioners and professionals. He examines topics such as the master plan, capital improvements programs, zoning, and subdivision regulation. A highly personal, insider's account of the planning process.



Citizen's Guide to Zoning

Herbert H. Smith. .I 983. 242 *pp. (APA Planners Press.) www.planning.org/publications*

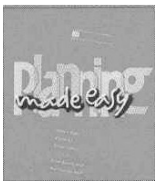
An easy-to-read book about zoning that cuts the jargon out but leaves the wisdom in. Smith explains the fundamental principles of zoning, how to develop zoning regulations, and the nuts and bolts of a zoning ordinance. He examines variances, zoning hearings, and frequent zoning problems



Job of the Planning Commissioner

3rd ed.; revised. Albert So/nit. 1987. 198 *pp.*
(APA Planners Press.) www.planning.org/publications

A popular and practical guide on how to be an effective planning commissioner. Filled with checklists and outlines, it's both a good introduction and a handy reference. Includes criteria for keeping a master plan in working order, lists of tools to guide growth, advice on how to deal with professional staff, and do's and don'ts of successful public meetings.



Planning Made Easy

William Toner et al.1994.168 pp.
(APA Planners Press.) www.planning.org/publications
Training Made Easy *(15-minute video and training guide).*

Developing a program to train planning commissioners and zoning board members takes a lot of time and effort. This manual can help. It covers the basics of planning, zoning, subdivision regulation, and ethics. Organized in discrete modules, it's ideal for both self- study and classroom use. Exercises focus on local planning issues and worksheets reinforce important concepts.

Planning Commissioners Guide

David Allor: 1984. 186 *pp.*
(APA Planners Press.) www.planning.org/publications

Allor shows commissioners how to make group decisions in a reasonable and effective way. He first interviewed commission members. Then he listened to staff presentations, questions and comments of commissioners, and testimony of applicants and witnesses. He uses this information to show how commissioners can work together to direct a community's development.

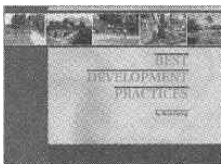
Design With Nature

Ian L. McHarg. 1991; *original* 1969. 198 *pp. (John Wiley & Sons.) www.planning.org/publications*

An elegant reissue of an important planning milestone. This book first brought the concept of environmental sensitivity to the planning profession. and it has served as the basis for much of our most important work. This reprint makes this visionary work available for a new generation of planners

Best Development Practices

Reid Ewing. 1996. *180 pp. (Copublished by APA*
Planners Press and the Urban Land Institute.) www.planning.org/publications



This richly illustrated book argues that developers can create vibrant, livable communities- and still make money. Ewing searched Florida for the best contemporary developments. He studied these exceptional places to find out what lessons they held and distilled them into 43 "best practices" for four areas of development-land use, transportation, the environment, and housing. Case studies show how these practices make good business sense for developers, reduce automobile dependence, increase the supply of affordable housing, and serve other important public purposes.

Customer Service in Local Government

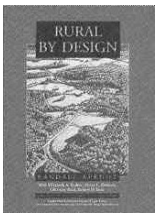
Bruce w: McClendon. 1992. 226 *pp. (APA Planners Press.) www.planning.org/publications*

McClendon shows how local governments benefit when they make customers a priority and incorporate their needs in all government functions. He explains how to use interviews, surveys, and focus groups to assess what services address local problems and craft citizen participation programs that build ongoing communication. Case studies demonstrate how such programs improve customer satisfaction.

Above and Beyond

Julie Campoli, Elizabeth Humstone, and Alex
Maclean. 2002. 203 pp. (APA Planners Press.) www.planning.org/publications

Above and Beyond compares contemporary and traditional development patterns and demonstrates how suburban sprawl is forever changing the look of rural America. Aerial photographs- many altered through computer simulation to illustrate how landscapes are transformed over time-show how traditional development patterns produce more compact cities and towns. The authors introduce communities that have successfully fought sprawl and invigorated their town areas; nurtured community identity; rewritten land-use regulations to allow for more compact development; and overcome the "cars rule" mentality of sprawl development. These examples will inspire planners, planning officials, and concerned citizens in rural communities and small towns everywhere.



Rural by Design

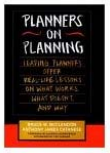
Randall Arendt. 1994. 441 *pp. (APA Planners Press.) www.planning.org/publications*

Conventional planning techniques just aren't working in many rural and suburbanizing areas. Arendt advocates creative land-use planning techniques for preserving open space and community character in a variety of residential, commercial, and mixed-use developments. Thirty-eight cases from 21 states demonstrate how rural and suburban communities have preserved open space, established land trusts, and designed affordable housing appropriate for their size and character.

Welcome to the Commission: A Guide for New Members

The Planning Commissioners Journal. 40 pp www.plannersweb.com

The Guide for New Members is 40 pages long and incorporates carefully selected excerpts from past PCJ articles and columns. Illustrations by cartoonist Mark Hughes help highlight points made in the text. At the end of the Guide you'll also find an annotated reading list of books of particular interest to new commissioners. The Guide is also 3-hole punched for easy storage.



Planners on Planning : Leading Planners Offer Real-Life Lessons on What Works, What Doesn't, and Why

Bruce W. McClendon, Anthony James Catanese, 320 pp, *(Jossey-Bass) www.amazon.com*

Offers pragmatic information on the realities of day-to-day practice from some of the most innovative, respected, and visionary leaders in the planning profession today. Bridging the gap between theory and practice, this guide provides straightforward lessons from today's most effective planners on the core values, skills, and techniques needed for success. Through personal, real-life examples from the trenches, these experts explain in their own words what works, what doesn't, and why.

2019
City of Jacksonville
Orientation Program

SOVEREIGN IMMUNITY

Materials Prepared and Assembled By:

Jon R. Phillips, Deputy General Counsel

June 2019

SOVEREIGN IMMUNITY

The concept of sovereign immunity derives from English common law, the original idea being that the King could do wrong and, therefore, could not be sued. In the United States, the traditional sovereigns were the United States government and the governments of each state. This immunity generally inured to the benefit of individual employees, so long as the employees were engaged in the work of the sovereign. Historically, if a government employee injured a citizen, the citizen could not seek redress against either the employer or the employee in court.

Florida's more modern--and more fair--iteration of this idea dates, for today's purposes, to the passage of Section 768.28 of the Florida statutes in 1973. This statute provided and clarified, among other things, that not only the State of Florida but also counties, municipalities, and certain other governmental agencies each enjoy sovereign immunity. The statute then provided a limited waiver of sovereign immunity so as to provide some relief for torts (or harms) committed by employees of such entities.

Entities that are entitled to sovereign immunity include the state government, its agencies and its political subdivisions, i.e., counties and the City of Jacksonville, as well as corporations and entities acting primarily as instrumentalities or agencies of the State. F.S. 768.28 also clarified that municipal corporations and other entities are also entitled to sovereign immunity. For example, JEA, JTA, JAA, JaxPort, the Housing Authority, and the Duval County School Board are all entitled to sovereign immunity in Florida. Employees of governmental entities are likewise still immune from tort lawsuits in their individual capacities, except if they act in bad faith or outside the course and scope of their employment. Consequently, before a claimant may prevail in court over a governmental entity, he or she must first establish a waiver of sovereign immunity.

Five principal public policy considerations support the doctrine of sovereign immunity:

- The public treasury must be protected from excessive encroachments;
- Orderly government administration would be disrupted if the state could be sued for all of its activities without limitation;
- Governmental decision-making requires flexibility and discretion;
- Separation of powers concerns prohibit the judicial branch from interfering with the discretionary functions of the legislative or executive branches, absent a violation of a constitutional or statutory right; and
- The government could not attract competent workers if the workers could be held personally liable in Court for mere negligence in doing their jobs.

However, the doctrine of sovereign immunity has not gone without some criticism. These criticisms include:

- The injustice of leaving an injured plaintiff without an adequate remedy;
- The need to deter tortious (even negligent) conduct of government employees; and

- The policy of enhancing the public's ability to make informed decisions about the conduct and efficiency of its government by bringing wrongful conduct to public attention.

In dealing with municipal sovereign immunity, the Florida courts have divided municipal activities into two groups: *governmental* functions and *proprietary* functions. Florida courts define *proprietary* functions as functions that might be provided by private corporations. Proprietary functions include such things as operation of playgrounds and recreational areas, repairing and maintaining streets, and erecting and operating water supply systems, lighting, and negligent operation of police cars or fire equipment. On the other hand, *governmental* functions are any functions that fall under legislative and executive discretion or any other purely governmental function. For example, when a municipality is performing governmental functions such as preserving the public peace, enforcing the laws, protecting the community from fire and disease, and issuing building permits or licenses, the municipality will not be held liable for torts committed in the performance of these activities. After the enactment of F.S. §768.28, the Florida Courts have identified certain activities for which the governmental entity may be held liable. Activities that fall outside these defined areas of immunity or liability are examined on a case-by-case basis.

F.S. §768.28 mandates certain pre-suit requirements must be complied with before a party may file a claim against an entity protected by sovereign immunity. First, a plaintiff may not file a suit against a governmental agency without first presenting the claim to the entity in writing. The claim must be presented within three years of the incident, except for wrongful death and medical malpractice claims, which have a shortened time period for presenting the notice.

Second, in accordance with F.S. §768.28, the plaintiff is required to describe or identify the details of the claim to the governmental entity. This notice requirement theoretically facilitates the governmental entity's investigation of the claim.

Third, suit cannot be filed until six months after the claim notice is presented, unless the claim is denied by the government entity before the six-month period expires. The government entity may allow the time to lapse, thereby denying the claim. The plaintiff should allege both of the conditions in the complaint. If the plaintiff fails to allege these conditions, the court may dismiss the complaint with leave to amend. If the time for the notice has expired, the court may then dismiss the complaint with prejudice.

Fourth, most claims must be filed within four years of the incident, not from the time of notice.

In addition to the statutory notice requirement, some municipalities, including the City of Jacksonville, require specific notice as outlined in their local ordinance codes. Even if an individual follows the conditions precedent as established in F.S. §768.28, the Plaintiff may be delayed from filing suit or barred from filing due to non-compliance with local notice requirements. For example, while F.S. §768.28 requires notice, it does not specify who is to receive notice or what information the notice must contain. To rectify this problem, the City of

Jacksonville enacted §112.201-112.206 of the Jacksonville Ordinance Code. These provisions specify how a claimant is to comply with the notice requirements of F.S. §768.28.0F[1]

Even when the governmental entity has waived its sovereign immunity and is found liable for the tortious action, Florida law limits the amount of damages that may be recovered on a claim against the entity. For all injuries occurring after October 1, 2011, liability is limited to $200,000 on a claim by any one person, or up to $300,000 for all claims arising from the same incident or occurrence[2]. If an individual receives a judgment in excess of the limit, the governmental entity is only required to pay up to the limit. The successful plaintiff who receives a judgment in excess of these amounts may request to have a sum up to the amount of the entire judgment paid by presenting a claims bill to the state legislature. If the legislature approves a claims bill, the governmental entity will be required to pay some, or all of the amount, of the judgment.

There are limitations on when the doctrine of sovereign immunity may bar recovery. The governmental entity may not raise sovereign immunity as a defense to an action based upon a violation of federal statutes or the United States Constitution. Additionally, the courts have held that governmental entities implicitly waive sovereign immunity in certain situations such as in condemnation, breach of contract and in counter-claims against the entity. Other types of claims are expressly permitted by statute, such as claims under the Florida Civil Rights Act.

In conclusion, the doctrine of sovereign immunity serves an important purpose in allowing governmental entities to perform routine, daily tasks free from the fear of certain types of tort litigation. Before a claimant may bring a tort action against a municipality, it must first be determined whether or not the claimant is suing on an activity that can support liability. Once liability has been determined, the claimant must then fulfill the conditions precedent to file the claim. Although the courts have defined boundaries on activities that are immune from tort liability and activities that waive the immunity, there are many situations that do not clearly fall within these boundaries and must be evaluated on a case-by-case basis.

[1] Florida Courts have determined that provisions such as the ones set forth in the Jacksonville Ordinance Code which provide the method and content of the notice required by F.S. §768.28 are valid and enforceable. *Boven v. City of St. Petersburg*, 73 So.2d 232, 234 (Fla. 1954).

[2] Prior to that date, the statutory limit was $100,000.00/$200,000.00--up from the original 1973 limits of $50,000.00/$100,000.00. This increase in the statutory limit has unsurprisingly resulted in a significant increase in the number of tort lawsuits filed against the City and the other clients of the Office of General Counsel.

2019
City of Jacksonville
Orientation Program

SUNSHINE LAW

Materials Prepared and Assembled By:

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Paige H. Johnston, Chief, Legislative Affairs

June 2019

FLORIDA'S OPEN MEETINGS "SUNSHINE" LAW

I. HISTORY OF THE SUNSHINE LAW

Florida first established a requirement in 1967 to have meetings open to the public. This was about the time the City of Jacksonville consolidated. The obligations of public officials in connection with open meetings have expanded by both legislative and judicial and advisory interpretations ever since. The basic law, known as the Sunshine Law, is found in Chapter 286, Florida Statutes, and states in pertinent part:

> All meetings of any board or commission . . . or 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. The board or commission must provide reasonable notice of all such meetings. Section 286.011, F.S.

In 1992, the Florida voters adopted Article 1, Section 24(b) of the Constitution of the State of Florida which created a constitutional guarantee to open public meetings. It reads as follows:

> All meetings of any collegial public body of . . . a county, municipality . . . at which official acts are to be taken or at which public business of such body is to be transacted or discussed shall be open and noticed to the public . . . .

The Attorney General of the State of Florida has always been considered the State's guardian of the State's open government laws, including the public meetings law, and annually publishes the "Government-In-The-Sunshine Manual" which contains over 450 pages of guidance and references to assist Florida's public officials in open government compliance, and citizens in open government access. James Madison recognized the importance of open government more than 200 years ago, writing:

> A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.

II. THE SCOPE OF THE SUNSHINE LAW

The Sunshine Law contains the following fundamental principles:

A. The Sunshine Law applies to all public officials elected and appointed, commissions, councils, and boards and to any committees that has any authority beyond that gathering and includes members-elect;

B. The Sunshine Law requires meetings to be open to the public;

C. The Sunshine Law requires reasonable notice of each meeting;

D. The Sunshine Law requires minutes of each meeting to be taken and transcribed.

III. CONSEQUENCES FOR VIOLATION OF THE SUNSHINE LAW

A. A knowing violation of the law is a misdemeanor of the second degree. (60 days in jail) Sec. 286.011(3)(b), F.S.;

B. All other violations are considered non-criminal with fines not exceeding $500.00. Sec. 286.011(3)(a), F.S.;

C. Removal from office is an option for the Governor. Sec. 112.52, F.S.;

D. Civil actions for injunctive or declaratory relief may be filed with the result being a court order:

1. Declaring the violation;[1]

2. Enjoining future violations;[2]

3. Invalidating action taken by the Council or Committee; [3]

4. Awarding attorneys' fees and costs in the event a violation is found even against the individual in violation.[4]

IV. COUNCIL AND BOARD MEETINGS SUBJECT TO THE "SUNSHINE LAW"

A. The law applies when any *two or more* Council or Board Members meet to discuss any matter which will *foreseeably* be acted upon by the Council or a Board or any committee thereof;[5]

B. Council or Board meetings;

C. Standing committee meetings;

D. Ad hoc committee meetings;
E. Casual gatherings of two or more members;

F. Chance gatherings of two or more members;

G. Telephone conversations between two or more members;

H. Written or electronic correspondence used to develop a position or engage in written debate;[6]

I. Third party liaisons used to communicate information between Council or Board Members;[7]

J. Any single Council or Board Member when that member acts as a decision maker for the Council or Board as a whole or for a committee;[8]

K. The law does not apply to a meeting between a single Council or Board Member and one or more Council or Board staff persons;[9]

L. Does not apply to a single Council or Board Member and the Mayor or one or more of the Mayor's staff;[10]

M. Does not apply to a single Council or Board Member and members of the public;

N. Does not apply to a single Council or Board Member and one elected or appointed official from another board, commission or agency;[11]

O. Does not apply to a Council or Board Member speaking about their philosophies, trends, and issues facing the City at a public forum where there is no intent to circumvent the law.[12]

V. TYPES OF DISCUSSIONS COVERED BY THE SUNSHINE LAW

A. Any matter which will *foreseeably* be acted upon by the Council or Board or any committee thereof;

B. Pending ordinances, resolutions, and agenda items;

C. Matters that will be *foreseeably* drafted into ordinances, resolutions, and agenda items such as, by way of example;

1. Quasi-judicial or fact- finding matters;[13]

2. Investigative inquiries;

3. Personnel matters;[14]

4. Interviews;[15]

5. Screening committees;[16]

6. Most economic development matters;[17]

7. Most legal matters.[18]

VI. EXEMPTIONS TO THE SUNSHINE LAW – "SHADE" MEETINGS

A "shade" meeting is a colloquialism for a meeting that is customized to be held out of the "sunshine." Examples are:

A. Certain collective bargaining strategy sessions - Sec. 447.605(1) F.S.

No notice and no minutes required.

B. Limited attorney-client litigation strategy sessions - Sec. 286.011(8), F.S.

Strict notice and steno-reported minutes required to be taken and printed.

C. Other exemptions that may be created by Florida Statute, from time to time;

VII. NOTICE, LOCATION, AND PROCEDURAL REQUIREMENTS

"Reasonable" notice is required; Sec. 286.011 (1), F.S.

1. "Reasonable" is an undefined term subject to interpretation on a case by case basis. One method of addressing the "reasonableness" standard is to ask whether a judge ruling on a civil complaint, with the power to award attorneys' fees and the power to void the action of the Council, would find the notice to be reasonable under the circumstances;

2. **24 hours** is generally considered the minimum notice for special meetings;

3. Reasonable notice is required even if there is a general knowledge of the meeting;[19]

4. Reasonable notice is required even if a quorum will not be present;[20]

5. Notice must be posted in an area typically set aside for posting City notices;

6. The meeting sponsors frequently contact the local media;
7. Some meetings must be advertised;

8. A posting of a detailed agenda citing every matter to be discussed is generally not required, but circumstances may justify more detailed notice to specific persons from time to time.[21]

B. Meetings must be located where the public has reasonable opportunity to attend and may not be held at any location that discriminates; Sec. 286.011(6), F.S.;

C. Meetings at public facilities are required by the Ethics Code, Chapter 602, Ord. Code;

D. "Silent" and non-disruptive recording devices may not be prohibited;[22]

E. The chair person in a meeting may utilize reasonable time, place, and manner restrictions to ensure the orderly conduct of the meeting;[23]

F. Section §286.0114, F.S., affords the public a reasonable opportunity to be heard by a board or commission before it takes official action on most matters. A public hearing (or in some cases public participation in lieu of a public hearing) provide an opportunity to be heard prior to final action. [24]

Endnotes

1. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974); Port Everglades Authority v. ILA, 652 So. 2d 1169 (Fla. 4th DCA 1995)
2. Port Everglades Authority v. ILA, 652 So. 2d 1169 (Fla. 4th DCA 1995)
3. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974)
4. Section 286.011(4), F.S.
5. City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971)
6. Op. Atty Gen. Fla. 89-23 (1989); Op. Atty Gen. Fla. 89-39 (1989); Op. Atty Gen. Fla. 90-19 (1990)
7. Blackford for Use and Benefit of Cherokee Jr. High School Parent Teacher Assoc. v. School Bd. of Orange County, 375 So. 2d 578 (Fla. 5th DCA 1979)
8. News-Press Publishing Co., Inc. v. Carlson, 410 So. 2d 546 (Fla. 2d DCA 1982); Op. Atty Gen. Fla. 74-294 (1974); Op. Atty Gen. Fla. 84-54 (1984)
9. Sarasota Cit. for Resp. Gov't v. City of Sarasota, 48 So. 3d 755, 764 (Fla. 2010)
10. Op. Atty Gen. Fla. 90-26 (1990) and Op. Atty Gen. Fla. 85-36 (1985)
11. Rowe v. Pinellas Sports Authority, 461 So.2d 72 (Fla. 1984)
12. Op. Atty Gen. Fla. 94-62 (1994)
13. Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973)
14. Times Publishing Company v. Williams, 222 So.2d 470 (Fla. 2d DCA 1969), *overruled in*

part on other grounds by Neu v. Miami Herald Publishing Co., 462 So. 2d 821 (Fla. 1985)

15. Op. Atty Gen. Fla. 89-37 (1989)

16. Wood v. Marston, 442 So. 2d 934 (Fla. 1983)

17. City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971)

18. Neu v. Miami Herald Publishing Company, 462 So. 2d 821 (Fla. 1985)

19. TSI Southeast, Inc. v. Royals, 588 So. 2d 309 (Fla. 1st DCA 1991)

20. Op. Atty Gen. Fla. 71-346 (1971) and Op. Atty Gen. Fla. 90-56 (1990)

21. Op. Atty Gen. Fla. 73-170 (1973) and Op. Atty Gen. Fla. 80-78 (1980)

22. Op. Atty Gen. Fla. 77-122 (1977)

23. Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989)

24. Laws of Florida 2013-227

2019
City of Jacksonville
Orientation Program

PUBLIC RECORDS LAW

Materials Prepared and Assembled By:

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Paige H. Johnston, Chief, Legislative Affairs

June 2019

FLORIDA'S PUBLIC RECORDS LAW

I. HISTORY

Florida's first Public Records Law was passed in 1909 and stated:

> "That all State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen." Chapter 5942, Acts 1909, Sec.1

Since 1909, Florida's Public Records Law, codified in Chapter 119 of the Florida Statutes, has grown exponentially.

In 1992, the people adopted Article 1, Section 24(a) of the Florida Constitution which provided a constitutional guarantee to the openness of public records.

The Attorney General of the State of Florida has always been considered the State's guardian of the State's open government laws, including the Public Records Law; and annually publishes the "Government-In-The-Sunshine Manual which contains over 450 pages of guidance and references to assist Florida's public officials in open government compliance, and citizens in open government access.

Justice William O. Douglas, in explaining the importance of open government, wrote:

> "Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic error." *New York Times v. United States*, 403 U.S. 713, 724 (1971) (Douglas, J., concurring)

II. SCOPE OF THE PUBLIC RECORDS LAW

A. The law requires the custodian of a public record to permit the inspection and copying of all public records under reasonable conditions and supervision. Sec. 119.07(1), F.S.

B. The law applies to virtually every document <u>made</u> or <u>received</u> pursuant to law or ordinance, or in connection with the transaction of official business by any public agency. Sec. 119.011(1), F.S. Examples of these documents include:

1. documents, papers, letters;

2. maps, books, tape recordings;
3. films, data processing, e-mail, texts;
4. social media posts when made from an official government account or by an employee or elected or appointed official in the course of business;
5. any material regardless of physical form, characteristics, or means of transmission.

C. The law applies to documents in the possession of the Council, the Council Committees, Council Members and Council Staff. Sec. 119.011(2), F.S.

D. All such documents are public records unless exempted by a Florida statute.

E. The City Council is powerless to pass exemptions to the Florida Public Records Law.[1]

III. THE CONSEQUENCES OF FAILING TO COMPLY WITH THE ACT

A. A "knowing" violation of the law is a misdemeanor of the first degree punishable by imprisonment in jail for up to one (1) year. Sec. 119.10(2), F.S.

B. All other violations are noncriminal punishable by fines not exceeding $500.00. Sec. 119.10(1), F.S.

C. Civil actions

1. A violation of the Act will likely result in a civil action for injunctive or declaratory relief against the City and the individual Council Member wherein the claimant will seek to:

a. Declare the violation; Sec. 119.11, F.S.

b. Compel disclosure and copying; [2] and

c. Award of attorneys' fees and costs in the event of violation. Sec. 119.12, F.S.

IV. NON-FINAL, AS WELL AS FINAL AND COMPLETED DOCUMENTS, ARE SUBJECT TO PUBLIC RECORDS DISCLOSURE

A. Non-final documents which are subject to disclosure include those that are intended to perpetuate, communicate, or formalize knowledge, and include such things as:

1. Draft documents circulated for review, comment or information, even if considered a "working" or "preliminary" draft; [3]

2. Drafts and notes intended as final evidence of knowledge; [4]

3. Handwritten notes intended to communicate, memorialize, formulate, or preserve knowledge.

B. It is generally accepted that the following documents are not public records subject to disclosure:

1. Personal notes used only to prepare other documentary records. [5]

2. Notes given to a secretary or assistant for transcription.

3. Preliminary notes made by a public custodian intended only for personal use in developing a document or presentation.

4. Draft audit reports prepared by the Council Auditor as part of an internal audit of Council or inter-city governmental related matters.

5. Personal correspondence of any sort. [6]

V. EXEMPTIONS

The Florida Legislature has seen fit to "exempt," or protect from disclosure, many types of documents from the mandatory disclosure requirements of the public records law. This has been done to protect the privacy of some employees, to protect the integrity of the public bidding process and the collective bargaining process, and for other reasons deemed appropriate by the Legislature. The following are guidelines that are applied to exemptions:

A. All exemptions from mandatory disclosure are found only in the Florida Statutes. [7]

B. Many exemptions from mandatory disclosure are found in Section 119.07(3), Florida Statutes but many other exemptions are scattered throughout the Florida Statutes. Common exemptions from mandatory disclosure include:

1.	EEO Complaints and Investigations.	Sec. 119.071(2)(g)
2.	Certain Collective Bargaining Material	Sec. 447.605
3.	Medical Records	Sec. 119.071(4)(b)1

4.	Certain Attorney-Client Materials	Sec. 119.071(1)(d)1
5.	Certain Trade Secrets	Sec. 815.045; Sec. 119.0713(4)(a)
6.	Criminal Investigation Information	Sec. 119.071(2)(c)1
7.	Police Complaint Information	Sec. 112.533
8.	Draft or nonfinal internal audit reports	Sec. 119.0713(2)(b)1
9.	Whistleblower Complaints	Sec. 112.3189
10.	Commission on Ethics Complaints	Sec. 112.3188, .3189

C. Unless there is certainty that an exemption from mandatory disclosure exists, a public official should contact an attorney in the Office of General Counsel for guidance.

D. Very few exemptions from mandatory disclosure apply to the City Council, Council Committees, or Council Members.

E. If an exemption from mandatory disclosure is claimed to prevent disclosure, the exemption must be identified to the requestor. Sec. 119.07(1)(e).

F. Some exemptions from mandatory disclosure are only for a limited time.

VI. THE PROCESS FOR ACCESS AND COPYING

A. A custodian of the record responsible for disclosure is any person who has it within his or her power to release the documents; [8]

B. A person seeking disclosure need not show a "special interest" in order to have access to disclosure; [9]

C. A person need not even identify his or her self in order to obtain disclosure[10] (There is nothing that prevents the custodian from asking for identification. The custodian simply cannot make a disclosure a condition for release of the public record);

D. Public records requests do not have to be in writing though the custodian may ask for, but not require a written request;

E. A custodian may not deny a request for disclosure on the basis that the request is too broad. The custodian may, however, work with the requestor to identify precisely which documents are requested, and may charge appropriate statutorily prescribed fees for complying with the request. [11]

VII. TIMELINESS OF DISCLOSURES

A. There are no specific time limitations. Most requests will present little, but some will present significant, difficulty in production;

B. **Reasonableness** is the standard. It is based upon common sense, and an objective opinion of how a judge or a prosecutor would view the conduct if the custodian were charged with violating the law;

C. The Public Records Law does not provide for any type of "automatic" delay that the custodian can rely upon; [12]

D. An unreasonable or excessive delay in production will likely lead to a civil action with the possibility of embarrassment, fines, penalties and assessment of attorneys' fees and costs.[13]

VIII. FEES AND COSTS WHICH CAN BE CHARGED FOR PRODUCTION AND COPYING

A. The standard cost of production and copying is 15 cents a page for single-sided letter or legal-sized copies and 20 cents a page for two sided copies. A charge of up to $1.00 per record may be charged for certified records; Sec. 119.07(1)(a), F.S.;

B. If a record, such as a plat or map for example, costs more than the standard amount to duplicate, the requestor may be charged the actual cost of duplication, without regard for overhead or labor costs;

C. There are no administrative or personnel costs that maybe imposed when complying with simple public records requests;

D. If the nature or volume of public records to be inspected or copied requires substantial use of clerical time or information technology, a reasonable service charge based upon actual costs may be charged. Sec. 119.07(1)(d), F.S.

E. Deposits may be required before production, inspection and copying begins. [14]

IX. DESTRUCTION OF PUBLIC RECORDS

A. Records can only be destroyed with the approval of the State of Florida's Division of Library and Information Services, Department of State (Division) per its general records retention schedule.

B. The City may obtain an orderly retention schedule from the Division.

https://dos.myflorida.com/library-archives/records-management/general-records-schedules/

STATE OF FLORIDA

GENERAL RECORDS SCHEDULE GS1-SL
FOR
STATE AND LOCAL GOVERNMENT AGENCIES

EFFECTIVE: August 2017
R. 1B-24.003(1)(a), Florida Administrative Code

Florida Department of State
Division of Library and Information Services

Tallahassee, Florida

850.25.6750
https://dos.myflorida.com/media/698312/gs1-sl-2017-final.pdf

Samples:

MINUTES: OFFICIAL MEETINGS **Item #32**

This record series consists of the official record of official meetings, defined in Section 286.011(1), Florida Statutes, Public meetings and records, as "All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken..." The series may include verbatim transcripts or minutes summarizing issues addressed, actions taken, and decisions made. The series may also include agendas and background materials used as reference documentation for agenda items; these should be included when they are necessary to understand the minutes. For documentation of the logistics/planning of the meetings such as venue information or directions, travel itineraries, and reservations and confirmations, use "ADMINISTRATIVE SUPPORT RECORDS." See also "CABINET AFFAIRS FILES," "MINUTES: OFFICIAL MEETINGS (PRELIMINARY/AUDIO RECORDINGS/VIDEO RECORDINGS)," "MINUTES: OFFICIAL MEETINGS (SPECIAL DISTRICTS/AGENCY SUPPORT ORGANIZATIONS/NON-POLICY ADVISORY BOARDS)," "MINUTES: OFFICIAL MEETINGS (SUPPORTING DOCUMENTS)" and "MINUTES: OTHER MEETINGS." ***These records may have archival value.***

RETENTION:

a) Record copy. Permanent. ***State agencies should contact the State Archives of Florida for archival review after 5 years. Other agencies should ensure appropriate preservation of records.***
b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

MINUTES: OFFICIAL MEETINGS (PRELIMINARY/AUDIO RECORDINGS/VIDEO RECORDINGS **Item #4**

This record series consists of handwritten or typed notes and/or audio and/or video recordings of official meetings as defined in Section 286.011(1), Florida Statutes, Public meetings and records. See also "MINUTES: OFFICIAL MEETINGS," "MINUTES: OFFICIAL MEETINGS (SPECIAL DISTRICTS/AGENCY SUPPORT ORGANIZATIONS/NON-POLICY ADVISORY BOARDS)" and "MINUTES: OFFICIAL MEETINGS (SUPPORTING DOCUMENTS)."

RETENTION:

a) Record copy. 2 anniversary years after adoption of the official minutes or certification of transcript.
b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

MINUTES: OFFICIAL MEETINGS (SUPPORTING DOCUMENTS) Item #123

This record series consists of supporting documents for minutes and agendas generated by official meetings as defined in Section 286.011(1), Florida Statutes, Public meetings and records. These records provide information necessary for conducting the meeting or completing the minutes but do not document actual meeting proceedings. Records may include, but are not limited to, copies of required public notices of meeting, attendance lists, roll call sheets, sign-in sheets for speakers, and agendas and background materials used as reference documentation for agenda items. See also "CABINET AFFAIRS FILES," "MINUTES: OFFICIAL MEETINGS (PRELIMINARY/AUDIO RECORDINGS/VIDEO RECORDINGS)," "MINUTES: OFFICIAL MEETINGS," "MINUTES: OFFICIAL MEETINGS (SPECIAL DISTRICTS/AGENCY SUPPORT ORGANIZATIONS/NON-POLICY ADVISORY BOARDS)" and "MINUTES: OTHER MEETINGS."

RETENTION:

a) Record copy. 2 anniversary years after adoption of the official minutes or certification of transcript.
b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

MINUTES: OTHER MEETINGS Item #33

This record series consists of minutes and all supporting documentation from meetings that are not official meetings as defined in Section 286.011(1), Florida Statutes, Public meetings and records. **These records may have archival value.**

RETENTION:

a) Record copy. 1 anniversary year after date of meeting. ***State agencies must contact the State Archives of Florida for archival review before disposition of records. Other agencies should ensure appropriate preservation of records determined to have long-term historical value.***
b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

ORDINANCES Item #228

This record series consists of county or municipal ordinances. Section 166.041(1)(a), Florida Statutes, Procedures for adoption of ordinances and resolutions, defines "ordinance" as "an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law." See also "CHARTERS/AMENDMENTS/BYLAWS/ CONSTITUTIONS," "ORDINANCES: SUPPORTING DOCUMENTS," "PROCLAMATIONS," and "RESOLUTIONS." ***These records may have archival value.***

RETENTION:

a) Record copy. Permanent. ***State agencies should contact the State Archives of Florida for archival review after 5 years. Other agencies should ensure appropriate preservation of records.***
b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

ORDINANCES: SUPPORTING DOCUMENTS **Item #229**

This record series consists of documentation used in formulating ordinances including, but not limited to, correspondence, studies and reports, petitions, and other supporting documentation. See also "ORDINANCES." ***These records may have archival value.***

RETENTION:

a) Record copy. 5 years after adoption of ordinance. ***State agencies must contact the State Archives of Florida for archival review before disposition of records. Other agencies should ensure appropriate preservation of records determined to have long-term historical value.***
b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

X. TALKING ABOUT PUBLIC RECORDS

Custodians are obliged to produce existing public records. They are not, however, required to discuss or explain them. They are not required to create a new record in response to a public record request, although this may at times be easier for the custodian.[15]

Endnotes

[1] Tribune Company v. Cannella, 458 So. 2d 1075 (Fla. 1984)

[2] Staton v. McMillan, 597 So. 2d 940 (Fla. 1st DCA 1992)

[3] Shevin v. Byron, Harless, Schaffer, Reid & Assoc., 379 So. 2d 633 (Fla. 1980); Coleman v. Austin, 521 So. 2d 247, 248 (Fla. 1st DCA 1988)

[4] Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc., 718 So. 2d 227, 229 (Fla. 3d DCA 1998)

[5] The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, 823 So. 2d 185, 192 (Fla. 1st DCA 2002); Coleman v. Austin, 521 So. 2d 247 (Fla. 1st DCA 1988)

[6] State v. City of Clearwater, 863 So. 2d 149, 154 (Fla. 2003); see also, O'Boyle v. Town of Gulf Stream, 257 So. 3d 1036 (Fla. 4th DCA 2018); compare, Miami-Dade County v. Professional Law Enforcement Association, 997 So. 2d 1289 (Fla. 3d DCA 2009)

[7] Tribune Company v. Cannella, 458 So.2d 1975 (Fla. 1984)

[8] Sec. 119.021, F.S.; see also, Puls v. City of Port St. Lucie, 678 So.2d 514 (Fla. 4th DCA 1996); Sec. 119.07(1)(a), F.S.

[9] Curry v. State, 811 So. 2d 736, 742 (Fla. 4th DCA 2002), Barfield v. School Board of Manatee County, 135 So. 3d 560, 562 (Fla. 2d DCA 2014); Timoney v. City of Miami Civilian Investigative Panel, 917 So. 2d 885 (Fla. 3d DCA 2005); Lorei v. Smith, 464 So. 2d 1330, 1332 (Fla. 5th DCA 1985); State ex rel. Davis v. McMillan, 38 So.666 (Fla. 1905)

[10] Op. Atty Gen. Fla 91-76 (1991); Ops. Atty Gen. Fla. 92-38 (1992);

[11] Lorei v. Smith, 464 So. 2d 1330 (Fla. 2d DCA 1985)

[12] Tribune Company v. Cannella, supra.

[13] Promenade D'Iberville, LLC v. Sundy , 145 So. 3d 980, 983 (Fla. 1st DCA 2014)

[14] Board of County Commissioners of Highlands Co. v. Colby, 976 So. 2d 31 (Fla. 2d DCA 2008)

[15] Op. Atty Gen. Fla. 92-38 (1992)

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City of Jacksonville
Orientation Program

PARLIAMENTARY PROCEDURE APPLICABLE TO THE JACKSONVILLE CITY COUNCIL

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APPLICABLE TO JACKSONVILLE CITY COUNCIL

BACKGROUND AND HISTORY

A. Generally

- Laws are enacted through deliberative discussion, debate and vote

- Parliamentary procedure is the body of rules, ethics, and customs governing meetings and other operations of clubs, organizations, legislative bodies, and other deliberative assemblies.

- Parliamentary rules serve to:

  - Expedite business
  - Maintain order
  - Ensure justice and equal treatment
  - Accomplish the organization's purpose

- American parliamentary law is built upon the principle that rights must be respected. The rights of the:

  - Majority
  - Minority
  - Individuals
  - Absentees

B. History of Parliamentary Rules

- American parliamentary law was originally based upon what the settlers remembered about rules used in the English Parliament

- Originally, each colony had its own set of rules

- In 1801, Thomas Jefferson determined that a uniform system of rules was needed and he wrote rules which were adopted by the U.S. House and Senate

- In 1876, Henry Robert Martin, an engineer, authored the book of rules known as *Robert's Rules of Order*

"TEN COMMANDMENTS" OF PARLIAMENTARY PROCEDURE

There are ten basic concepts upon which all rules of parliamentary procedure are based:

1. **Rights of the organization supersede rights of the individual**

   - The organization makes its own rules
   - The members must observe the rules

2. **All members are equal and all rights are equal**

   - All members have the right to:
     - Attend meetings
     - Speak in debate
     - Make motions
     - Vote

3. **A quorum is necessary to do business**

   - A quorum prevents an unrepresentative group from taking action in the name of the organization

4. **The majority rules**

   - Minority must respect and abide by the majority decision

5. **Silence means consent!**

   - Members who do not vote, agree to the decision

6. **A 2/3 vote is required when taking away members' rights or changing a decision**

7. **One at a time**

   - One speaker
   - One motion

8. **Debatable motions receive full debate**

   - Debate is directed to:
     - motions, not motives

- principles, not personalities

9. A decision is a decision (usually)

- Motions to reconsider and rescind are the exception

10. Personal remarks are always out of order

III. WHICH RULES CONTROL CITY COUNCIL?

A. The primary source of parliamentary rules is the Rules of the Council of City of Jacksonville

- As authorized by Section 10.101, *Ordinance Code* (published February 19, 2019 reflecting amendments through Ordinance 2019-19-E) *codified on-line coj.net City Council, Council Rules

B. The secondary source is *Roberts Rules of Order, Newly Revised*

- *Robert's* supplements the City Council Rules (see Rule 5.101)*

IV. WHO INTERPRETS THE RULES?

A. The presiding officer interprets the rules (5.102)

B. Chairman of the Rules Committee advises the presiding officer with respect to parliamentary procedure (5.101)

V. THE BASIC RULES APPLICABLE TO COUNCIL MEETINGS

The *Council Rules* outline a few general rules of parliamentary procedure.

A. Quorum

- 14 members are needed to conduct business (4.106)

B. Absence from Meetings

- Any member who is unable to attend a Council or Committee meeting must give notice to the Council Secretary or Chief of Legislative Services prior to the convening of the meeting (4.501)

C. Order and Decorum

- All members work to preserve order and decorum (4.502)
- No delays or interruptions are allowed (4.502, 4.803)

- The presiding officer is to be obeyed (4.502)

- Members must be recognized by the presiding officer (4.504, 4.802)

- Members must rise to speak (4.504, 4.802)

- Address only the issue, not any personality (4.504)

- Members may only speak to matters germane to the business or questions under debate (4.802)

- If a member, while speaking is called to order, he/she shall cease speaking until the presiding officer rules (4.803)

- No member shall speak more than twice on any matter before the Council (4.804)

  - A member may only speak a 2nd time after every member desiring to speak has had an opportunity to do so once.

  - Time limits (4.805):

    - 5 minutes - 1st time
    - 3minutes - 2nd time

*Citations in parenthetical throughout this outline are to *Rules of the Council of the City of Jacksonville*, as authorized by Section 10.101, *Ordinance Code*, updated February 19, 2019, unless otherwise noted.

D. Voting

- Each member present at any meeting of the Council must vote on each question put (4.602; F.S. 286.012)

- Exception: a member must abstain in matters involving a conflict of interest (4.602, F.S. 112.3132)

- A vote not cast is deemed an affirmative vote (Rule 4.602)

- Manner of voting (Rule 4.603)

  - Procedural matter = voice
  - Amendment = voice
  - Emergency = voice
  - Final Action, Postpone = electronic or written roll call

- Any change of vote must be done before the closing of the ballot unless moved to reconsider (4.604).

- The number of votes needed to pass a measure is shown on the "Frequent Council Rules Actions" Chart included as **Appendix 1**.

E. Motions

The *Council Rules* also address four specific types of motions: reconsideration, previous question, postpone indefinitely and lay on the table.

1. Generally

- Motions are made orally (unless the presiding officer requests it in writing) *(4.701)*

- A 'second' is needed for debate or vote *(4.701)*

- A committee report serves as a second at a City Council Meeting *(Roberts Rules of Order* and *4.702(4))*

2. Amendments

- Motions to amend must be germane *(4.709)*

- Primary Amendment - propose changes to main motion

- Secondary Amendment - propose changes to primary amendment

- Amendments must be seconded

- Amendments must be considered one at a time

3. Order of Precedence

- Secondary motions (i.e. amendment or move to defer) assist in determining the action to take on a main motion

- Debate on a main motion stops until secondary motion is decided

- Priority is given to certain motions to determine order in which motions will be considered

- Multiple secondary motions may be pending, but they may only be considered one at a time and in order of priority

- Council Rule 4.705 states the Order of Precedence (i.e. the order in which secondary motions are heard)

4. Motions Specifically Addressed by Council Rules

- **Reconsideration**

  - Must be moved at the same council meeting (4.711)
  - Must be moved by a member of the prevailing side (4.711)
  - May be seconded by any member (4.711)
  - May be decided immediately or be left pending (4.712)

- **Previous Question**

  - Stops debate
  - Brings the main question and all amendments to a vote (4.714)
  - Neither the bill's introducer nor mover of the bill or proposal shall may make the motion (4.714)

- **Postpone Indefinitely**

  - Avoids direct vote on the question on the floor (4.715)
  - Bill goes under unfinished business if not handled by end of meeting (4.715)

- **Emergency**

  - Council, by 2/3 vote, may declare an Ordinance or Resolution to be an emergency measure (4.901)
  - Rezonings may not be passed as emergency legislation (4.905)
  - The effects of declaring legislation an emergency (4.901):

    - Public hearing requirements are waived
    - Three readings are waived
    - Council immediately considers the bill

  - Council must debate existence of emergency and vote on that motion before voting on merits of the bill (4.902)
  - Vote required to declare an emergency:

    - **An Ordinance** needs 2/3's of the entire Council (e.g. 13 votes)
    - **A Resolution** needs majority of members present

- **Lay on the Table**

  - Removes the bill from consideration until the body votes to take it from the table (4.716)
  - Requires a majority vote
  - Is intended to be a courtesy motion, not a dilatory tactic
  - Use to set aside question temporarily because something else is more important needs to be handled first

F. Cheat Sheets

- **Parliamentary Procedure at a Glance** included as **Appendix 2**, is another helpful tool regarding motions and rules which pertain to them.

VI. PROCEDURAL RULES APPLICABLE TO COMMITTEE MEETINGS

Committee proceedings are less formal than Council meetings. While many of the Council rules apply to committees, not all do.

A. Attendance (Rule 2.202)

- Mandatory attendance

  - Members must attend unless excused by the Chair
  - Failure to attend 3 meetings without excuse may result in removal from the committee

- **Permissive attendance**

  - Any Council member may attend committee meetings even if they are not a member of the committee, and:

    - Can interview witness
    - Can offer comments
    - Cannot make a motion, amendment or 2nd a motion
    - Cannot vote (except the Council President, Rule 2.211)

- **President's attendance**

  - President may attend any committee meeting (Rule 2.211)
  - President's attendance may make quorum (Rule 2.211)
  - President may vote on any issue in committee (Rule 2.211)

B. Voting (Rule 2.202)

- No proxy voting allowed
- Each member present shall vote on every question (unless a conflict exists)

C. Committee Reports (Rule 2.204)

- **Requirements of reports**
  - All bills must be reported; either:
    - Approval,
    - Approval with committee Amendment or with Substitute,
    - Denial, or
    - Withdrawn
  - Majority report goes to Council
  - Vote on a report must be by electronic or written roll-call
  - Must file report at least 24 hours before Council meetings
  - Council (by 2/3 vote) may waive this 24 hour requirement
  - Second and re-refer is not a "report"
  - Taking action on a bill, and subsequently deferring the bill, is equivalent to no action being taken
- **Amendments (Rule 3.303)**
  - Are reduced to writing
  - Contain name of submitting Council Member
  - Are approved as to form by Office of General Counsel
- **Substitutes (Rule 2.206)**
  - A committee may draft a new bill and recommend it to the Council
  - A committee may also adopt a substitute bill proposed by another committee
  - Council shall consider the substitute instead of the current bill
  - Once a substitute bill is adopted by Council, the previous bill may no longer be considered
- **Time frames (Rule 2.205)**
  - If not reported timely (and no extension given) a bill can be placed

before the Council by a majority vote of the Rules Committee or by 2/3 vote of Council present

VII. Distinctions between procedures used in Committee meetings versus Council Meetings

Council	Committee
Members must stand when speaking	Not Need Stand
"Majority" is based on those present	"Majority" is based on number on the committee (usually 4)
Reconsideration must be moved at same meeting	May move reconsideration at next committee meeting

VIII. EIGHT EASY STEPS TO MAKING A MOTION AND ACTING ON IT AT A COUNCIL MEETING

A. Obtain the Floor

- Request the floor
- Chair recognizes and assigns the floor

B. Handle the Motion

- Stand and make the motion
- Motion is seconded (not need rise)
  (not need second if from committee)
- Chair states the motion
- Chair asks for discussion
- Debate (Maker of motion has first right to discuss)
- Chair puts question to a vote by again restating the question

C. Chair announces the vote

FREQUENT COUNCIL RULES ACTIONS

ACTION	Council Rule	Vote	2nd?	Debate?	Notes	19	18	17	16	15	14
					QUORUM = 14	NUMBER OF VOTES REQUIRED					
Addendum - Agree to Adopt or add to	**3.703(b)(1)**	**2/3** present	2nd req'd		Council may accept any portion or all of Addendum	13	12	12	11	10	10
Adopt Ordinance Regular	**4.601**	Majority present	2nd req'd	debate		10	10	9	9	8	8
Adopt Resolution: Emerg or Regular	**4.601**	Majority present	2nd req'd	debate		10	10	9	9	8	8
Amend or substitute Ord or Reso		Majority present	2nd req'd	debate or amend		10	10	9	9	8	8
Amend an Amendment		Majority present	2nd req'd	debate	Only once	10	10	9	9	8	8
Amend an Amendment to an amendment	**4.704**	**Not Permitted**			Not Permitted						
Amend Council Rules	**5.105**	**2/3** of all Members	2nd req'd	debate		13	13	13	13	13	13
Appeal decision of Chair	**4.203**	Majority present	2nd req'd	**NO** debate		10	10	9	9	8	8
Call the Question (stop Debate)	**4.714**	**2/3** present	2nd req'd	**NO** debate	amend	13	12	12	11	10	10
Deferal in Committee	**2.210(3)**										
Discharge from Committee	**2.205**	**2/3** present	2nd req'd	debate		13	12	12	11	10	10
Disruption of Meeting	**4.505**										
Emergency, Declared	**4.901**	**2/3** present	2nd req'd	debate		13	12	12	11	10	10
Emergency Ordinance Passed	**4.902**	**2/3** of all Members	2nd req'd	debate		13	13	13	13	13	13
Permanent Change to Rules	**5.105**	**2/3** of all Members	2nd req'd	debate or amend		13	13	13	13	13	13
Point of Order or Personal Privelege	**4.702, 4.703**	Chair must recognize	NO	**NO** debate	decision of Chair						
Postpone to time or date certain	**4.705**	Majority present	2nd req'd	debate or amend		10	10	9	9	8	8
Precedence, Order of	**4.705**										
Reconsider previous action	**4.711, 4.712, 4.713**	Majority present	2nd req'd	debate	Must be moved by Member on prevailing side	10	10	9	9	8	8
Rereferal to Committee	**3.203**	Request of Chair/President	no vote	no vote	Refers to 1.201 for						
		Request of Council Memb.	yes	debate							
Suspend Council Rules (Waive)	**5.104**	**2/3** of all Members	2nd req'd	**NO** debate		13	13	13	13	13	13
Table, Lay on or remove*	**4.716**	Majority present	2nd req'd	**NO** debate or amend		10	10	9	9	8	8
Veto Override (generally)	**4.1004**	**2/3** present	2nd req'd	debate		13	12	12	11	10	10
Veto Override, Budget Item/Money	**4.1004**	Majority present	2nd req'd	debate (CR 4.1004)		10	10	10	10	10	10
Waive Council Rules (Suspend)	**5.104**	**2/3** of all Members	2nd req'd	**NO** debate		13	13	13	13	13	13

* Motion to remove from table must be made by the end of the meeting **after** the meeting at which the bill was laid on the table or the bill is automatically removed from the agenda.

Appendix 1

Parliamentary Motions Guide

Based on *Robert's Rules of Order Newly Revised (11th Edition)*

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
Close meeting	I move to adjourn	No	Yes	No	No	Majority
Take break	I move to recess for	No	Yes	No	Yes	Majority
Register complaint	I rise to a question of privilege	Yes	No	No	No	None
Make follow agenda	I call for the orders of the day	Yes	No	No	No	None
Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
Close debate	I move the previous question	No	Yes	No	No	2/3
Limit or extend debate	I move that debate be limited to ...	No	Yes	No	Yes	2/3
Postpone to a certain time	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
Refer to committee	I move to refer the motion to …	No	Yes	Yes	Yes	Majority
Modify wording of motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority
Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
Bring business before assembly (a **main motion**)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

Parliamentary Motions Guide

Based on *Robert's Rules of Order Newly Revised (11th Edition)*

Incidental Motions - No order of precedence. Arise incidentally and decided immediately.

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
Enforce rules	Point of order	Yes	No	No	No	None
Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority
Suspend rules	I move to suspend the rules which …	No	Yes	No	No	2/3
Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3
Divide motion	I move to divide the question	No	Yes	No	Yes	Majority
Demand rising vote	I call for a division	Yes	No	No	No	None
Parliamentary law question	Parliamentary inquiry	Yes (if urgent)	No	No	No	None
Request information	Request for Information	Yes (if urgent)	No	No	No	None

Motions That Bring a Question Again Before the Assembly - no order of precedence. Introduce only when nothing else pending.

Take matter from table	I move to take from the table …	No	Yes	No	No	Majority
Reconsider motion	I move to reconsider the vote ...	No	Yes	Varies	No	Majority

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CODE ENFORCEMENT PROCESS

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Municipal Code Enforcement Process

Municipal code enforcement in the City of Jacksonville is concentrated mostly in six City agencies:

- Municipal Code Compliance Division
- Animal Care and Protective Services Division
- Environmental Quality Division
- Building Inspection Division
- Fire Prevention Division
- Historic Preservation Section

These agencies regulate everything from blight, junk and abandoned vehicles, environmental and public health and building construction to zoning violations, compliance with historic district regulations and public safety for multi-family and commercial properties.

Code enforcement has been conducted as a civil enforcement process. Though many City codes authorize criminal sanctions in addition to civil penalties and injunctive relief, the City has not sought prosecution against violators in criminal arenas, unless such violations have specific criminal charges separately established in the state law, such as prosecution for animal cruelty. Furthermore, state law provides a separate legal framework for municipal code enforcement from the criminal context. Chapter 933, Florida Statutes creates a separate legal process for obtaining criminal search warrants from their civil inspection warrant counterparts. Section 933.21, Florida Statutes requires an attempt to obtain consent to conduct the inspection and a refusal as a predicate for obtaining the warrant. Additionally, section 933.30, Florida Statutes prohibits use of any information obtained during the civil inspection as a basis for a criminal investigation.

Mechanisms for Enforcement

The mechanisms available for municipal code enforcement for any particular agency are specified in its respective individual codes and may include:

- Civil Citation, heard by Special Magistrate and County Court Judge (similar to traffic ticket)
- Municipal Code Enforcement Board / Special Magistrate (administrative hearing for rolling fine until compliance is achieved)
- Civil Action filed by the Office of General Counsel in state court for civil penalties and / or injunctive relief (lawsuit in county, circuit or federal court)
- Referral to Construction Trades Qualifying Board for suspension / revocation of contractor licensure (administrative hearing against individuals holding contractor certification license)
- Corrective measures by the City with lien against property owner for cost of doing so (mowing grass, removing junk vehicles, demolition)

Each agency has the ability to prosecute violations of its individual codes through the civil citation process, the Special Magistrate process and the civil action in state court process. Generally, the individual code officer selects which enforcement mechanism will be pursued in a particular case, though filing a civil action in court requires concurrence of the applicable Division Chief or Department Director.

Challenges for Code Enforcement Officers

Section 162.21, Florida Statutes and section 609.104, Ordinance Code authorize enforcement based upon the "personal investigation" of a duly-appointed code enforcement officer. As such, violations must either be based on personal observation or some other credible circumstantial evidence to allow for civil conviction. Since the actions are civil in nature, the preponderance of the evidence standard is applied.

City civil code enforcement inspections are classified as searches and are bound by the same restrictions as criminal searches under the Fourth Amendment to the Constitution. Private property owners have the right to privacy and the right to exclude the government from unreasonable searches. As such, an inspection of private property can only be conducted with the permission of the property owner, in areas open to the public (such as on a right-of-way or in public areas in a commercial structure), on adjacent private properties with the permission of the property owner (neighbor's backyard), or pursuant to a code enforcement inspection warrant. If permission to inspect is denied, courts have found that privacy rights can been waived in certain circumstances, such as where a condition exists on property that is open to the public and view from those areas, viewed from the right-of-way or an adjacent property, viewed on the approach to the front door unless the owner has taken special steps to restrict access or based on affidavits from, and testimony of, third parties.

In situations where a property owner has refused access to an inspection officer, section 933.21, Florida Statutes authorizes an inspection warrant to allow an inspection over the objection of the property owner. Civil inspection warrants differ from their criminal counterparts in significant ways. Inspection warrants must be served at least 24 hours before the actual inspection can occur, unless immediate execution of the warrant is required to prevent loss of life or property. In some instances, this provides the property owner 24 hours to hide violations or otherwise evade the code enforcement process. Unlike criminal warrants, inspection warrants must be conducted in the presence of the property owner or other individual in charge of the property. This, again, may provide an opportunity for a violator to evade the inspection. Perhaps most significantly, inspection warrants are not available for owner-occupied residential dwellings.

Due to these limitations, code enforcement efforts may be thwarted, resulting in consternation and frustration to the code officers, the complaining neighbors and elected officials.

Process for Prosecuting Violations of the City's Codes

Chapter 162, Florida Statutes provides two mechanisms for prosecuting municipal code violations. Part I of Chapter 162, Florida Statutes authorizes an administrative code enforcement board process with the authority to impose administrative fines and other non-criminal penalties. Part II authorizes supplemental code enforcement procedures, specifically a civil citation process that is similar to a traffic ticket with a civil penalty "not to exceed $500". Part II also provides, however, that nothing in Part II shall prohibit a local government from enforcing its codes by other means. Finally, section 162.23, Florida Statutes authorizes the code enforcement officer to issue a notice to appear in any county court proceeding and section 162.30, Florida Statutes provides authority to enforce codes through the filing of a civil action in state court.

Though the general authority to prosecute violators stems from Chapter 162, Florida Statutes, the specific mechanisms selected to enforce a particular Jacksonville code provision are enumerated within that code. As such, each individual code designates what mechanisms are available to enforce it. As a general rule, in Jacksonville, each code is enforceable by both the administrative code enforcement boards and the civil citation processes. However, some codes authorize supplemental enforcement mechanisms, such as civil lawsuits filed by the General Counsel's Office, corrective measures conducted by the City, referral to the Construction Trades Qualifying Board, seizure and disposition of property, and demolition.

A. Municipal Code Enforcement Board / Special Magistrate

Part I of Chapter 162, Florida Statutes authorizes municipal code enforcement through an administrative body known as a municipal code enforcement board. Locally, the City has elected to administer this process by assigning a special magistrate to hear these types of cases. The City's three Special Magistrates are attorneys from the Office of General Counsel, and hearings are held up to 8 times per week, with 2 sessions per day, over 4 days, depending on the volume of cases. Typically, the Special Magistrate hears cases brought by the City's Municipal Code Compliance Division against violators of the Property Safety Code, although most other Codes also authorize prosecutions in this manner.

A Special Magistrate case is initiated after an investigation by the code enforcement agency which identifies a property that is in violation of a City Code. The officer researches property ownership, and a letter is generated to that individual requiring attendance at a Special Magistrate hearing, typically held within two weeks of the letter date. The code officer presents the case to the Special Magistrate, who also hears from the violator, to determine whether the property is in violation of the City Code. If a violation is found, the property owner is given some period of time (typically 30 days) to correct the violation and the potential for and amount of a rolling fine is established if appropriate corrective measures are not completed. If the violation is not corrected within the proscribed time, the matter is again set for hearing by the code

officer, and a determination is made whether the violation has been corrected. If the violation remains, the Special Magistrate enters an order effectuating the fine, which begins to accrue from the date of the order entered at the second hearing. The order is recorded and becomes a lien against the violator and impacts all properties owned by that individual. These liens continue to accrue until the violation has been corrected. Once compliance is achieved, while the rolling fine halts, interest will still accrue until the lien amount and accumulated interest has been paid. The City is authorized to settle these liens for less than the face value pursuant to an administrative settlement guideline process.

Because this process enables the City to achieve a continuing penalty when a violation continues to exist, it lends itself well to those types of violations that are recurring in nature, such as a failure to maintain property, or construction of a building without receiving the necessary permits, whereas it may not be as effective against single occurrence types of violations, such as an animal running at large, illegally placing commercial signs in the right-of-way or illegally parking a commercial vehicle on a residential property.

Alternatively, the Special Magistrate has the authority to order the City to perform corrective measures, itself, resulting in a lien placed on the property for the cost of such action. The order is recorded and becomes a lien against the violator and impacts only the property upon which the corrective action was taken.

B. Civil Citations

Part II of Chapter 162, Florida Statutes outlines a civil citation process similar to a traffic citation. This process is used to identify a violation as it exists on a particular date, at a particular time, at a particular location. It differs from the Special Magistrate process described above in that it serves as a mechanism to prosecute one finite violation, as opposed to having a rolling fine accumulate until compliance is achieved. As such, this enforcement mechanism works well with transitory violations, whose nature is temporary and more easily rectified.

Chapter 162, Florida Statutes, and Chapter 609, Ordinance Code, specify the requirements for initiating a citation enforcement, such as sufficiently identifying the code provision alleged to be violated, the violator, the facts establishing the violation and the applicable penalty if the person pays or contests the violation. A warning is required before a citation can be issued unless the violation is a repeat of a previously adjudicated violation, the violation is irreparable or irreversible, or the violation presents a serious threat to the public health, safety or welfare. An irreparable or irreversible violation is one where work has been done without a required permit, where the activity is of such limited duration that written notice and an opportunity to correct are impractical, or where the activity is of such permanent nature that corrective measures are impossible to achieve. Furthermore, the statute and code provides that if a person elects to ignore the citation by either not paying or requesting a hearing within 10 days of issuance, the

violator has waived his/her right to present any defenses and the City is entitled to a civil judgment for the maximum allowable civil penalty.

Once a citation is issued, if the violator pays the face value, the matter is concluded. If the violator elects to request a hearing, the matter is scheduled for hearing before a Special Magistrate judge, representing the sitting county court judge. The Special Magistrate meets every other Friday. A typical docket for the Special Magistrate session includes approximately 25-30 citation hearings, with the majority being Animal Care and Protective Services citations, but may also include curfew ordinance citations, tobacco possession by minors, zoning infractions, historic preservation ordinance violations and Building Code violations.

The City agencies are represented at the Special Magistrate hearings by a member of the Office of General Counsel, who presents the City's witnesses and evidence. The majority of violators are *pro se*, however they are occasionally represented by private counsel. The Special Magistrate evaluates each case and makes a recommendation to the county court judge on whether the City has proven the violation occurred and the amount of civil penalty to be awarded. Those recommendations are forwarded to the sitting county court judge who can adopt or modify the Special Magistrate's recommendation. Civil penalties are recorded as a judgment against the violator.

C. Civil Action filed in State or Federal Court

A third mechanism available in any code enforcement action is for the enforcing agency to request the Office of General Counsel initiate a civil enforcement lawsuit to request injunctive relief and/or civil penalties. Each code provides for a civil lawsuit to enforce its provisions. Most codes provide that violations are civil in nature and each day upon which a violation exists constitutes a separate violation. Therefore, if a violation is continuing in nature, and has existed for some time, the civil penalties the City would be entitled to pursue may be quite substantial. For example, environmental or solid waste violations could subject the violator to civil penalty amounts up to $10,000 per violation, though a maximum civil penalty of $500 per violation is much more common among the various codes.

Due to the legal fees involved with filing and prosecuting these actions, this remedy is usually reserved for those violators who have failed to respond to other enforcement efforts, are chronic repeat violators, or who maintain significant and dangerous violations where a rapid response is needed (such as an emergency demolition request). Violators that fail to respond to a court ruling directing corrective measures are subject to contempt proceedings to compel compliance.

D. Alternate Enforcement Mechanisms

The first three enforcement mechanisms referenced above are the most common methods used by City agencies to prosecute violations. However, there may be additional methods provided by a specific code. For example, violations of the Building

Code or the historic preservation ordinance authorize referral of offending construction contractors to the City's Construction Trades Qualifying Board to evaluate whether contractor licensure should be suspended or revoked.

Additionally, some codes authorize City agencies to self-correct violations. Jacksonville Fire and Rescue Department can shut down a business for violations of the fire code. Municipal Code Compliance can contract to mow a property, haul away junk vehicles or demolish an unsafe structure, among other nuisance abatement actions. Building Inspection can prohibit access to buildings where unpermitted work is or has been done. Animal Care and Protective Services can revoke pet shop licenses or confiscate animals that are cruelly mistreated and petition the court for permanent custody and an injunction to prohibit the cruelty violator from ever owning another animal.

If the City is required to expend money to correct violations, it is authorized to lien the property to recover the cost of doing so, along with any accumulated interest. This lien clouds the title of all real property held by the violator, and is valid for 20 years.

Attached is a list of the main code enforcement agencies, along with a list of the particular codes falling within the jurisdiction of the agency and key personnel.

Jacksonville Municipal Code Enforcement Agencies

Jacksonville's municipal code enforcement agencies primarily consist of:

Neighborhoods Department – Stephanie Burch, Director

Environmental Quality Division – Melissa Long, Division Chief
Chapter 360 (Environmental Regulation)
Chapter 362 (Air and Water Pollution)
Chapter 365 (Hazardous Regulated Substance Program)
Chapter 366 (Groundwater and Surface Water Resource Management)
Chapter 368 (Noise Control)
Chapter 367 (Odor Control)

Animal Care and Protective Services – Devron Cody, Division Chief
Chapter 462 (Animals)

Municipal Code Compliance Division – Michael Chao, Division Chief
Chapter 518 (Property Safety and Maintenance Code)
Chapter 656 (Zoning Code)

Planning and Development Department – William Killingsworth, Director

Building Inspection Division – Tom Goldsbury, Division Chief
Chapters 320 - 326 (Jacksonville Building Code)
Chapter 656, Part 12 (Landscape Code)

Historic Preservation Section – Christian Popoli, Historic Preservation Planner Supervisor
Chapter 307 (Historic Preservation)

Fire and Rescue Department – Chief Kurt Wilson, Director

Fire Prevention Division – Chief Kevin Jones, Division Chief
Chapter 321 (Building Code)
Chapter 420 (Supplemental Fire Prevention Code)

Department of Public Works – John Pappas, Director

Solid Waste Division – Eric Fuller, Division Chief
Chapter 380 (Solid Waste Management)
Chapter 382 (Waste Collection and Disposal Service by Contractors and City)
Chapter 386 (Waste Flow Control)

This list is not exhaustive, as there are other numerous, smaller entities that enforce other provisions, such as Consumer Affairs, Public Parking and the Duval County Health Authority, however the majority of enforcement matters prosecuted by the City are done by the above-listed agencies.