REQUEST FOR PRIVATE PROPERTY DEBRIS REMOVAL APPROVAL

APPLICANT LETTER

PRIVATE PROPERTY DEBRIS REMOVAL APPROVAL REQUEST WHEN USING PRIVATE CONTRACTOR, FORCE ACCOUNT, OR DIRECT FEDERAL ASSISTANCE

1 South Central Avenue
PO Box 2286
Umatilla, FL 32784
(352) 669-3125

September 25, 2017

Mr. Justo Hernandez
Federal Coordinating Officer
Federal Emergency Management Agency
FEMA-4337-DR-FL
11000 N. Interstate Highway 35
Austin, TX 78753

Through:

Mr. Bryan Koon
Director, Florida Division of Emergency Management
State Coordinating Officer FEMA-DR-4337-FL
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Subject: FEMA-4337-DR-FL, Debris Removal from Private Property in Umatilla, Florida.

Dear Federal Coordinating Officer Hernandez:

Pursuant to the terms and conditions of the Stafford Act, 42 U.S.C. 5121 et seq., FEMA Regulations as published at 44 CFR 206.222 - 206.224, the FEMA *Public Assistance Program and Policy Guide* FP 104-009-2, and the FEMA Fact Sheet, "Public Assistance: Private Property

Debris Removal DR-4337-FL, September 11, 2017," the City of Umatilla hereby requests FEMA approve the removal of debris from private property in Umatilla, Florida.

Determination of Public Interest

The City of Umatilla has determined that it is in the public interest to have debris removed from private property in order to eliminate immediate threats to life, public health, and safety, as well as to eliminate threats of significant damage to improved property. We understand that the final public interest determination will be made by FEMA. Due to the severity and extent of the damage from Hurricane Irma, the City of Umatilla is unable to perform this work in a timely manner. At a publicly noticed meeting of the City of Umatilla City Council on September 19, 2017, Resolution 2017-47 was passed by the affirmative vote of the duly constituted City Council and established certain findings and determinations including a determination that it is in the public interest that debris be removed from private road right of ways and non-city maintained road right of ways in order to eliminate immediate threats to life, public health, safety, and to further the economic recovery of the community. (City of Umatilla Resolution is attached as Exhibit A)

Documentation of Legal Responsibility

In accordance with 44 CFR 206.223(a) and Public Assistance Program and Policy Guide FP 104-009-2, in order to be eligible for FEMA Public Assistance funding, we understand that the City of Umatilla must have the legal authority and responsibility to perform the work at issue in the public interest, in this case, the removal of hurricane-generated debris from private property. As noted above, the damage caused by the disaster in the City of Umatilla was extensive. Additionally, the following authority has been identified as establishing legal authority and responsibility to perform removal of hurricane-generated debris from private property.

1. Removal of hurricane-related debris from residential private property is necessary and in the public interest to eliminate immediate threats to life, public health and safety as determined by The Governor's Declaration of Emergency dated September 4, 2017 (Exhibit B).

2. Necessary legal power has been granted to the City of Umatilla pursuant to Art. VIII, Sec. 2, Florida Constitution establishing home rule powers, and Chapter 166.011, et seq. Florida Statutes, (the Municipal Home Rule Powers Act). Additionally, under the local ordinances of the City of Umatilla specifically Chapter 34, Nuisances, including but not limited to Section 34-34(c) "Enforcement; abatement of nuisance (allowing the City or its contractor to terminate and abate nuisance violations) and/or the power granted to localities by Florida Statutes Section 252.38(3) and/or the discussion of local powers in one or more opinions of the Florida Attorney General, such as in Florida Attorney General Opinion 2012-33 (allowing a local government to use public funds to assist with private roads and on private property following an emergency situation) the City of Umatilla has the legal responsibility, duty and authority to remove such hurricane-generated debris from private property in the public interest (Composite Exhibit C).

3. Based upon "1" and "2" above, we have determined to exercise these authorities to enter onto private property.

4. We certify that, to the extent feasible, before we initiate such debris removal on these private properties, we will have unconditional authorization to do so, either through satisfying all the legal processes as provided in our nuisance abatement and/or condemnation ordinance(s) and/or through obtaining all legal permissions to carry out these actions through the use of Rights of Entry with indemnity and prevention of duplication of benefits clauses signed by each property owner.

5. There may be circumstances however, where, because of the immediate urgency of the situation, the procedures of obtaining a Right of Entry or pursuing a condemnation proceeding, as set out in paragraph "4" above, may be too time consuming. We then will act under the auspices of the above-mentioned and attached opinion from the State of Florida Attorney General (within Composite Exhibit C) and the State of Florida Office of the Governor Executive Order Number 17-235, dated September 4, 2017 (Exhibit B), which together confirm the legal basis for the City of Umatilla to remove the debris on these private properties utilizing its police power. We certify that we have a process to regularize and determine which properties will require these extraordinary procedures to protect the public safety. In these circumstances, a reasonable period of time will be afforded for public notification before private property debris removal will commence.

6. We will not remove titled personal property such as cars, trucks or boats. In addition, we will not remove any debris generated as a result of reconstruction.

7. The City of Umatilla will recognize and respect all laws and regulations that concern historic preservation and environmental protection.

8. The subject private property set forth in composite Exhibit D are the subject of this debris removal approval request.

Indemnification

As required by section 407(b) of the Stafford Act (42 U.S.C. 5173(b)), the City of Umatilla hereby agrees that it shall indemnify and hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. The City of Umatilla hereby acknowledges that in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

Duplication of Benefits

To avoid duplication of benefits pursuant to section 312 of the Stafford Act (42 U.S.C. 5155),the

City of Umatilla will obtain from the subject private property owners information and documentation relating to insurance coverage, proceeds and settlements and provide this to the Florida Division of Emergency Management. The City of Umatilla point of contact for this request is Scott Blankenship who may be contacted at 352-669-3125 or via email at sblankenship@umatillafl.org if you require additional information.

Proper Procurement

The City of Umatilla affirms that any contract entered into for debris removal will comply with the requirements of 2 C.F.R. § 200.318-200.336 and understands that a failure to comply with any required federal, state and local laws, regulations and permits necessary for lawful performance of debris removal could jeopardize FEMA funding.

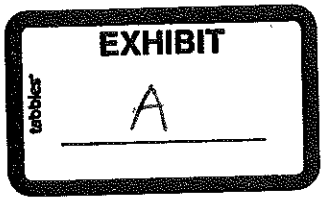
By affixing my signature hereto, I represent that I am duly authorized as the City of Umatilla City Manager, acting on behalf of the City Council of the City of Umatilla to make this request.

Sincerely,

City of Umatilla, Florida

S/_____

Scott Blankenship
City Manager



RESOLUTION 2017 - 47

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF UMATILLA, LAKE COUNTY, FLORIDA, DECLARING THAT HURRICANE IRMA MAY HAVE GENERATED A SIGNIFICANT AMOUNT OF STORM DEBRIS ALONG PRIVATE AND NON-CITY MAINTAINED ROADWAYS WITHIN THE CITY; DECLARING THAT THE REMOVAL OF ANY SUCH DEBRIS BY CONTRACTORS UTILIZED BY LAKE COUNTY, FLORIDA MAY BE IN THE PUBLIC INTEREST IN ORDER TO ELIMINATE IMMEDIATE THREATS TO LIFE, PUBLIC HEALTH, SAFETY, AND THE ECONOMIC RECOVERY OF THE COMMUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 4, 2017, Governor Rick Scott executed Executive Order 17-235, declared a state of emergency in every County within the State of Florida in preparation for Hurricane Irma; and

WHEREAS, Section 4(C) of Executive Order 17-235, political subdivisions may waive any requirements of law in order to perform any public work and take any action necessary to ensure the health, safety, and welfare of the community; and

WHEREAS, on September 6, 2017, the Chairman of the Board of County Commissioners did declare a local state of emergency and executed Resolution 2017-105. Such declaration was valid for a period of seven (7) days from execution; and

WHEREAS, on September 12, 2017, Resolution 2017-110 was executed for the purposes of extending the local state of emergency for an additional seven (7) days;

WHEREAS, Hurricane Irma caused substantial damage to and loss of property, including homes, farms and other properties within the City of Umatilla; and

WHEREAS, a significant amount of storm debris may have been generated along private and non-city maintained roadways within the City; and

WHEREAS, the City Council of the City of Umatilla finds and determines that it is in the public interest that any such debris be removed from such private road right of ways and non-city maintained road right of ways in order to eliminate immediate threats to life, public health, safety, and the economic recovery of the community; and

WHEREAS, the City Council of the City of Umatilla finds and determines that it may be in the public's interest for the City to request that Lake County utilize its contractors to remove storm debris along such private road right of ways and non-city maintained road right of ways.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Umatilla, Lake County, Florida, that:

Section 1. The foregoing recitals are true and correct and hereby incorporated by reference.

Section 2. The Umatilla City Council finds and determines that it is in the public interest that storm debris located on private road right of ways and non-city maintained road right of ways within the City of Umatilla be removed in order to eliminate immediate threats to life, public health, safety, and the economic recovery of the community.

Section 3. The City Council of the City of Umatilla hereby declares that it may be in the public's interest for the City to request that Lake County utilize its contractors to remove the storm debris located along private road right of ways and non-city maintained road right of ways within the City.

Section 4. The Umatilla City Council hereby authorizes the City Manager to execute such documents as are determined necessary to effectuate the removal of storm debris from private road right of ways and non-county maintained road right of ways within the City.

Section 5. The resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 15th day of September, 2017, by the City Council of the City of Umatilla, Lake County, Florida.

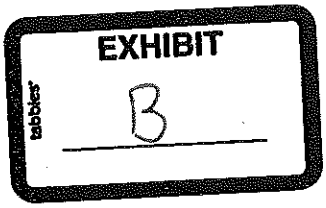
Mary C. Johnson
Mayor

Approved As To Form:
STONE & GERKEN, P.A.

Karen H. Howard, CMC
City Clerk

Kevin Stone/Grant Watson/Lewis Stone
City Attorney

Passed First Reading: September 19, 2017
Seal



STATE OF FLORIDA

OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 17-235
(Emergency Management – Hurricane Irma)

WHEREAS, as of 11:00 a.m. on Monday, September 4, 2017, Hurricane Irma is a major hurricane located approximately 560 miles east of the Leeward Islands with maximum sustained winds of 120 mph;

WHEREAS, the five-day forecast from the National Hurricane Center predicts that, on Saturday, September 9, 2017, Hurricane Irma will be a major hurricane located somewhere north of Cuba and south of Andros Island in the Bahamas;

WHEREAS, current forecast models predict that Hurricane Irma will head into the Straits of Florida as a major hurricane;

WHEREAS, current forecast models predict that Hurricane Irma will make landfall somewhere in South Florida or Southwestern Florida as a major hurricane;

WHEREAS, current forecast models predict that Hurricane Irma will travel up the entire spine of Florida;

WHEREAS, Hurricane Irma poses a severe threat to the entire State of Florida and requires that timely precautions are taken to protect the communities, critical infrastructure, and general welfare of this State;

WHEREAS, as Governor, I am responsible to meet the dangers presented to this state and its people by this emergency;

NOW, THEREFORE, I, RICK SCOTT, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida

Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. Because of the foregoing conditions, I declare that a state of emergency exists in every county in the State of Florida.

Section 2. I designate the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of this emergency and direct him to execute the State's Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency. Pursuant to section 252.36(1)(a), Florida Statutes, I delegate to the State Coordinating Officer the authority to exercise those powers delineated in sections 252.36(5)–(10), Florida Statutes, which he shall exercise as needed to meet this emergency, subject to the limitations of section 252.33, Florida Statutes. In exercising the powers delegated by this Order, the State Coordinating Officer shall confer with the Governor to the fullest extent practicable. The State Coordinating Officer shall also have the authority to:

A. Invoke and administer the Emergency Management Assistance Compact ("EMAC") (sections 252.921-.933, Florida Statutes) and other compacts and agreements existing between the State of Florida and other states, and the further authority to coordinate the allocation of resources from such other states that are made available to Florida under such compacts and agreements so as best to meet this emergency.

B. Seek direct assistance and enter into agreements with any and all agencies of the United States Government as may be needed to meet the emergency.

C. Direct all state, regional and local governmental agencies, including law enforcement agencies, to identify personnel needed from those agencies to assist in meeting the

needs created by this emergency, and to place all such personnel under the direct command and coordination of the State Coordinating Officer to meet this emergency.

D. Designate Deputy State Coordinating Officers.

E. Suspend the effect of any statute, rule, or order that would in any way prevent, hinder, or delay any mitigation, response, or recovery action necessary to cope with this emergency.

F. Enter orders as may be needed to implement any of the foregoing powers; however, the requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to any such orders issued by the State Coordinating Officer.

Section 3. I order the Adjutant General to activate the Florida National Guard, as needed, to deal with this emergency.

Section 4. I find that the special duties and responsibilities resting upon some State, regional, and local agencies and other governmental bodies in responding to the emergency may require them to waive or deviate from the statutes, rules, ordinances, and orders they administer. Therefore, I issue the following authorizations:

A. Pursuant to section 252.36(1)(a), Florida Statutes, the Executive Office of the Governor may waive all statutes and rules affecting budgeting to the extent necessary to provide budget authority for state agencies to cope with this emergency. The requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to any such waiver issued by the Executive Office of the Governor.

B. Each State agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent,

hinder, or delay necessary action in coping with the emergency. This includes, but is not limited to, the authority to suspend any and all statutes, rules, ordinances, or orders which affect leasing, printing, purchasing, travel, and the condition of employment and the compensation of employees. For the purposes of this Executive Order, "necessary action in coping with the emergency" means any emergency mitigation, response, or recovery action: (1) prescribed in the State Comprehensive Emergency Management Plan ("CEMP"); or, (2) directed by the State Coordinating Officer. Any waiver of statutes, rules, ordinances, or orders shall be by emergency rule or order in accordance with sections 120.54(4) and 252.46, Florida Statutes, and shall expire thirty days from the date of this Executive Order, unless extended in increments of no more than thirty days by the agency, and in no event shall remain in effect beyond the earlier of the date of expiration of this Order, as extended, or ninety (90) days from the date of issuance of this Order.

C. In accordance with section 252.38, Florida Statutes, each political subdivision within the State of Florida may waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

1) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;

2) Entering into contracts;

3) Incurring obligations;

4) Employment of permanent and temporary workers;

5) Utilization of volunteer workers;

6) Rental of equipment;

7) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and,

8) Appropriation and expenditure of public funds.

D. All agencies whose employees are certified by the American Red Cross as disaster service volunteers within the meaning of Section 110.120(3), Florida Statutes, may release any such employees for such service as requested by the Red Cross to meet this emergency.

E. The Secretary of the Florida Department of Transportation (DOT) may:

1) Waive the collection of tolls and other fees and charges for the use of the Turnpike and other public highways, to the extent such waiver may be needed to provide emergency assistance or facilitate the evacuation of the affected counties;

2) Reverse the flow of traffic or close any and all roads, highways, and portions of highways as may be needed for the safe and efficient transportation of evacuees to those counties that the State Coordinating Officer may designate as destination counties for evacuees in this emergency;

3) Suspend enforcement of the registration requirements pursuant to sections 316.545(4) and 320.0715, Florida Statutes, for commercial motor vehicles that enter Florida to provide emergency services or supplies, to transport emergency equipment, supplies or personnel, or to transport FEMA mobile homes or office style mobile homes into or from Florida;

4) Waive the hours of service requirements for such vehicles;

5) Waive by special permit the warning signal requirements in the Utility Accommodations Manual to accommodate public utility companies from other jurisdictions which render assistance in restoring vital services; and,

6) Waive the size and weight restrictions for divisible loads on any vehicles transporting emergency equipment, services, supplies, and agricultural commodities and citrus as recommended by the Commissioner of Agriculture, allowing the establishment of alternate size

and weight restrictions for all such vehicles for the duration of the emergency. The DOT shall issue permits and such vehicles shall be subject to such special conditions as the DOT may endorse on any such permits.

Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or the carrier, owner, or driver of any vehicle from compliance with any restrictions other than those specified in this Executive Order, or from any statute, rule, order, or other legal requirement not specifically waived herein or by supplemental order by the State Coordinating Officer;

F. The Executive Director of the Department of Highway Safety and Motor Vehicles (DHSMV) may:

1) Suspend enforcement of the registration requirements pursuant to sections 316.545(4) and 320.0715, Florida Statutes, for commercial motor vehicles that enter Florida to provide emergency services or supplies, to transport emergency equipment, supplies or personnel, or to transport FEMA mobile homes or office style mobile homes into or from Florida;

2) Waive the hours of service requirements for such vehicles;

3) Suspend the enforcement of the licensing and registration requirements under the International Fuel Tax Agreement (IFTA) pursuant to Chapter 207 Florida Statutes, and the International Registration Plan (IRP) pursuant to section 320.0715, Florida Statutes, for motor carriers or drivers operating commercial motor vehicles that are properly registered in other jurisdictions and that are participating in emergency relief efforts through the transportation of equipment and supplies or providing other assistance in the form of emergency services;

4) Waive fees for duplicate or replacement vessel registration certificates, vessel title certificates, vehicle license plates, vehicle registration certificates, vehicle tag

certificates, vehicle title certificates, handicapped parking permits, replacement drivers' licenses, and replacement identification cards and to waive the additional fees for the late renewal of or application for such licenses, certificates, and documents due to the effects of adverse weather conditions; and,

5) Defer administrative actions and waive fees imposed by law for the late renewal or application for the above licenses, certificates, and documents, which were delayed due to the effects of adverse weather conditions, including in counties wherein the DHSMV has closed offices, or any office of the County Tax Collector that acts on behalf of the DHSMV to process renewals has closed offices due to adverse weather conditions.

Recordkeeping and other applicable requirements for existing IFTA and IRP licensees and registrants are not affected by this order. The DHSMV shall promptly notify the State Coordinating Officer when the waiver is no longer necessary.

G. In accordance with section 465.0275, Florida Statutes, pharmacists may dispense up to a 30-day emergency prescription refill of maintenance medication to persons who reside in an area or county covered under this Executive Order and to emergency personnel who have been activated by their state and local agency but who do not reside in an area or county covered by this Executive Order.

H. All State agencies responsible for the use of State buildings and facilities may close such buildings and facilities in those portions of the State affected by this emergency, to the extent to meet this emergency. I direct each State agency to report the closure of any State building or facility to the Secretary of the Department of Management Services. Under the authority contained in section 252.36, Florida Statutes, I direct each County to report the closure of any building or facility operated or maintained by the County or any political subdivision therein to

the Secretary of the Department of Management Services. Furthermore, I direct the Secretary of the Department of Management Services to:

1) Maintain an accurate and up-to-date list of all such closures; and,

2) Provide that list daily to the State Coordinating Officer.

I. All State agencies may abrogate the time requirements, notice requirements, and deadlines for final action on applications for permits, licenses, rates, and other approvals under any statutes or rules under which such application are deemed to be approved unless disapproved in writing by specified deadlines, and all such time requirements that have not yet expired as of the date of this Executive Order are suspended and tolled to the extent needed to meet this emergency.

Section 5. All public facilities, including elementary and secondary schools, community colleges, state universities, and other facilities owned or leased by the state, regional or local governments that are suitable for use as public shelters shall be made available at the request of the local emergency management agencies to ensure the proper reception and care of all evacuees. Under the authority contained in section 252.36, Florida Statutes, I direct the Superintendent of each public school district in the State of Florida to report the closure of any school within its district to the Commissioner of the Florida Department of Education. Furthermore, I direct the Commissioner of the Department of Education to:

A. Maintain an accurate and up-to-date list of all such closures; and,

B. Provide that list daily to the State Coordinating Officer.

Section 6. I find that the demands placed upon the funds appropriated to the agencies of the State of Florida and to local agencies are unreasonably great and may be inadequate to pay the costs of coping with this disaster. In accordance with section 252.37(2), Florida Statutes, I direct

that sufficient funds be made available, as needed, by transferring and expending moneys appropriated for other purposes, moneys from unappropriated surplus funds, or from the Budget Stabilization Fund.

Section 7. All State agencies entering emergency final orders or other final actions in response to this emergency shall advise the State Coordinating Officer contemporaneously or as soon as practicable.

Section 8. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by states other than the State of Florida may render such services in Florida during this emergency for persons affected by this emergency with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross or the Florida Department of Health.

Section 9. Pursuant to section 501.160, Florida Statutes, it is unlawful and a violation of section 501.204 for a person to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency.

Section 10. Under the authority contained in sections 252.36(5)(a), (g), and (m), Florida Statutes, I direct that, for the purposes of this emergency, the term "essentials", as defined by section 252.359(2), Florida Statutes, shall be the same as and no more expansive than the term "commodity", as defined by section 501.160(1)(a), Florida Statutes (hereinafter referred to collectively or alternatively as "essential commodities"). Accordingly, any person who delivers essential commodities to a location in the area(s) declared to be under a state of emergency by this

Executive Order, and when necessary to ensure that those commodities are made available to the public, may travel within evacuated areas and exceed curfews, provided the State Coordinating Officer determines, after consultation with the appropriate Emergency Support Function(s), that:

A. Law enforcement officials in the declared area(s) can provide adequate security to protect the essential commodities from theft;

B. The weight of a delivery vehicle will not jeopardize the structural integrity of any roadway or bridge located within the declared area;

C. Delivery vehicles will not negatively impact evacuation activities in the declared area(s); and,

D. Delivery vehicles will not negatively impact any response or recovery activities occurring within the declared area(s).

After consulting with the appropriate Emergency Support Function(s), and after consulting with local officials, the State Coordinating Officer may dictate the routes of ingress, egress, and movement within the declared area(s) that drivers must follow when delivering essential commodities.

Provided he or she is actually delivering medications, any person authorized to deliver medications under chapter 893, Florida Statutes, qualifies as a person delivering essential commodities.

In order to qualify as a person delivering essential commodities under this section, a person must be in the process of delivering essential commodities only. If an individual is transporting both essential and non-essential commodities, then this section shall not provide any authorization for that individual to enter into or move within the declared area(s).

Section 11. Consistent with Executive Order 80-29, nothing in this Order shall prevent local jurisdictions in any area not declared to be under a state of emergency by this Executive Order from taking prompt and necessary action to save lives and protect the property of their citizens, including the authority to compel and direct timely evacuation when necessary.

Section 12. I authorize the Florida Housing Finance Corporation to distribute funds pursuant to section 420.9073, Florida Statutes, to any county, municipality, or other political subdivision located within the area(s) declared to be under a state of emergency by this executive order. The authority of the Florida Housing Finance Corporation to distribute funds under this state of emergency shall expire six months from the date of this Order.

Section 13. All actions taken by the Director of the Division of Emergency Management with respect to this emergency before the issuance of this Executive Order are ratified. This Executive Order shall expire sixty days from this date unless extended.

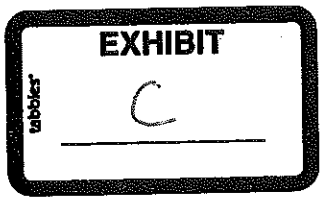
IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 4th day of September, 2017.

GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2017 SEP -4 PM 4:34
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA



Number: AGO 2012-33
Date: September 19, 2012
Subject: Public Funds, use on private roadway

Mr. Hal A. Airth
Attorney at Law
Post Office Box 448
Live Oak, Florida 32064

RE: PUBLIC FUNDS--PRIVATE PROPERTY--DECLARATION OF EMERGENCY--use of public funds; entry onto private property. s. 252.38, Fla. Stat.; Part I, Ch. 252, Fla. Stat.

Dear Mr. Airth:

On behalf of the Suwannee County Board of County Commissioners, you have asked for my opinion on substantially the following questions:

1. May the County use public funds to repair washouts on private non-roadway property created by water run-off from a public road? Similarly, may the County enter private property and remove materials that were washed from the public roads onto the private property? May the County act in either case with or without a declared local state of emergency?

2. If a sink hole opens on private property then impacts public property, may the County enter the private property to seal the sink hole while repairing the public property? Similarly, if a sink hole opens on public property then runs on to private property, may the County enter and repair the damage to the private property? Is the response different if the work performed on private property is necessary to protect the public property? May the County act in either case with or without a declared local state of emergency?

In sum:

1. In light of the broad language contained in the State Emergency Management Act authorizing local governments to act to protect county citizens and their property, it is my opinion that county resources may be utilized in this effort and that Suwannee County may dedicate county funds to the repair of washouts on private non-roadway property that have been caused by water run-off from a public roadway. Likewise, public funds could be dedicated to the repair of sinkholes on private property that impact public property. This conclusion is based on the extensive powers delegated to local governments under the State Emergency Management Act and such authority would not extend to the county in the absence of a declared local state of emergency. Further, the Suwannee County Commission must still independently determine that these emergency repairs accomplish a valid public purpose as is required in the State Emergency Management Act.

2. In light of potential for charges of violations of section 810.09, Florida Statutes, this office would suggest, should the Suwannee County Commission determine to commit county manpower to the repair of sinkholes and non-roadway property which affect public property, that the county secure consents from the landowners of such private property to enter and remain on the property while performing emergency repairs.

While you have asked a number of questions relating to washouts and sinkholes, I understand all of these questions to involve two central issues: 1) whether the county is authorized to use public funds to repair private property damaged during an emergency and 2) whether the county may enter onto private property to effect these repairs. Therefore, this discussion is directed to these issues.

Question One - Use of Public Funds

According to your letter, Tropical Storm Debby dumped massive amounts of rain in Suwannee County in a short period of time. As a result of that intense rainfall, water flowing off county roads has caused severe washouts on private property. You have drawn my attention to a previously issued opinion of this office, Attorney General Opinion 98-22, in which it was concluded that Citrus County could use county funds to keep private roads passable during a declared state of emergency under section 252.38, Florida Statutes, if the county commission determines that such an expenditure satisfied a county purpose. You have asked whether section 252.38, Florida Statutes, would authorize the county to make the proposed expenditures of public funds when the damage was caused by runoff from public roads. You also ask whether this statutory language would authorize the dedication of public funds to the repair of sinkholes that may have appeared on private property and that impact public property.

It is a basic proposition of Florida law that the expenditure of public funds must be used primarily for a public purpose.[1] Thus, the expenditure of county funds must meet a county purpose, rather than a private purpose.[2] The issue has most frequently occurred in relation to the repair of public roadways and the courts of this state and this office have concluded that public funds may only be spent for the construction, maintenance, or repair of public roads.[3]

The situation in Attorney General Opinion 98-22, like the situation you have described in Suwannee County, involved a local declaration of emergency pursuant to section 252.38, Florida Statutes, and the

county's duties to protect lives and property under such a declaration. The situation presented to this office in Attorney General Opinion 98-22 was a case of first impression and involved Citrus County's attempt to keep private roads passable by supplying assistance to subdivision residents who had requested county assistance in the form of culverts, fill dirt, equipment, and manpower to keep these roads and streets open. In light of the local declaration of emergency and the specific terms of section 252.38, Florida Statutes, this office concluded that Citrus County was statutorily authorized to use county funds to keep private roads passable during a declared state of emergency.

Part I of Chapter 252, Florida Statutes, is the "State Emergency Management Act."[4] The Legislature expressed its intent for the adoption of the act in part as follows:

"It is the intent of the Legislature to reduce the vulnerability of the people and property of this state; to prepare for efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the restoration of services and property; and to provide for the coordination of activities relating to emergency preparedness, response, recovery, and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with the private sector."

Pursuant to section 252.34(4)(c), Florida Statutes, specific emergency management responsibilities include "[r]esponse to emergencies using all systems, plans, and resources necessary to preserve adequately the health, safety, and welfare of persons or property affected by the emergency." More specifically, section 252.38(3)(a)1., Florida Statutes, authorizes political subdivisions such as counties "[t]o appropriate and expend funds [and to] provide for the health and safety of persons and property . . . ." Further, a political subdivision, in carrying out its emergency management powers, may "assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to . . . transportation, construction, and similar items or services for emergency operation purposes . . . ."[5] Again, all of these powers are tied to a declared state of emergency under Part I, Chapter 252, Florida Statutes.

In exercising its emergency management powers, a county "has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to . . . [p]erformance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;"[6] and the "[a]cquisition and distribution, with or without compensation of supplies, materials, and facilities."[7] The county is also authorized to suspend the usual procedures and formalities required for the "[a]ppropriation and expenditure of public funds."[8]

The "State Emergency Management Act" recognizes that "[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."[9] Thus, the Legislature has made a determination that, under these extreme conditions, the safeguarding of private property and the expenditure of public funds to do so does satisfy a public purpose.

In light of the broad language contained in the State Emergency Management Act authorizing local governments to act to protect county citizens and their property, it is my opinion that county resources may be utilized in this effort and that Suwannee County may dedicate county funds to the repair of washouts on private non-roadway property that has been caused by water run-off related to a storm emergency. Further, this statutory language would also appear to authorize the dedication of public funds to the repair of sinkholes that may have appeared on private property and impact public property. As my conclusion is based on the extensive powers delegated to local governments under the State Emergency Management Act, this authority would not extend to the county in the absence of a declared local state of emergency. In addition, the Suwannee County Commission must still independently determine that these emergency repairs accomplish a valid public purpose as is required in the State Emergency Management Act.[10] As this office noted in Attorney General Opinion 98-22, county funds may be expended to repair private roads during an emergency declared pursuant to section 252.38, Florida Statutes, "provided that the county first makes appropriate legislative findings as to the purpose of the expenditure and the benefits which would accrue to the county."

Question Two - Entry onto Private Property

Both your first and second questions require consideration of whether section 252.38, Florida Statutes, provides authorization for local governmental agents to enter onto private property in order to make emergency repairs. As you have provided me with no specifics regarding the location of the property in question or the ownership of any such property, my comments must be general in nature.

Section 252.38, Florida Statutes, provides for the emergency management powers of political subdivisions. Section 252.38(3), Florida Statutes, states that each political subdivision, in carrying out the provisions of sections 252.31 - 252.90, Florida Statutes, has the power and authority:

"To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

a. Performance of public work and taking whatever prudent action is necessary to ensure the health,

safety, and welfare of the community.
b. Entering into contracts.
c. Incurring obligations.
d. Employment of permanent and temporary workers.
e. Utilization of volunteer workers.
f. Rental of equipment.
g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
h. Appropriation and expenditure of public funds."

Thus, the Legislature has granted local governments broad powers to deal with declared states of emergency by utilizing public resources. However, despite the broad powers granted, the entry onto private property by governmental agents presents several potential problems for governmental entities and agents.

Under common law theory, every man's land is deemed to be enclosed so that every entry thereon is, except by consent, a trespass.[11] The basis of the wrong lies in the disturbance of possession. This disturbance of possession may result from such acts as the unauthorized cutting and removal of trees[12] or the digging of a trench to carry utility pipes without having a right-of-way.[13]

As described in Florida's statutes relating to burglary and trespass, section 810.09, Florida Statutes, a person who enters upon or remains in any property other than a structure or conveyance[14] without authorization may commit the offence of trespass on property other than a structure or conveyance. Trespass on property other than a structure or conveyance is a first degree misdemeanor. Thus, a local government might well be concerned that its agent's unauthorized entry onto private property either to retrieve public property or to perform repairs could subject both the agency and the agent to liability and criminal prosecution.

In light of possible trespass concerns, this office would suggest, should the Suwannee County Commission determine to commit county manpower to the repair of sinkholes and non-roadway property which affect public property, that the county secure consents[15] from the landowners of such private property to enter and remain on the property while performing such emergency repairs or retrieving county property.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

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[1] *See* Art. VII, s. 1, Fla. Const., which by implication limits the imposition of taxes and the expenditure of tax revenue to public purposes.

[2] *See* Op. Att'y Gen. Fla. 73-222 (1973) and *Collins v. Jackson County*, 156 So. 2d 24 (Fla. 1st DCA 1963) (county not authorized to expend funds to maintain municipal roads which have not been designated as county roads).

[3] *See Padgett v. Bay County*, 187 So. 2d 410 (Fla. 1st DCA 1966); *Collins v. Jackson County, supra;* Ops. Att'y Gen. Fla. 75-309 (1975) and 73-222 (1973).

[4] Section 252.31, Fla. Stat., contains the short title.

[5] Section 252.38(3)(a)4., Fla. Stat.

[6] Section 252.38(3)(a)5.a., Fla. Stat.

[7] *Id.* at 5.g.

[8] Section 252.38(3)(a)5.h., Fla. Stat.

[9] Section 252.38, Fla. Stat.

[10] *See* Ops. Att'y Gen. Fla. 98-22 (1998) and 88-52 (1988) (upon making the appropriate findings that an expenditure of county funds for lobbying serves a county purpose and is in the public interest, the board of county commissioners may expend county funds for lobbying); 86-87 (1987) and 74-227 (1974) (municipal funds may be used to support position on annexation).

[11] *See Harris v. Baden*, 17 So. 2d 608 (Fla. 1944), *Leonard v. Nat Harrison Associates, Inc.*, 122 So. 2d 432 (Fla. 2d DCA 1960).

[12] *National Rating Bureau, Inc. v. Florida Power Corp.*, 94 So. 2d 809 (Fla. 1956).

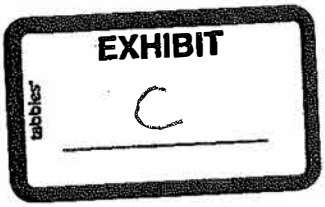
[13] *Okaloosa County Gas District v. Enzor*, 101 So. 2d 406 (Fla. 1st DCA 1958).

[14] The statute provides that it applies to a structure or conveyance:

"1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or
2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass, commits the offense of trespass on property other than a structure or conveyance."

[15] Consent is an absolute defense to an action for trespass provided the consent is given by the possessor of the land or one competent and authorized to give such consent and provided further that the acts of the party accused of the trespass do not exceed, or are not in conflict with, the purposes for which such consent was given. *See* 55 Fla. Jur. 2d *Trespass* s. 9; *Florida Publishing Co. v. Fletcher*, 340 So. 2d 914 (Fla. 1976), *cert. denied*, 431 US 930, 53 L.Ed.2d 245, 97 S.Ct. 2634 (U.S. 1977); *Florida Power Corporation v. Parker*, 370 So. 2d 45 (Fla. 1st DCA 1979), *cert. denied*, 381 So. 2d 766 (Fla. 1980).

Constitution of Florida 1968



Section 2

Text of Section 2:

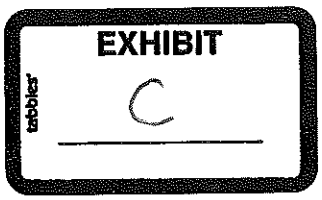
Municipalities

(a) ESTABLISHMENT. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

(c) ANNEXATION. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.[1]

Chapter 34 - NUISANCES



ARTICLE I. - IN GENERAL

Sec. 34-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned property means wrecked or derelict property having no value other than nominal salvage value, if any, which has been left abandoned and unprotected from the elements and shall include wrecked, inoperative, or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture, and any other similar article which has no value other than nominal salvage value, if any, and which have been left abandoned and unprotected from the elements.

Abandoned vehicle includes vehicles neglected, immobile, inoperable or capable of being moved or having not been moved for ten (10) days or more. Abandonment is presumed when the vehicle is unlicensed, unregistered, untagged or uninsured.

Abate/abatement means the termination of a nuisance by means of removal of trash, junk, debris, abandoned property, junked vehicles, nonliving plant material, or the mowing, cutting, trimming, or grubbing of excessive growth of grass, weeds, brush, and branches.

Accumulate is synonymous with store, keep, hold, and retain. The term includes the retention or storage of one item, as well as the amassing of more than one item.

Ashes means the residue from the burning of wood, coal, coke, or other combustible materials.

Compliance means to conform to specific requirements.

Enforcement officer means any law enforcement officer or city code enforcement or building inspector who is appointed by the city manager to enforce city ordinances.

Excessive growth means grass, weeds or brush that has reached a height of at least twelve (12) inches.

Exterior portion of any building means those portions of a building which are open-sided, such that the open space within such portions of the building may be lawfully viewed by the public or any member thereof from a sidewalk, street, alleyway, parking lot or from any adjoining or neighboring premises. This definition includes such open-sided structures as carports and porches.

Exterior portion of the property means those portions of a lot, tract or parcel of land which is either outside of any building erected thereon or, if there is no building erected thereon, the entire lot, tract or parcel, regardless of whether such portions are exposed to public view or are surrounded by a fence, wall,

hedge or other similar structure. For purposes of this chapter, the term "exterior portion of the property" shall include the "exterior portion of any building" only where specifically stated.

Grass, weeds, or brush means any grass or weeds, or brush which, when allowed to grow in a wild and unkempt manner, will reach a height of twelve (12) inches or more. This definition does not include bushes, shrubs, trees, vines, flowering plants, or any other living plant life typically used and actually being used for landscaping purposes.

Improved property means any lot, tract or parcel of land in the city used for residential, commercial, professional office or industrial purposes which contains one or more buildings or structures, paving or other improvements, excluding solely underground utilities, pipes, wires, cable culverts, conduits or other similar improvements.

Junk means and includes wrecked, inoperative or partially dismantled motor vehicles which have no value other than salvage value, if any, and which have been left abandoned and unprotected from the elements; scrap metal, or any dismantled, partially dismantled, nonoperative, or discarded machinery, appliance, equipment, vehicle, or boat, or part thereof. Any vehicle which is required to be registered and licensed in order to be operated or driven on the roads of the state, and which does not have a current certificate of registration and current license tag shall be irrefutably presumed to be junk. Any item of tangible personal property, designed to be used in an environment which is protected from the elements, such as the interior of a building, shall be irrefutably presumed to be junk if the item is stored outside. For the purposes of this chapter, inoperable condition shall mean a condition of disrepair which renders the vehicle inoperable in a normal manner, or in the manner for which the vehicle was designed, for a period of time exceeding ten (10) days.

Junkyard means an establishment or place of business which operates or is operated or maintained for the purpose of storing, buying, or selling junk.

Motor vehicle means any vehicle which is self-propelled.

Nonliving plant material means nonliving vegetation such as leaves, grass cuttings, shrubbery cuttings, tree trimmings and other material attending the care of lawns, shrubs, vines and trees.

Nuisance means any of the following:

(1) Any public nuisance known at common law or in equity jurisprudence or as provided by the statutes of the state and ordinances of the city, including this chapter.

(2) Any accumulation of trash, rubbish, refuse, junk and other abandoned materials, metals, lumber, or other things, which, based upon the facts and circumstances of the accumulation, has become a public nuisance in fact.

(3)

The existence of excessive accumulation or untended growth of weeds, grass, undergrowth, brush, or other dead or living plant life upon an improved lot, tract, or parcel of land, within one hundred (100) feet of any improved property within the city to the extent and in the manner that such improved lot, tract, or parcel of land is or may reasonably become infested or inhabited with rodents, vermin, wild animals, or snakes; or may become a breeding place for mosquitoes; may pose a fire hazard; threaten or endanger the public health and welfare; pose an attractive nuisance for children; may reasonably cause disease; or adversely affect and impair the economic welfare of any adjacent property.

(4) Any "attractive nuisance" or condition which may prove detrimental to the health and safety of children, whether on an improved or unimproved lot, tract or parcel of land including, but not limited to, abandoned wells, shafts, excavations, abandoned appliances, abandoned or inoperable motor vehicles, and any structurally unsound fences or structure, lumber, trash, debris, or vegetation such as poison ivy or oak, which may prove a hazard for minors.

(5) Any unfit, unsanitary, abandoned, or unsafe dwelling, structure, or improvement upon real property.

(6) Any underbrush, weeds, or untended grass which exceeds two feet in height located on improved property.

(7) The carcasses of animals or fowl not disposed of within a reasonable time after death.

(8) The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, industrial wastes, or other substances.

(9) Any building, structure, or other place or location where any activity in violation of local, state, or federal law is conducted, performed, or maintained, and which under the facts and circumstances surrounding the activity constitutes a public nuisance in fact.

(10) Any accumulation of stagnant water or sewage permitted or maintained on any improved lot, premises, or piece of ground.

(11) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

(12) Unsheltered storage for a period of 30 days or more within the corporate limits of this city (except in licensed junkyards) of old and unused stripped junk and other automobiles not in good and safe operating condition; and of any other vehicles, machinery, implements, or equipment or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, is hereby declared to be a nuisance and a danger to public health, safety, and welfare.

(13) For the purpose of this article, the term "nuisance" shall also include any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which the premises are located.

(14)

Such other acts or conditions which are determined and declared by other ordinances or by resolution of city council to be or constitute public nuisances.

Person means an individual, firm, corporation or unincorporated association.

Property means any lot, tract or parcel of land, or portion thereof , whether improved or unimproved, and adjacent rights-of-way within the boundaries of the city.

Public property means any property owned by the city, county, state or other governmental entity and includes all roads, streets, alleyways and the adjacent right-of-way of each.

Repairs means motor vehicle repairs that are above and beyond simple vehicle maintenance. The changing of vehicle fluids, replacing vehicle battery, replacing a fan belt or hose, changing a tire or other incidental emergency repairs are excluded from the prohibitions of this article when the repair is promptly commenced and completed.

Storing of vehicle means the interim parking, placing, stowing or leaving of an abandoned or junk vehicle prior to its proper and final disposal.

Trailer means any vehicle with or without power designed for carrying persons or property and for being drawn by a motor vehicle.

Trash and debris means waste material, including, but not limited to, decomposed, rotten, or foul smelling waste; combustible and noncombustible waste; and generally all materials such as: paper, cardboard, tin cans, lumber, concrete rubble, glass, bedding, crockery, household furnishings, household appliances, ashes, rubber tires or rusted metal articles of any kind. Any item of tangible personal property, designed to be used in an environment which is protected from the elements, such as the interior of a building, shall be irrefutably presumed to be junk if the item is stored outside.

Unimproved property means any lot, tract or parcel of land in the city which does not contain any buildings or structures, paving or other improvements, but may include solely underground utilities, pipes, wires, cables, culverts, conduits or other similar improvements.

Vehicle means every device in, upon or by which, any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(Ord. No. 2010-K, § 2(13-1), 10-19-2010)

Sec. 34-2. - Delegation of authority.

The city council hereby delegates to the enforcement officer the authority to enforce the provisions of this chapter. The provisions of this chapter are supplemental to the procedures described in chapter 162, Florida Statutes. The enforcement officer may utilize the procedures outlined in chapter 162, Florida

Statutes to address any property determined by the enforcement officer to be in violation to any of the procedures described in this chapter.

(Ord. No. 2010-K, § 2(13-2), 10-19-2010)

Secs. 34-3—34-15. - Reserved.

ARTICLE II. - REGULATING LOT MAINTENANCE

Sec. 34-16. - High weeds, rubbish, junk, standing water prohibited.

(a) It shall be unlawful for any owner, agent, custodian, lessee, or occupant of any lot, parcel or tract of land within the city to permit the excessive growth of weeds, grass, vegetation or undergrowth; or to permit rubbish, trash, debris, dead trees, nonliving plant material, junk, abandoned automobiles or other vehicles, refrigerators or other unsightly or unsanitary matter to remain on any exterior portion of the property, including the exterior portion of any building located thereon. Accordingly, such owner, agent, custodian, lessee or occupant shall maintain and keep the property free of accumulation of trash, junk, debris, and nonliving plant material.

(b) It shall be unlawful to permit the existence of untended swimming pools, spas, vessels, depressions or excavations or any other condition on the premises wherein water may accumulate and stand in such a manner or fashion as to make possible the propagation of mosquitoes therein.

(c) All land areas within the city used as citrus groves shall comply with grass, weed, or brush height requirements.

(d) Subsection (a) of this section shall not be construed to prohibit any of the following:

(1) The storage of trash, junk, debris and nonliving plant material in garbage containers which comply with all applicable ordinances relating to solid waste collection;

(2) The storage of nonliving plant material in compost bins; or

(3) Keeping wood on the property for use as fuel, provided such wood is piled, stacked, bundled, or corded and the area surrounding the piles, stacks, bundles or cords shall be free of excessive growth of grass, weeds, brush and branches.

(Ord. No. 2010-K, § 3(13-16), 10-19-2010)

Sec. 34-17. - Enforcement; abatement of nuisance.

Article for enforcement and abatement of nuisance pursuant to section 34-34.

(Ord. No. 2010-K, § 3(13-17), 10-19-2010)

Sec. 34-18. - Appeals.

Article for appeals pursuant to section 34-35.

(Ord. No. 2010-K, § 3(13-18), 10-19-2010)

Sec. 34-19. - Liens; assessment.

Article for liens; assessment pursuant to section 34-36.

(Ord. No. 2010-K, § 3(13-19), 10-19-2010)

Secs. 34-20—34-30. - Reserved.

ARTICLE III. - ABANDONED PROPERTY AND JUNKED VEHICLES

Sec. 34-31. - Abandoned property and junk vehicle, generally.

Any abandoned or junk vehicles must be located behind a privacy fence such that the vehicle is completely obstructed from public view or must be removed from the property. Abandoned or junk vehicles may not be parked, stored or maintained in the open, on public or private property, in any district within the limits of the city. All yards, open areas and vacant lots on which abandoned property is located are declared a nuisance detrimental to the public health, safety and welfare and the nuisance shall be abated as herein provided.

(Ord. No. 2010-K, § 4(13-31), 10-19-2010)

Sec. 34-32. - Vehicle repair.

Vehicle repairs on public property are strictly prohibited.

(Ord. No. 2010-K, § 4(13-32), 10-19-2010)

Sec. 34-33. - Abandoned personal property.

All abandoned personal property as defined by this chapter must be located behind a privacy fence such that the personal property is completely obstructed from public view or must be removed from the property. Abandoned personal property may not be stored or maintained in the open, on public or private property, in any district within the limits of the city. All yards, open areas and vacant lots on which abandoned personal property is located are declared a nuisance detrimental to the public health, safety and welfare and the nuisance shall be abated as herein provided.

(Ord. No. 2010-K, § 4(13-33), 10-19-2010)

Sec. 34-34. - Enforcement; abatement of nuisance.

(a) Whenever the enforcement officer finds that there appears to be a violation of this article or finds the existence of a nuisance, as defined herein, the enforcement officer may serve a notice of violation upon the owner, and, if applicable, the agent, custodian, lessee or occupant, directing such owner, and, if applicable, the agent, custodian, lessee or occupant, to bring into compliance the violation within ten (10) calendar days of the date such notice is received. For purposes of this article, notice is received on the earliest of the day it is hand delivered to the property owner, the date the property is posted with said notice, or five days after said notice is mailed to the property owner, postage prepaid. The enforcement officer shall, within five (5) days of the date the notice is mailed, cause a sign of at least eight (8) by twelve (12) inches in size to be placed upon the property in a conspicuous and easily visible location. Both the sign and mailed notice of violation shall include the following information:

(1) A sufficient description by address and/or legal description to identify the property upon which the violation exists;

(2) A description of the violation to be terminated and abated;

(3) A statement that if the described violation is not terminated and abated within ten (10) calendar days after notice is received the enforcement officer shall cause the violation to be terminated and abated;

(4) That a lien shall be imposed upon the property for the actual cost of such termination and abatement, plus administrative expenses; and

(5) A preliminary nonbinding, minimum estimate of the cost of termination and abatement.

(b) The notice of violation shall further state in bold and conspicuous letters that if such violation, within the ten-day period prescribed by subsection (a) of this section:

(1) Has not been brought into compliance; or

(2) Has not been timely appealed in accordance with section 34-35;

the city shall cause the violation to be terminated and abated, and the actual cost of such termination and abatement, plus administrative costs, shall constitute a lien on the property in accordance with section 34-36.

(c) If the property owner fails to bring into compliance the violation within the ten-day period prescribed by subsection (a) of this section, the enforcement officer shall cause the violation to be terminated and abated. The city may hire and enter into contracts with independent contractors to terminate and abate violations of this article.

(Ord. No. 2010-K, § 4(13-50), 10-19-2010)

Sec. 34-35. - Appeals.

(a) Within the ten-day period prescribed by section 34-33 after notice is received, an aggrieved party may appeal the enforcement officer's determination that a notice of violation is warranted for the property in question.

(b) An appeal by an aggrieved party shall:

(1) Be addressed to the enforcement officer; and

(2) Be either hand-delivered to the enforcement officer or postmarked within the ten-day period after notice is received.

(c) Upon receipt of a timely appeal, the enforcement officer shall schedule a hearing date before the special master.

(d) At the hearing, the special master shall allow the city and the appellant an opportunity to present evidence and to examine and cross-examine witnesses. After considering the evidence and testimony, the special master shall make a factual determination as to whether the property is in violation of this article. If the special master makes a factual determination that the property is in violation of this article, the special master shall affirm the enforcement officer's issuance of the notice of violation and issue an order requiring the appellant to promptly clean the property in order to terminate or abate the violation. If the appellant has not remedied the violation within the allotted time ordered by the special master after the date of the special master's determination that this article has been violated, then the enforcement officer shall terminate and abate the violation as provided in section 34-34.

(e) Any appeal of the special master's decision shall be filed in a timely manner with the circuit court.

(Ord. No. 2010-K, § 4(13-51), 10-19-2010)

Sec. 34-36. - Liens; assessment.

(a) After causing the violation to be terminated and abated as provided in section 34-34, the enforcement officer shall certify to the city clerk the actual cost incurred in remedying the condition, whereupon such cost, plus the city's administrative expenses, shall be due within ten (10) days.

(b) Upon certifying to the city clerk the actual cost incurred in remedying the condition, the enforcement officer shall, by hand or certified mail, return receipt requested, deliver or send a notice of assessment of costs to the last known owner of record of the subject real property. If the assessment is not paid or arrangements satisfactory to the city have not been made to pay such assessment within ten days after notice is received, then the imposition of a lien shall be made against the subject property. If a lien is imposed, the amount due shall bear interest at the rate of eight (8) percent per annum from the date the lien is imposed.

(c) A certified copy of the claim of lien shall be recorded in the public records of the county and shall constitute a lien superior to all other liens and mortgages, except for tax liens and mortgages recorded prior to the effective date of the ordinance from which this article is derived. A certified copy the claim of lien shall constitute notice to any subsequent purchasers, successors in interest, or assigns.

(d)

Ninety (90) days after the recording of a certified copy of a claim of lien in the public records of the county, the city manager may authorize the city attorney to institute legal proceedings to foreclose such lien. The property owner shall be liable for all costs, including reasonable attorney's fees, incurred in any such action.

(Ord. No. 2010-K, § 4(13-52), 10-19-2010)

Secs. 34-37—34-40. - Reserved.

ARTICLE IV. - NOISE ABATEMENT

Sec. 34-41. - Short title.

This article shall be known and be cited as the "City of Umatilla Noise Abatement Ordinance".

(Ord. No. 2003-E, 6-17-03)

Sec. 34-42. - Applicability.

This article shall apply to, and be enforced uniformly within the limits of, the City of Umatilla.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-43. - Definitions.

When used in this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. All terminology used in this chapter, not defined below, shall be used so as to conform to the applicable publication of the American National Standards Institute (ANSI).

City means the City of Umatilla, Florida.

City administrator means the elected city administrator of the city.

City council means the five-member elected legislative board of the city.

Construction means any site preparation, assembly, erection, repair, alteration, or similar action for or of rights-of-way, structures, utilities, or similar property.

Demolition means any dismantling, intentional destruction or removal of structures, utilities, right-of-way surfaces, or similar property.

Impulsive sound means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include: explosions, drop forge impacts, and the discharge of firearms.

Noise disturbance means any sound which:

(1) Endangers or injures the safety or health of humans or animals; or

(2) Annoys or disturbs a reasonable person of normal sensitivities; or

(3) Endangers, injures or may negatively impact the value of personal or real property; or

(4) Is sufficient to annoy and disturb the occupants of premises other than those premises from which the noise is emanating to the extent that it renders the ordinary use of the other premises physically uncomfortable; or

(5) Negatively affects the value of any real or personal property.

Plainly audible sound includes, but is not limited to, any sound for which the information content of that sound is communicated to the listener, such as, but not limited to, understandable spoken speech or comprehensible musical rhythms.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person. When applied to a structure or structures with various tenants and which are located on premises under a common ownership, "real property boundary" shall refer to the physical boundaries of the spaces occupied by the distinct tenants. For example the walls of the various units in an apartment complex would constitute real boundaries hereunder.

Rebuttable presumptions means any plainly audible sound which may be heard at a distance of fifty (50) feet from the real property boundary surrounding the premises from which the sound is emanating or which may be heard inside a closed building, dwelling unit, or business space which is located outside the real property boundaries of the premises from which the sound is emanating shall be presumed to be a noise disturbance. Likewise, a sound which is not a plainly audible sound at a distance of fifty (50) feet from the real property boundary surrounding the premises from which the sound is emanating or which is not a plainly audible sound when heard inside a closed building, dwelling unit, or business space which is located outside the real property boundaries of the premises from which the sound is emanating shall be presumed not to be a noise disturbance.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristics of such sound, including duration, intensity, and frequency.

(Ord. No. 2003-E, 6-17-03)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 34-44. - Specific sounds prohibited.

The following acts are prohibited under this part:

(1) Using, operating, or permitting the use or operation of any device which produces or reproduces sound in a manner which creates a noise disturbance across a real property boundary, is prohibited. Examples of devices used unlawfully in violation of this article include, but are not limited to, the following: radios, television sets, musical instruments, loudspeakers, c.d. or tape players, record players and similar devices. Also, motor vehicles, motorboats, jet skis and other recreational or all-terrain land vehicles and watercraft shall be included.

(2) *Loudspeakers and public address systems.* Using or operating, for any noncommercial purpose, any loudspeaker, public address system, or similar device between the hours of 9:00 p.m. and 6:00 a.m. the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary.

a. Using or operating for any commercial purpose any loudspeaker, public address system, or similar device such that the sound therefrom creates a noise disturbance across a real property boundary.

b. The use of any loudspeaker, public address system, or similar device in conjunction with an activity authorized by the city; e.g., parades, art festivals, is excepted from this subsection unless the city, in authorizing the activity, provides otherwise.

(3) *Engine idling.* Idling or permitting the idling of a motor of any stationary motor vehicle of any kind whatsoever for a period of time in excess of fifteen (15) minutes in any hour, between the hours of 9:00 p.m. and 6:00 a.m. the following day such that the sound thereof creates a noise disturbance across a real property boundary.

(4) *Honking.* Using, operating, or permitting the use of operation of any audible signaling device on any stationary motor vehicle of any kind whatsoever. This subsection shall not apply if the emitted signal is for the purpose of averting danger or warning of a dangerous or apparently dangerous condition or a possible criminal act.

(5) *Animals.* The emission of any continual or repeated sound, including natural sound, by any animal for a period exceeding fifteen (15) minutes in duration in any one hour period which is audible across real property boundaries, and which creates a noise disturbance across a real property boundary.

(6) *Humans.* The emission of any continual or repeated sound, including natural sound, by any human for a period exceeding five minutes in duration in any one hour period which creates a noise disturbance across a real property boundary.

(7) *Construction, landscaping, and motor vehicle noise.*

a.

Operating or causing to be operated any equipment used in commercial and residential construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto or operating or causing to be operated any landscaping equipment or operating or causing to be operated any motor vehicle, with sound-control devices less effective than those provided on the original equipment or in violation of any requirement of the United States Environmental Protection Agency.

b. Operating or causing to be operated any equipment in commercial and residential construction, repair alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto between the hours of 9:00 p.m. and 6:00 a.m. the following day. Any person desiring to operate outside such hours of limitation, based upon necessity or in the interest of public health, safety, and welfare, must notify the city administrator.

(8) *Commercial equipment and vehicle noise.* Within any commercial zoning district, operating or causing to be operated any commercial equipment or vehicles used in the maintenance or cleaning or parking lots, or buildings or any delivery vehicles or any appurtenant motors, including air refrigeration motors or engines, or any trash or garbage collection vehicles, or any other commercial vehicles, if such operation is:

a. Within three hundred fifty (350) feet of any residential zoning district, and is conducted between the hours of 9:00 p.m. and 6:00 a.m. of the following day; or

b. Being performed with sound-control devices less effective than those provided on the original equipment or in violation of any regulation of the United States Environmental Protection Agency; or,

c. One which creates a sound sufficient to annoy and disturb the occupants of premises other than those premises from which the noise is emanating to the extent that is renders the ordinary use of the other premises physically uncomfortable.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-46. - Exemptions.

The following sounds shall be exempt from the prohibitions of section 34-44:

(1) Sound made by safety signals, warning devices, and sound emanating from any authorized emergency vehicle, including public works vehicles and equipment, when responding to an emergency call or acting in time of emergency.

(2) Sound emanating from city sanctioned activities, including those at city parks and recreational facilities as allowed through the issuance of a permit.

(3) Sound emanating from landscaping activities which are conducted between the hours of 6:00 a.m. and 9:00 p.m. of the same day. However, this subsection shall not exempt landscaping equipment from the prohibition of subsection 34-44(3).

(4) Sound emanating from refuse collection activities sanctioned by the city.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-47. - Relief from noise restrictions.

Applications for relief from this part may be made to the city council. Any ruling granting relief shall contain all conditions upon which the permit has been granted, including but not limited to, effective dates, time of day, and location.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-48. - Enforcement.

The city's police department is empowered to enforce this article through citation issuance.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-49. - Penalties.

(1) It is a civil infraction to violate any section of this part. The civil penalty for such infraction is as follows:
   a. First violation—A fine of one hundred dollars ($100.00).
   b. Second similar violation—A fine of two hundred fifty dollars ($250.00) plus all costs of enforcement set forth in subsection (8) below.
   c. Third and subsequent similar violations, fine from two hundred fifty dollars ($250.00) to five hundred dollars ($500.00), plus all costs of enforcement set forth in subsection (8) below, per violation.

(2) Any police officer who has probable cause to believe that a person has committed an act in violation of this article may issue a citation therefor.

(3) Any person issued a citation pursuant to this part may:
   a. Pay the civil penalty at the office of the city administrator, either by mail or in person, within ten (10) days of receiving the citation; or
   b. Contest the citation in county court.

(4) Any person electing to contest the citation and choosing to appear in county court shall be deemed to have waived the limitations on the civil penalty specified in subsection (1) of this section. The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of a violation has been proven, the court may impose a civil penalty not to exceed five hundred dollars ($500.00), plus court costs and all costs of enforcement set forth in subsection (8) below.

(5)

Any person who willfully refuses to sign the citation issued by the police officer is guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083, or 775.084.

(6) Any person who has not requested a hearing and who has not paid the fine specified in subsection (1) of this section within ten (10) days is guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083, or 775.084.

(7) If any person fails to pay the civil penalty or fails to appear in court to contest the citation as required by subsection (3) of this section, the court may issue an order to show cause upon the request of the city. This order shall require such person to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.

(8) *Special enforcement penalties.* Special enforcement penalties, and costs associated therewith, may be enforced against any person, entity or the property of any person or entity found to be in violation of this article upon proof that the violator, even a first offender, has been given a prior official written notice of a specific violation of this article, by a city official; and a subsequent similar violation has been proven. Special enforcement penalties shall include, but not be limited to, the following:

a. A civil fine not to exceed five hundred dollars ($500.00)

b. All costs of enforcement including:

1. A reasonable attorney fee rendered in advancing the case against the violator.

2. Costs of enforcement, including investigative costs and the reasonable cost of special enforcement personnel or private investigators expended in the investigation, apprehension and prosecution of the violator.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-50. - Special enforcement fund created.

There is hereby created a special enforcement fund which shall be a separate and independent fund consisting of donation or deposits from proceeds of violations of this article which shall be overseen by the chief of police and the city administrator. Monies collected within this fund shall be used exclusively for the investigation and prosecution of violations of this article until said fund reaches a level that will fund not less that one hundred (100) hours in attorney fees, two hundred (200) hours of special investigation services, and five thousand dollars ($5,000.00) costs reserved for anticipated litigation. When said fund is deemed by the City Council of the City of Umatilla to have exceeded the reasonable amount necessary to be held in reserves for the enforcement of this section, then the remaining excess may be applied and utilized in the same manner as other fines and forfeitures recoveries. This section may be amended by resolution.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-51. - Lien created.

A lien is hereby created upon the property of any person or entity found to be in violation of this article, and said lien may be foreclosed in a court of competent jurisdiction against any of the property found to have a nexus to the violation. Specifically, if the violation occurred through the use of a motor vehicle or any other device found to have a nexus to have a violation of this article, said vehicle or device shall be subject to a lien under this section.

(Ord. No. 2003-E, 6-17-03)

Sec. 34-52. - Judicial abatement.

Violations of this part are deemed and declared to be nuisances and shall be subject to summary abatement by means of a restraining order or injunction issued by a court of competent jurisdiction.

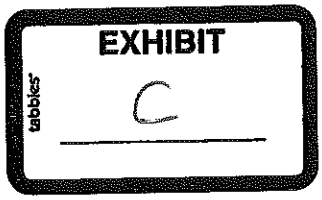
(Ord. No. 2003-E, 6-17-03)

Sec. 34-53. - Election of remedies.

This article is supplemental and complimentary to any other noise abatement ordinance of the city and the city reserved its right to elect which ordinance is appropriate to achieve compliance.

(Ord. No. 2003-E, 6-17-03)

Secs. 34-54—34-59. - Reserved.



252.38 **Emergency management powers of political subdivisions.**—Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.

(1) COUNTIES.—

(a) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of ss. 252.31-252.90, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in ss. 252.31-252.90, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3)(b) which is recognized by the Governor by executive order or rule, each county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3)(b) which is recognized by the Governor by executive order or rule shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.

(b) Each county emergency management agency created and established pursuant to ss.252.31-252.90 shall have a director. The director must meet the minimum training and education qualifications established in a job description approved by the county. The director shall be appointed by the board of county commissioners or the chief administrative officer of the county, as described in chapter 125 or the county charter, if applicable, to serve at the pleasure of the appointing authority, in conformance with applicable resolutions, ordinances, and laws. A county constitutional officer, or an employee of a county constitutional officer, may be appointed as director following prior notification to the division. Each board of county commissioners shall promptly inform the division of the appointment of the director and other personnel. Each director has direct responsibility for the organization, administration, and operation of the county emergency management agency. The director shall coordinate emergency management activities, services, and programs within the county and shall serve as liaison to the division and other local emergency management agencies and organizations.

(c) Each county emergency management agency shall perform emergency management functions within the territorial limits of the county within which it is organized and, in addition, shall conduct such activities outside its territorial limits as are required pursuant to ss. 252.31-252.90 and in accordance with state and county emergency management plans and mutual aid agreements. Counties shall serve as liaison for and coordinator of municipalities' requests for state and federal assistance during postdisaster emergency operations.

(d) During a declared state or local emergency and upon the request of the director of a local emergency management agency, the district school board or school boards in the affected area shall participate in emergency management by providing facilities and necessary personnel to staff such facilities. Each school board providing transportation assistance in an emergency evacuation shall coordinate the use of its vehicles and personnel with the local emergency management agency.

(e) County emergency management agencies may charge and collect fees for the review of emergency management plans on behalf of external agencies and institutions. Fees must be reasonable and may not exceed the cost of providing a review of emergency management plans in accordance with fee schedules established by the division.

(2) MUNICIPALITIES.—Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan. In addition, each municipality must coordinate requests for state or federal emergency response assistance with its county. This requirement does not apply to requests for reimbursement under federal public disaster assistance programs.

(3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—

(a) In carrying out the provisions of ss. 252.31-252.90, each political subdivision shall have the power and authority:

1. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

2. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.

3. To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

4. To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.

5. To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.

b. Entering into contracts.

c. Incurring obligations.

d. Employment of permanent and temporary workers.

e. Utilization of volunteer workers.

f. Rental of equipment.

g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.

h. Appropriation and expenditure of public funds.

(b) Upon the request of two or more adjoining counties, or if the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and services, the Governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this paragraph shall be based on one or more factors related to the difficulty of maintaining an efficient and effective emergency prevention, mitigation, preparedness, response, and recovery system on a unijurisdictional basis, such as:

1. Small or sparse population.

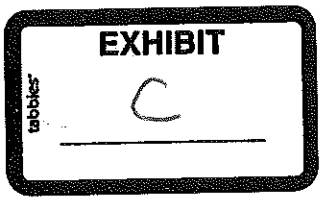
2. Limitations on public financial resources severe enough to make maintenance of a separate emergency management agency and services unreasonably burdensome.

3. Unusual vulnerability to emergencies as evidenced by a past history of emergencies, topographical features, drainage characteristics, emergency potential, and presence of emergency-prone facilities or operations.

4. The interrelated character of the counties in a multicounty area.

5. Other relevant conditions or circumstances.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174; s. 22, ch. 81-169; s. 21, ch. 83-334; s. 102, ch. 92-279; s. 55, ch. 92-326; s. 14, ch. 93-211; s. 132, ch. 95-148; s. 5, ch. 2000-140; s. 34, ch. 2001-61.



166.011 Short title.—This chapter shall be known and may be cited as the "Municipal Home Rule Powers Act."

History.—s. 1, ch. 73-129.

166.021 Powers.—

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the constitution;

(c) Any subject expressly preempted to state or county government by the constitution or by general law; and

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances.

(6) The governing body of a municipality may require that any person within the municipality demonstrate the existence of some arrangement or contract by which such person will dispose of solid waste in a manner consistent with the ordinances of the county or municipality or state or federal law. For any person who will produce special wastes or biomedical waste, as the same may be defined by state or federal law or county or city ordinance, the municipality may require satisfactory proof of a contract or similar arrangement by which special or biomedical wastes will be collected by a qualified and duly licensed collector and disposed of in accordance with the laws of Florida or the Federal Government.

(7) Entities that are funded wholly or in part by the municipality, at the discretion of the municipality, may be required by the municipality to conduct a performance audit paid for by the municipality. An entity shall not be considered as funded by the municipality by virtue of the fact that such entity utilizes the municipality to collect taxes, assessments, fees, or other revenue. If an independent special district receives municipal funds pursuant to a contract or interlocal agreement for the purposes of funding, in whole or in part, a discrete program of the district, only that program may be required by the municipality to undergo a performance audit.

(8)(a) The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or

manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

(d) A contract between the governing body of a municipality or other entity engaged in economic development activities on behalf of the municipality and an economic development agency must require the agency or entity receiving municipal funds to submit a report to the governing body of the municipality detailing how the municipal funds are spent and detailing the results of the economic development agency's or entity's efforts on behalf of the municipality. By January 15, 2011, and annually thereafter, the municipality shall file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the municipality's website.

(e)1. By January 15, 2011, and annually thereafter, each municipality having annual revenues or expenditures greater than $250,000 shall report to the Office of Economic and Demographic Research the economic development incentives in excess of $25,000 given to any business during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. Economic development incentives include:

a. Direct financial incentives of monetary assistance provided to a business from the municipality or through an organization authorized by the municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.

b. Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.

c. Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions.

d. Below-market rate leases or deeds for real property.

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities.

(f) This subsection does not limit the home rule powers granted by the State Constitution to municipalities.

(9)(a) As used in this subsection, the term:

1. "Authorized person" means a person:

a. Other than an officer or employee, as defined in this paragraph, whether elected or commissioned or not, who is authorized by a municipality or agency thereof to incur travel expenses in the performance of official duties;

b. Who is called upon by a municipality or agency thereof to contribute time and services as consultant or advisor; or

c. Who is a candidate for an executive or professional position with a municipality or agency thereof.

2. "Employee" means an individual, whether commissioned or not, other than an officer or authorized person as defined in this paragraph, who is filling a regular or full-time authorized position and is responsible to a municipality or agency thereof.

3. "Officer" means an individual who, in the performance of his or her official duties, is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and who has jurisdiction extending throughout the municipality, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

4. "Traveler" means an officer, employee, or authorized person, when performing travel authorized by a municipality or agency thereof.

(b) Notwithstanding s. 112.061, the governing body of a municipality or an agency thereof may provide for a per diem and travel expense policy for its travelers which varies from the provisions of s. 112.061. Any such policy provided by a municipality or an agency thereof on January 1, 2003, shall be valid and in effect for that municipality or agency thereof until otherwise amended. A municipality or agency thereof that provides any per diem and travel expense policy pursuant to this subsection shall be deemed to be exempt from all provisions of s. 112.061. A municipality or agency thereof that does not provide a per diem and travel expense policy pursuant to this subsection remains subject to all provisions of s. 112.061.

(c) Travel claims submitted by a traveler in a municipality or agency thereof which is exempted from the provisions of s. 112.061, pursuant to paragraph (b), shall not be required to be sworn to before a notary public or other officer authorized to administer oaths, but any claim authorized or required to be made under any per diem and travel expense policy of a municipality or agency thereof must contain a statement that the expenses were actually incurred by the traveler as necessary travel expenses in the performance of official duties and shall be verified by a written declaration that it is true and correct as to every material matter; and any person who willfully makes and subscribes any such claim that he or she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation of such a claim that is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Whoever

receives an allowance or reimbursement by means of a false claim is civilly liable in the amount of the overpayment for the reimbursement of the public fund from which the claim was paid.

History.—s. 1, ch. 73-129; s. 1, ch. 77-174; s. 2, ch. 90-332; s. 2, ch. 92-90; s. 2, ch. 93-207; s. 2, ch. 94-332; s. 1, ch. 95-178; s. 1, ch. 98-37; s. 1, ch. 2003-125; s. 2, ch. 2010-147; s. 22, ch. 2011-34; s. 60, ch. 2011-142; s. 3, ch. 2011-143.

166.0213 Governing body meetings.—

(1) The governing body of a municipality having a population of 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution.

(2) The governing body of a municipality may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality at such time and place as shall be prescribed by ordinance or resolution.

History.—s. 1, ch. 2011-147; s. 1, ch. 2014-14.

166.031 Charter amendments.—

(1) The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State. All such amendments are effective on the date specified therein or as otherwise provided in the charter.

(3) A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law. A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2).

(4) There shall be no restrictions by the municipality on any employee's or employee group's political activity, while not working, in any referendum changing employee rights.

(5) A municipality may, by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter and amend provisions or language out of the charter which has

been judicially construed, either by judgment or by binding legal precedent from a decision of a court of last resort, to be contrary to either the State Constitution or Federal Constitution.

(6) Each municipality shall, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. Such ordinance or charter provision shall also provide procedures for filling a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office.

History.—s. 1, ch. 73-129; s. 1, ch. 86-95; s. 1, ch. 90-106; s. 43, ch. 90-315; s. 45, ch. 94-136.

166.032 Electors.—Any person who is a resident of a municipality, who has qualified as an elector of this state, and who registers in the manner prescribed by general law and ordinance of the municipality shall be a qualified elector of the municipality.

History.—s. 1, ch. 73-129.

166.033 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (4), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164, but does not include building permits.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality shall attach such a disclaimer to the

issuance of development permits and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

History.—s. 2, ch. 2006-88; s. 3, ch. 2012-205; s. 3, ch. 2013-92; s. 3, ch. 2013-193; s. 2, ch. 2013-213.

166.041 Procedures for adoption of ordinances and resolutions.—

(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(a) "Ordinance" means 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.

(b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

(2) Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(b) The governing body of a municipality may, by a two-thirds vote, enact an emergency ordinance without complying with the requirements of paragraph (a) of this subsection. However, no emergency ordinance or resolution shall be enacted which establishes or amends the actual zoning map designation of a parcel or parcels of land or that changes the actual list of permitted, conditional, or prohibited uses within a zoning category. Emergency enactment procedures for land use plans adopted pursuant to part II of chapter 163 shall be pursuant to that part.

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the municipality is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The _(name of local governmental unit)_ proposes to adopt the following ordinance: _(title of the ordinance)_.

A public hearing on the ordinance will be held on _(date and time)_ at _(meeting place)_.

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly

indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

(4) A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution; except that two-thirds of the membership of the board is required to enact an emergency ordinance. On final passage, the vote of each member of the governing body voting shall be entered on the official record of the meeting. All ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein.

(5) Every ordinance or resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the presiding officer and the clerk of the governing body.

(6) The procedure as set forth herein shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions and shall be taken as cumulative to other methods now provided by law for adoption and enactment of municipal ordinances and resolutions. By future ordinance or charter amendment, a municipality may specify additional requirements for the adoption or enactment of ordinances or resolutions or prescribe procedures in greater detail than contained herein. However, a municipality shall not have the power or authority to lessen or reduce the requirements of this section or other requirements as provided by general law.

(7) Five years after the adoption of any ordinance or resolution adopted after the effective date of this act, no cause of action shall be commenced as to the validity of an ordinance or resolution based on the failure to strictly adhere to the provisions contained in this section. After 5 years, substantial compliance with the provisions contained in this section shall be a defense to an action to invalidate an ordinance or resolution for failure to comply with the provisions contained in this section. Without limitation, the common law doctrines of laches and waiver are valid defenses to any action challenging the validity of an ordinance or resolution based on failure to strictly adhere to the provisions contained in this section. Standing to initiate a challenge to the adoption of an ordinance or resolution based on a failure to strictly adhere to the provisions contained in this section shall be limited to a person who was entitled to actual or constructive notice at the time the ordinance or resolution was adopted. Nothing herein shall be construed to affect the standing requirements under part II of chapter 163.

(8) The notice procedures required by this section are established as minimum notice procedures.

History.—s. 1, ch. 73-129; s. 2, ch. 76-155; s. 2, ch. 77-331; s. 1, ch. 83-240; s. 1, ch. 83-301; s. 2, ch. 95-198; s. 5, ch. 95-310; s. 5, ch. 2012-212.

166.0415 Enforcement by code inspectors; citations.—

(1) The governing body of each municipality may designate its agents or employees as code inspectors whose duty it is to assure code compliance. Any person designated as a code inspector may issue citations for violations of municipal codes and ordinances, respectively, or subsequent amendments thereto, when such code inspector has actual knowledge that a violation has been committed.

(2) Prior to issuing a citation, a code inspector shall provide notice to the violator that the violator has committed a violation of a code or ordinance and shall establish a reasonable time period within which the violator must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code inspector finds that the violator has not corrected the violation within the time period, the code inspector may issue a citation to the violator. A code inspector does not have to provide the violator with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if the code inspector has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(3) A citation issued by a code inspector shall state the date and time of issuance; name and address of the person in violation; date of the violation; section of the codes or ordinances, or subsequent amendments thereto, violated; name of the code inspector; and date and time when the violator shall appear in county court.

(4) Nothing in this section shall be construed to authorize any person designated as a code inspector to perform any function or duties of a law enforcement officer other than as specified in this section. A code inspector shall not make physical arrests or take any person into custody and shall be exempt from requirements relating to the Special Risk Class of the Florida Retirement System, bonding, and the Criminal Justice Standards and Training Commission, as defined and provided by general law.

(5) The provisions of this section shall not apply to the enforcement pursuant to ss. 553.79 and 553.80 of the Florida Building Code adopted pursuant to s. 553.73 as applied to construction, provided that a building permit is either not required or has been issued by the municipality.

(6) The provisions of this section may be used by a municipality in lieu of the provisions of part II of chapter 162.

(7) The provisions of this section are additional or supplemental means of enforcing municipal codes and ordinances. Except as provided in subsection (6), nothing in this section shall prohibit a municipality from enforcing its codes or ordinances by any other means.

History.—s. 13, ch. 89-268; s. 5, ch. 98-287; s. 116, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372.

166.04151 Affordable housing.—Notwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the

purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

History.—s. 15, ch. 2001-252.

166.042 Legislative intent.—

(1) It is the legislative intent that the repeal by chapter 73-129, Laws of Florida, of chapters 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184 of Florida Statutes shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above, but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe.

(2) Nothing contained in s. 5, chapter 73-129, Laws of Florida, shall be interpreted to impair any claim against a municipality or to affect the validity of any bonds or obligations issued under authority of any of the chapters enumerated in subsection (1).

History.—s. 5, ch. 73-129.

[1]**166.0425 Sign ordinances.**—Nothing in chapter 78-8, Laws of Florida, shall be deemed to supersede the rights and powers of municipalities and counties to establish sign ordinances; however, such ordinances shall not conflict with any applicable state or federal laws.

History.—s. 5, ch. 78-8.

[1]**Note.**—Also published at s. 125.0102.

166.043 Ordinances and rules imposing price controls; findings required; procedures.—

(1)(a) Except as hereinafter provided, no county, municipality, or other entity of local government shall adopt or maintain in effect an ordinance or a rule which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general law.

(b) The provisions of this section shall not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates, rates for towing of vehicles from or immobilization of vehicles on private property, or rates for removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle.

(c) Counties must establish maximum rates which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles

from an accident scene or for the removal and storage of vehicles, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle. However, if a municipality chooses to enact an ordinance establishing the maximum fees for the towing or immobilization of vehicles as described in paragraph (b), the county's ordinance established under s. 125.0103 shall not apply within such municipality.

(2) No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.

(3) Any law, ordinance, rule, or other measure which has the effect of imposing controls on rents shall terminate and expire within 1 year and shall not be extended or renewed except by the adoption of a new measure meeting all the requirements of this section.

(4) Notwithstanding any other provisions of this section, no controls shall be imposed on rents for any accommodation used or offered for residential purposes as a seasonal or tourist unit, as a second housing unit, or on rents for dwelling units located in luxury apartment buildings. For the purposes of this section, a luxury apartment building is one wherein on January 1, 1977, the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250.

(5) No municipality, county, or other entity of local government shall adopt or maintain in effect any law, ordinance, rule, or other measure which would have the effect of imposing controls on rents unless:

(a) Such measure is duly adopted by the governing body of such entity of local government, after notice and public hearing, in accordance with all applicable provisions of the Florida and United States Constitutions, the charter or charters governing such entity of local government, this section, and any other applicable laws.

(b) Such governing body makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

(c) Such measure is approved by the voters in such municipality, county, or other entity of local government.

(6) In any court action brought to challenge the validity of rent control imposed pursuant to the provisions of this section, the evidentiary effect of any findings or recitations required by subsection (5) shall be limited to imposing upon any party challenging the validity of such measure the burden of going forward with the evidence, and the burden of proof (that is, the risk of nonpersuasion) shall rest upon any party seeking to have the measure upheld.

(7) Notwithstanding any other provisions of this section, municipalities, counties, or other entity of local government may adopt and maintain in effect any law, ordinance, rule, or other measure which is adopted for the purposes of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 77-50; s. 82, ch. 79-400; s. 2, ch. 88-240; s. 3, ch. 90-283; s. 53, ch. 97-300; s. 5, ch. 98-324; s. 9, ch. 99-360; s. 34, ch. 2001-201.

166.0435 Amateur radio antennas; construction in conformance with federal requirements.—

(1) No municipality shall enact or enforce any ordinance or regulation which fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2d 952 (1985)" as issued by the Federal Communications Commission. Any ordinance or regulation adopted by a municipality with respect to amateur radio antennas shall conform to the above cited limited preemption, which states that local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.

(2) Nothing in this section shall effect any applicable provisions of chapter 333.

History.—s. 2, ch. 91-28.

166.044 Ordinances relating to possession or sale of ammunition.—No municipality may adopt any ordinance relating to the possession or sale of ammunition. Any such ordinance in effect on June 24, 1983, is void.

History.—s. 2, ch. 83-253.

166.0442 Criminal history record checks for certain municipal employees and appointees.—

(1) Notwithstanding chapter 435, a municipality may require, by ordinance, state and national criminal history screening for:

(a) Any position of municipal employment or appointment, whether paid, unpaid, or contractual, which the governing body of the municipality finds is critical to security or public safety;

(b) Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who is subject to licensing or regulation by the municipality; or

(c) Any private contractor, employee of a private contractor, vendor, repair person, for-hire chauffeur, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the municipality finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

(2) The ordinance must require each person applying for, or continuing employment or appointment in, any such position, applying for initial or continuing licensing or regulation, or having such contact or access to be fingerprinted. The fingerprints shall be submitted to the Department of Law Enforcement

for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal history record checks conducted pursuant to the ordinance may be used by the municipality to determine a person's eligibility for such employment or appointment and to determine a person's eligibility for continued employment or appointment. This section is not intended to preempt or prevent any other background screening, including, but not limited to, criminal history background checks, that a municipality may lawfully undertake.

History.—s. 2, ch. 2002-169; s. 2, ch. 2013-116.

[1]166.0443 Certain local employment registration prohibited.—

(1) Except as authorized by law, no county or municipality shall enact or enforce any ordinance, resolution, rule, regulation, policy, or other action which requires the registration or background screening of any individual engaged in or applying for a specific type or category of employment in the county or municipality or requires the carrying of an identification card issued as a result of such registration or screening, whether or not such requirement is based upon the residency of the person. However, an ordinance that regulates any business, institution, association, profession, or occupation by requiring background screening, which may include proof of certain skills, knowledge, or moral character, is not prohibited by this section, provided that such regulation:

(a) Is not preempted to the state or is not otherwise prohibited by law;

(b) Is a valid exercise of the police power;

(c) Is narrowly designed to offer the protection sought by the county or municipality; and

(d) Does not unfairly discriminate against any class of individuals.

(2) This section shall not be construed to prohibit any employer, including a local government, from investigating the background of employees or prospective employees or from requiring employees to carry an identification card or registration card.

History.—ss. 1, 2, ch. 86-259.

[1]Note.—Also published at s. 125.581.

166.0444 Employee assistance programs; public records exemption.—

(1) As used in this section, "employee assistance program" means a counseling, therapeutic, or other professional treatment program provided by a municipality to assist any municipal employee who has a behavioral disorder, medical disorder, or substance abuse problem or who has an emotional difficulty which affects the employee's job performance.

(2) A municipal employee's personal identifying information contained in records held by the employing municipality relating to that employee's participation in an employee assistance program is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

History.—s. 3, ch. 98-8; s. 1, ch. 2003-102.

[1]**166.0445 Family day care homes; local zoning regulation.**—The operation of a residence as a family day care home, as defined by law, registered or licensed with the Department of Children and Families shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use.

History.—s. 3, ch. 86-87; s. 15, ch. 99-8; s. 39, ch. 2014-19.

[1]Note.—Also published at s. 125.0109.

166.0446 Prohibition of fees for first responder services.—

(1) A municipality may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by ambulance services licensed pursuant to s. 401.23(4) and (5).

(2) As used in this section, the term "first responder" means a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is employed by the state or a local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section.

History.—s. 2, ch. 2009-191; s. 125, ch. 2013-183.

166.0447 Municipal park entrance fee discounts.—

(1) A municipal park or recreation department shall provide a partial or a full discount on park entrance fees to the following individuals who present information satisfactory to the municipal department which evidences eligibility for the discount:

(a) A current member of the United States Armed Forces, their reserve components, or the National Guard.

(b) An honorably discharged veteran of the United States Armed Forces, their reserve components, or the National Guard.

(c) An honorably discharged veteran of the United States Armed Forces, their reserve components, or the National Guard, who has a service-connected disability as determined by the United States Department of Veterans Affairs.

(d) A surviving spouse and parents of a deceased member of the United States Armed Forces, their reserve components, or the National Guard, who died in the line of duty under combat-related conditions.

(e) A surviving spouse and parents of a law enforcement officer, as defined in s. 943.10(1), a firefighter, as defined in s. 633.102, or an emergency medical technician or paramedic employed by state or local government, who died in the line of duty.

(2) As used in this section, the term "park entrance fee" means a fee charged to access lands managed by a municipal park or recreation department. The term does not include expanded fees for amenities, such as campgrounds, aquatic facilities, stadiums or arenas, facility rentals, special events, boat launching, golf, zoos, museums, gardens, or programs taking place within public lands.

History.—s. 3, ch. 2016-196.

166.045 Proposed purchase of real property by municipality; confidentiality of records; procedure.—

(1)(a) In any case in which a municipality, pursuant to the provisions of this section, seeks to acquire by purchase any real property for a municipal purpose, every appraisal, offer, or counteroffer must be in writing. Such appraisals, offers, and counteroffers are not available for public disclosure or inspection and are exempt from the provisions of s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing body of the municipality. If a contract or agreement for purchase is not submitted to the governing body for approval, the exemption from s. 119.07(1) will expire 30 days after the termination of negotiations. The municipality shall maintain complete and accurate records of every such appraisal, offer, and counteroffer. For the purposes of this section, the term "option contract" means a proposed agreement by the municipality to purchase a piece of property, subject to the approval of the local governing body at a public meeting after 30 days' public notice. The municipality will not be under any obligation to exercise the option unless the option contract is approved by the governing body at the public hearing specified in this section.

(b) If the exemptions provided in this section are utilized, the governing body shall obtain at least one appraisal by an appraiser approved pursuant to s. 253.025 for each purchase in an amount of not more than $500,000. For each purchase in an amount in excess of $500,000, the governing body shall obtain at least two appraisals by appraisers approved pursuant to s. 253.025. If the agreed purchase price exceeds the average appraised price of the two appraisals, the governing body is required to approve the purchase by an extraordinary vote. The governing body may, by ordinary vote, exempt a purchase in an amount of $100,000 or less from the requirement for an appraisal.

(c) Notwithstanding the provisions of this section, any municipality that does not choose with respect to any specific purchase to utilize the exemption from s. 119.07(1) provided in this section may follow any procedure not in conflict with the provisions of chapter 119 for the purchase of real property which is authorized in its charter or established by ordinance.

(2) Nothing in this section shall be interpreted as providing an exemption from, or an exception to, s. 286.011.

History.—s. 2, ch. 84-298; s. 2, ch. 88-315; s. 35, ch. 90-360; s. 9, ch. 94-240; s. 46, ch. 96-406; s. 30, ch. 2016-233.

166.0451 Disposition of municipal property for affordable housing.—

(1) By July 1, 2007, and every 3 years thereafter, each municipality shall prepare an inventory list of all real property within its jurisdiction to which the municipality holds fee simple title that is appropriate for use as affordable housing. The inventory list must include the address and legal description of each such property and specify whether the property is vacant or improved. The governing body of the municipality must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing. Following the public hearing, the governing body of the municipality shall adopt a resolution that includes an inventory list of such property.

(2) The properties identified as appropriate for use as affordable housing on the inventory list adopted by the municipality may be offered for sale and the proceeds may be used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing, or may be sold with a restriction that requires the development of the property as permanent affordable housing, or may be donated to a nonprofit housing organization for the construction of permanent affordable housing. Alternatively, the municipality may otherwise make the property available for use for the production and preservation of permanent affordable housing. For purposes of this section, the term "affordable" has the same meaning as in s. 420.0004(3).

History.—s. 4, ch. 2006-69.

166.047 Telecommunications services.—A telecommunications company that is a municipality or other entity of local government may obtain or hold a certificate required by chapter 364, and the obtaining or holding of said certificate serves a municipal or public purpose under the provision of s. 2(b), Art. VIII of the State Constitution, only if the municipality or other entity of local government:

(1) Separately accounts for the revenues, expenses, property, and source of investment dollars associated with the provision of such services;

(2) Is subject, without exemption, to all local requirements applicable to telecommunications companies; and

(3) Notwithstanding any other provision of law, pays, on its telecommunications facilities used to provide two-way telecommunications services to the public for hire and for which a certificate is required pursuant to chapter 364, ad valorem taxes, or fees in amounts equal thereto, to any taxing jurisdiction in which the municipality or other entity of local government operates. Any entity of local government may pay and impose such ad valorem taxes or fees.

This section does not apply to the provision of telecommunications services for internal operational needs of a municipality or other entity of local government. This section does not apply to the provision of internal information services, including, but not limited to, tax records, engineering

records, and property records, by a municipality or other entity of local government to the public for a fee.

History.—s. 2, ch. 97-197.

166.048 Conservation of water; Florida-friendly landscaping.—

(1)(a) The Legislature finds that Florida-friendly landscaping contributes to the conservation, protection, and restoration of water. In an effort to meet the water needs of this state in a manner that will supply adequate and dependable supplies of water where needed, it is the intent of the Legislature that Florida-friendly landscaping be an essential part of water conservation and water quality protection and restoration planning.

(b) As used in this section, "Florida-friendly landscaping" has the same meaning as in s. 373.185.

(2) The governing body of each municipality shall consider enacting ordinances, consistent with s. 373.185, requiring the use of Florida-friendly landscaping as a water conservation or water quality protection or restoration measure. If the governing body determines that such landscaping would be of significant benefit as a water conservation or water quality protection or restoration measure, especially for waters designated as impaired pursuant to s. 403.067, relative to the cost to implement Florida-friendly landscaping in its area of jurisdiction in the municipality, the governing body shall enact a Florida-friendly landscaping ordinance. Further, the governing body shall consider promoting Florida-friendly landscaping as a water conservation or water quality protection or restoration measure by: using such landscaping in any areas under its jurisdiction which are landscaped after the effective date of this act; providing public education on Florida-friendly landscaping, its uses in increasing water conservation and water quality protection or restoration, and its long-term cost-effectiveness; and offering incentives to local residents and businesses to implement Florida-friendly landscaping.

(3)(a) The Legislature finds that the use of Florida-friendly landscaping and other water use and pollution prevention measures to conserve or protect the state's water resources serves a compelling public interest and that the participation of homeowners' associations and local governments is essential to the state's efforts in water conservation and water quality protection and restoration.

(b) A deed restriction or covenant may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.

(c) A local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land.

History.—s. 6, ch. 91-41; s. 6, ch. 91-68; s. 3, ch. 2001-252; s. 22, ch. 2009-243.

[1]**166.0483 Permit may not be required for owner to paint residence.**—A local government may not require an owner of a residence to obtain a permit to paint such residence, regardless of whether the residence is owned by a limited liability company.

History.—s. 15, ch. 2017-149.

[1]Note.—Also published at s. 125.571.

[1]**166.0485 Establishment of neighborhood crime watch programs.**—A county sheriff or municipal police department may establish neighborhood crime watch programs within the county or municipality. The participants of a neighborhood crime watch program shall include, but need not be limited to, residents of the county or municipality and owners of businesses located within the county or municipality.

History.—s. 1, ch. 2004-18.

[1]Note.—Also published at s. 30.60.

166.049 Municipal law enforcement agencies; communications and assistance.—The chief of police shall:

(1) Schedule at least two law enforcement officers to be on duty at all times. While on duty, each officer must be able to communicate directly with the other and, if not engaged in another law enforcement activity, respond to the other officer's request for assistance; or

(2) Establish a means for a municipal law enforcement officer to communicate with the county sheriff's office and to request assistance of a routine law enforcement nature from the county sheriff's office; or

(3) Establish a mutual aid agreement as provided in chapter 23 in order for a municipal law enforcement officer to communicate with municipal law enforcement agencies of other jurisdictions and to request routine law enforcement assistance from those agencies.

History.—s. 2, ch. 95-318.

166.0493 Powers, duties, and obligations of municipal law enforcement agencies.—On or before January 1, 2002, every municipal law enforcement agency shall incorporate an antiracial or other antidiscriminatory profiling policy into the agency's policies and practices, utilizing the Florida Police Chiefs Association Model Policy as a guide. Antiprofiling policies shall include the elements of definitions, traffic stop procedures, community education and awareness efforts, and policies for the handling of complaints from the public.

History.—s. 3, ch. 2001-264.

166.0495 Interlocal agreements to provide law enforcement services.—A municipality may enter into an interlocal agreement pursuant to s. 163.01 with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the other adjoining municipality or municipalities. Any such agreement shall specify the duration of the agreement and shall comply with s. 112.0515, if applicable. The authority granted a municipality under this section is in addition to and not in limitation of any other authority granted a municipality to enter into agreements for law enforcement services or to conduct law enforcement activities outside the territorial boundaries of the municipality.

History.—s. 1, ch. 97-62.

166.0497 Alteration, amendment, or expansion of established downtown development district; procedures.—

(1) Whenever the governing body of a municipality that has created a downtown development district pursuant to chapter 65-1090, Laws of Florida, determines that it is necessary to alter, amend, or expand the boundaries of the established district by the inclusion of additional territory or the exclusion of lands from the limits of the established district, in order to revitalize and preserve property values or to prevent deterioration in the original district or its surrounding areas, it shall, by resolution, declare its intention to do so.

(2) In the resolution of intent, the governing body shall set a date for a public hearing on adoption of an ordinance altering, amending, or expanding the district and describing the new proposed district. Upon the adoption of the resolution, the governing body shall cause a notice of the public hearing to be published in a newspaper of general circulation published in the municipality, which notice shall be published one time not less than 30 nor more than 60 days prior to the date of the hearing. The notice shall set forth the date, time, and place of the hearing and shall describe the new proposed boundaries of the district. Any citizen, taxpayer, or property owner shall have the right to be heard in opposition to the proposed amendment or expansion of the district. After the public hearing, if the governing body intends to proceed with the amendment or expansion of the district, it shall, in the manner authorized by law, adopt an ordinance defining the new district. The governing body shall not incorporate land into the district not included in the description contained in the resolution and the notice of public hearing, but it may eliminate any lands from that description when it adopts the ordinance containing the final determination of the boundaries.

History.—s. 36, ch. 99-208.

EXHIBIT
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COMMUNITY NAME	PRIVATELY MAINTAINED ROAD
Lakeview Terrace	Lakeview Terrace Drive Classic Drive Lodge Terrace Maple Tree Drive Raintree Drive Pearl Lake Lane Sunny Point Lane Clubhouse Vista Road
Twin Lakes	Golfview Circle Twin Lakes Circle Fairway Circle
Olde Mill Stream	Lake Pearl Place All privately maintained streets located within community with access at 1000 N. Central Avenue
Lakeside Estates	Stillwater Drive Egret Street Lake Enola Circle
Golden Estates	Rose Blvd Hibiscus Street Fern Street Ivy Street Camellia Street