

City Commission REFERENCE GUIDE

FEBRUARY 2023



City of Gainesville
Office of the City Clerk

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Chapter 1: INTRODUCTION

Welcome to City of Gainesville in your new role as City Commission member.

Chapter 11776, Special Acts of 1925, Extraordinary Session established the City of Gainesville, as amended.

Following passage of the city charter in 1926, the City of Gainesville became incorporated and governed by a mayor and Commission. The Commission is vested with all legislative powers and its members are the community's decision makers. Commission meets twice a month in order to hold public hearings and make policy decisions regarding municipal business and services. The City Commission promotes open access to and participation in city government processes, ensuring a quality community with a safe and attractive environment.

We have come very far since this time and although we look different, our commitment continues in making Gainesville a wonderful place to live and work. Now you can be an active part of this exciting process!

1.1 City of Gainesville Vision Statement

Gainesville 2035 balances an equitable community for all and a sustainable community for the future. Gainesville 2035 is a world-class lifelong learning community, is a great place for neighbors to live and thrive, and provides meaningful experiences for everyone. Gainesville 2035 has an alive/vibrant downtown, a strong, resilient economy, and mobility for all neighbors.

1.2 City of Gainesville Mission Statement

Gainesville city government's mission is to build community by providing services responsive to neighbors and our community in a financially responsible and neighbor-focused manner in partnership with our neighbors while engaging neighbors and community builders.

1.3 Welcome Letter from the City Clerk

As you begin your term as a member of Commission, I would like to officially welcome you to the City of Gainesville. The City Clerk's Office is pleased to help you adjust to city business. This manual is designed to serve as a reference throughout your tenure as City Commissioner. The Charter and Code of Ordinances is available on the City website. The Comprehensive Plan and Land Development Code are available from the Department of Sustainable Development and on the city website. The budget and annual reports are available from the Finance Department and on the city website. The Florida Statutes are available online. The Florida Administrative Code and Advisory Opinions of the Commission on Ethics are available online. There is so much to read and learn, please do not hesitate to request information or assistance — we are here to assist you.

Since Commissioners schedules vary, it is important for you to consider what office hours you will make yourself available for meetings with constituents and city staff. Additionally, orientation will be provided by the charter officers and additional material will be made available for your acclimation to city hall.

The Florida League of Cities sponsors an Institute for Elected Municipal Officials at various locations and times during the year, which is highly recommended for you to attend. This course runs over the course of three to four days and is vital to understanding your new role, state law and requirements for elected officials and gives you an opportunity to network with other newly elected officials from around the state. Your assistant will assist you with completing the necessary steps through our city's travel policy so you may attend.

If you have any questions, please feel free to stop by my office. *Again, welcome to the City of Gainesville.*

Omichele D. Gainey, IIMC-CMC
City Clerk

1.4 A Quick Civic Review

Florida League of Cities Publication



Just what is a Florida City?

In Florida, a city is a municipal government. The founding citizens choose the name, and in doing so, decide whether to call the municipality a city, town or village. There is no legal difference between the three. In other states, the governing structure is often dictated by the Legislature.

A municipal government is a public corporation. The Commission, or commission, is the board of directors, elected by the stockholders, who are the citizens. The public corporation is formed to provide self-governance and a variety of services.

The charter, which is a city's constitution, is written to form the municipality and is similar to articles of incorporation. The charter sets forth the boundaries of the municipality, its form of government, the size of the Commission and certain governmental processes. In Florida, the Legislature approves the incorporation through a special act, and the charter is approved by the citizens through a referendum.

Besides being a public corporation, however, a municipality is an independent, general-purpose local government. General purpose means there is a wide range of services provided by the entity.

City Rights and Privileges

In Florida, a city is recognized with certain rights and privileges as such a government. The most important of these rights is Home Rule. The state Constitution recognizes that cities may enact their own ordinances and self-govern – so long as the city's law does not conflict with the state and federal law.

This Home Rule power was repeatedly sought by early Florida city officials. It was placed into the state Constitution in 1968, and later ratified through legislation in 1973. Municipal Home Rule powers do not extend to fiscal Home Rule, however, because the state reserves all taxing authority to itself.

Cities are not “of” the state, cities in Florida are “in” the state. This is an important distinction between municipal governments and other local governments.

Why Cities Are Formed

Cities are the heart of the social contract. People first lived together for safety. As civilizations were created, people sometimes lived with families, tribes or other communal entities. Scholars often look to Athens in ancient Greece as the first great city, with its democratic involvement of the public in government and its progressive services.

As the centuries passed, safety remained a concern, but people also chose to live near one another for other reasons. Today, when people choose to live near others and to share public infrastructure, such as streets, sidewalks, water and sewer systems and parks, they agree to abide by a set of rules. These rules are known as ordinances, which guide a city's residents.

Living in a city, in Florida, requires choice. As people look for a place to live, many things may affect their decision – such as distance from work, quality of schools, or other things that are important to them and

their family. They also agree to become part of the support to this government, to pay their share for utilities and services.

In Florida, this often means they agree to pay city property taxes in addition to those they pay to the county and the school district. With self-governance comes responsibility.

What Are Florida Cities Like?

One of the most fascinating things about the municipalities in Florida is the tremendous difference in them. There are 410 municipalities in the state, and no two are alike. During the decade from 1950 to 1960, more than 100 cities in Florida were incorporated.

More than 9.5 million Floridians reside in a city, town or village – equaling about 51 percent of the state population. The majority of Floridians – by a small percentage – live in unincorporated county areas. City populations range from 5 (City of Weeki Wachee) to more than 880,000 (City of Jacksonville).

Sixty percent of the 410 cities are under 10,000 in population. Florida is a state composed of mostly smaller cities, with the median city population at 5,510.

Florida's cities have a suburban flavor, as none are as large or urban as New York, Los Angeles or Chicago. Many of the cities were planned for retirees and do not have a central business area. A few are completely residential. Some grew up around military bases and popular tourist destinations. The fishing and agricultural industries have also caused the creation of coastal cities, towns and villages.

Just as no two city charters are alike, each city's menu of services is also different. A common practice among chambers of commerce and other promotional agencies is to label city and county governments as "full service." This is an unfortunate label because it is hard to define since not all city offers its own police and fire services. Moreover, some Florida cities do not pave every street, have a centralized water or sewage system, or offer parks and recreation services, or offer natural gas or electric utilities as Gainesville currently does.

For some cities, the most important service is building code standards and inspections, and planning and zoning. Some of these services are also offered by special districts and counties, and are delivered to citizens both inside and outside of city boundaries.

The most important aspect of municipal services; however, is that the services are created to meet the demands of the residents.

The Structure of Governments in Florida

One of the Florida League of Cities' missions, as stated in its strategic plan, is to increase the public's understanding of municipal government in Florida. To do that, we often include information on Florida's overall governmental structure. To truly understand what a city is, it is important to understand the structure of other local governments.

Florida became a state in 1845. Under previous British and Spanish rule, territorial leaders had recognized local and regional governance. Two city charters in particular – St. Augustine and Pensacola – were recognized as municipal governments.

Upon becoming a territory of the United States, two counties were created that split the state into halves. Over time, the number of counties grew as the state sought to provide its services throughout Florida. A county is a sub-state, or arm of the state, and every inch of Florida is within a county. Counties are constitutionally created, and the boundaries can be changed only by the Legislature. Today, Florida has 67 counties – the oldest created in 1821 and the newest in 1925.

The Board of County Commissioners is the elected body that oversees a county's governance. Counties must carry out constitutionally mandated responsibilities, and those established by the state. The constitutional services of a county are law enforcement and jail administration, tax collection, property appraisal, state court administration and supervision of elections.

In addition, counties are charged with road maintenance, public health, solid waste disposal and other environmental responsibilities. Other county services are offered as determined by the elected county officials.

Florida has 67 other units of local government – school districts. These constitutionally created districts share the same geographical boundaries as each county, but the school district is a separate government. School districts have elected boards that govern the day-to-day operations of public education for grades K-12. School districts are a special-purpose local government. Funding is provided through property taxes and state revenues.

Florida has another type of local government, the special district. There are two types of special districts: independent and dependent. Independent districts are created by the Legislature for a specific purpose, to be provided in a certain area. The funding and governance of each one is set by the Legislature. Examples of independent special districts include water management districts, fire service, inland navigation, ditch maintenance and the like.

Florida also has dependent special districts, which are created by cities and counties. These districts are governed by the city or county elected commission, and derive their authority, funding and support from that government. Examples of dependent special districts include downtown improvement authorities, community redevelopment authorities and special taxing districts.

According to the Florida Association of Special Districts (FASD), there are over 1,800 Independent and Dependent Special Districts in the state of Florida, governed by more than 30 statutes, involving over 500 local governments.

Cities are not counties, they are not school districts, and they are not special districts. Cities are publicly created, independent governments designed by their citizens, for their citizens. They are the only voluntary level of local government in the Sunshine State. Cities require choice on the part of their residents, and with that choice comes the benefit of grass-roots democracy, true self-governance, and home rule powers.

The Need for Civic Education

As of 2022, 36 percent of Floridians are native to the state, and the remaining from other states, which might greatly affect a Floridian's understanding of state and local government in the Sunshine State. For most people, their civics lessons were given in high school. Upon moving here, there aren't always opportunities for new residents, especially adults who are out of school, to quickly learn how their governments function.

City officials can play a great part in helping to educate all Floridians about their governments, and the League wants to help make that happen. Everyone benefits from an informed public!

1.5 What Do I Really Need to Know as an Elected Official?

Florida League of Cities Publication



Congratulations – and welcome to municipal governance in Florida! Your “to-do” list was probably pretty long while you were running for office. Now that you’ve won, there’s little doubt that your list has not been shortened. Here are a few ideas to help your understanding of the municipal picture in Florida – a combination of facts, suggestions and resources that might help. In many municipalities, orientation workshops are provided to newly elected officials. The orientation is critical! The Florida League of Cities and the [Florida Institute of Government](#) also provide elected official sessions three times per year in locations around the state. This workshop is called the [Institute for Elected Municipal Officials](#) (IEMO).

No matter where you receive this training or whether it is provided in a formal or informal setting, there is specific information that should be made accessible to you as an elected official. The most helpful information answers questions that center around 1) getting the job done (as an elected official) and 2) what you need to know to be effective in office. To begin, let’s discuss the major information and documents that you as an elected official will need to know or know how to access for answers. You may not refer to the office you now hold as a job, but I assure you it is a job. It is a job that requires a certain level of expertise, knowledge, resources and tact. Aren’t those the same SKAs (skills, knowledge and abilities) required of most jobs? Jobs take time to do effectively, but with the right tools and support, the time required can be minimized and constructive.

Contrary to what you may believe, elected officials are not expected to know it all or have all of the answers. They are, however, expected to know where to go to get the answers, and to come up with solutions that at least attempt to resolve problem situations. Elected officials come from all walks of life, and therefore bring to their commissions an immeasurable wealth of knowledge and talent. Like any new job, however, there are some basic SKAs that an elected official must equip himself or herself with for success.

So what do you need to know? Information you need could be divided into two areas. The first area is information that comes directly from the municipal government and is developed by the municipality. Your city should provide you with the following documents and include a review in your orientation:

- City/County Charter, which contains laws governing your local government and can normally only be changed by referendum (a vote of the electors);
- Code Book (of Ordinances), which contains the laws passed by the locally elected governing body;
- Land Development Code and access to the city comprehensive plan;
- City Organizational Chart; · Annual Fiscal Year (Operational) Budget;

All of these documents provide information that is basic to the governing of the local government. In addition, workshops should be provided by staff to elected officials to explain these items:

- How to read and understand the city budget;
- How the budget works (for example, can funds be moved between line items or budget categories?);
- What happens to funds that result from under-expenditures;
- How the city handles over-expenditures, etc.;
- What debt service funds and enterprise funds are;

- What your city's financial policies are, including investment and reserve policies; and
- What the immediate and long-term effects of grants, etc., are.

Also, you should talk with your finance director about the forecast of your local government with regard to the county, state and federal governments. Another subject to discuss is the capacity of the city's current tax structure for the city. Asking for answers to these questions should not be seen as an effort to micromanage one's local government, but rather as a way to become better informed so as to better understand and appreciate actions recommended or taken by management. The second area of information important to elected officials is information that is directly related to local government. This is information that has a direct bearing on how the local government conducts its business.

Documents and information that would fall under this area include the following:

- The "Government-in-the-Sunshine" Manual, which provides a reference guide to the open meetings and public record laws, as well as exemptions to those laws approved by the state Legislature during the preceding legislative session. Newly updated manuals are available for purchase from the [First Amendment Foundation](#) at around February of each year. The Office of the Attorney General prepares the manual.
- A parliamentary procedures manual. The newest version of Robert's Rules of Order is the 12th edition.
- The "Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees," from the [Florida Ethics Commission](#). This pamphlet explains the various forms that must be completed when elected or appointed officers have voting, business or related conflicts, and for reporting gifts.
- The [Florida Municipal Officials' Manual](#), This manual gives a quick overview of cities, towns and villages in Florida (their structure and function), city services, revenue and tax structure, the Sunshine Law and other municipal requirements. It is a valuable resource!

Elected officials have online access to the following:

- [Attorney General opinions](#);
- [Florida Commission on Ethics opinions](#);
- [Division of Elections opinions](#), as well as the Election Code; and
- [Florida Statutes, Laws of Florida and Florida Constitution](#)

Elected officials also should meet with their clerk or archives staff person to review the Department of State, Division of Records Management, basic policies on public records retention and destruction. You might wonder why access to this type of information is important, since you have legal staff and management staff to answer questions in such matters. That is true, but the citizens who will give you the worst heartburn are those who know the above-mentioned laws and opinions. A little knowledge on your part in this area can and will go a long way when working with these citizens. And, with daily changes to technology and communications devices, we all need to stay current on laws and rulings. Your local and state leagues two valuable resources for elected officials are local and regional leagues and the Florida League of Cities. You usually cannot violate the open meetings/open records laws of Florida by talking to the elected officials of a neighboring city or from another area of the state.

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1.6 Local Government Vocabulary

Florida League of Cities



Ad valorem tax:

A property tax set according to the value of the property.

Annexation:

Extending a city's boundaries by adding land from adjoining unincorporated territory.

Authority:

A special-purpose public corporation set up by government to provide a specific function or services, such as hospital care or public housing.

Budget:

A government's annual financial plan. The budget is based on anticipated revenues and expenditures for a given year.

Charter:

Similar to a constitution; written and adopted by the citizens. It defines the city's boundaries, form of government and powers.

Neighbor:

In the City of Gainesville, a neighbor is defined as a resident of a city, state or nation; a consumer of public services.

City:

See municipality. Although many people think a city is a large town, in Florida there is no legal difference between towns, villages and cities.

City Attorney:

Represents city in legal matters and gives legal advice concerning city affairs.

City Clerk:

Record keeper for the city. Keeps the official city seal, maintains City Commission minutes and other records.

City Commission:

The governing body of a city.

City Hall:

A city's main government building, usually including the offices for the mayor, the City Commission members, and a Commission meeting room.

City Manager:

An official appointed by the City Commission charged with overseeing the daily affairs of the municipality.

Code:

A set of ordinances arranged by subject matter.

Community:

May refer to any local area whose residents share common interests.

Consolidation:

A formal merging of two governments (such as a county and city) that must be approved by the voters of each government.

County:

A subdivision of the state set up to carry out certain state laws; it also functions as a general-purpose local government.

County seat:

The area designated by the legislature as the site of a county's government. Florida League of Cities: An organization of Florida member cities dedicated to helping local governments become more innovative, effective and responsive.

Grant:

Money provided by the state or federal government for local governments projects. Grants are often designated for specific uses or projects.

Growth strategies:

Planning for future population growth, resource use and development.

Homestead exemption:

A reduction in property tax for the taxpayer who owns and lives on property being taxed.

Home rule:

A constitutional provision that allows municipal governments to exercise any power for municipal purposes except when it is expressly prohibited by state law. That is, as long as it is not specifically prohibited by state or federal law, municipal officials may pass any ordinance on behalf of the city.

Incorporate:

To officially bring a municipality into existence through the passage of an act in the state legislature and a referendum in the proposed municipality.

Incorporated area:

The land within a municipality. The boundaries are set by the city charter.

Infrastructure:

The physical framework or facilities of government, such as roads, bridges, buildings and sewer lines.

Intergovernmental:

The relationship between two or more governments or levels of government. Land-use plan: A plan on how land can be used. The plan divides a city or county into zones and specifies the purposes for which land in each zone can be used.

License fee:

A fee required of a specific business in order to control the effects that the business might have on a community.

Local law:

A law passed by the state legislature to provide for a specific need in a named county or city.

Local option:

Allowing citizens of a county or city to vote on whether a particular law or practice will apply in their community.

Mayor:

An elected municipal official who may, depending upon the charter, have specific duties and responsibilities.

Municipality:

The legal name in Florida for a city, town or village.

Ordinance:

A law enacted by a city or county affecting local affairs such as traffic, noise and animal control.

Population density:

The number of people who live in a specific area, such as a square mile.

Privatization:

The use of a private business to deliver a government service.

Property tax:

A tax based on the value of real property (a house or land) on personal property (car or boat). Also known as ad valorem tax.

Revenue:

A government's income from taxes, grants, fines, fees and licenses.

Rural:

Areas of the countryside with a low population density and not considered urban as defined by the U.S. Census Bureau.

Sanitary landfill:

The public facility where solid waste is buried under earth.

Suburban:

A heavily populated area near a large city, usually having residential areas and small businesses.

Tax:

Money that a government levies and collects from people or organizations within its jurisdiction. Taxes are used to pay for government services.

Tax digest:

The record showing the total taxable value of property in a city or county.

Town:

See municipality. Although many people think a town is a small city, in Florida there is no legal difference between towns, villages and cities.

Unincorporated area:

The area of the county not in any city. Area may be rural, agricultural or heavily populated and suburban in nature.

Urban:

Generally, refers to any city or developed community with a sizeable population. Urban can also refer to a densely settled area that is located next to a city.

Urbanized area:

Includes a central space and the densely settled urban fringe next to or around it.

User fee:

A charge made to persons for using a governmental service such as water.

Village:

See municipality. Although many people think a village is a small town, in Florida there is no legal difference between towns, villages and cities.

Zoning:

Dividing a community into zones for different types of uses, such as business, residential subdivisions and agriculture.

1.7 Commission-Manager Government

The City of Gainesville's Charter provides that the city will function under the Commission-Manager form of government.

What Does that Mean?

We all know the history of our federal government, but the history of municipal government is not a subject of widespread study. There are four basic forms of municipal government today: Commission-weak mayor, Commission-strong mayor; commission; and Commission-manager.

The Commission-manager form of government is considered one of the key elements in twentieth-century municipal reform based on the premise that a strong and non-political executive office should handle the administration of municipal government. This has become a very popular system of government in thousands of American cities. Those easily understand it that are familiar with the business world as well, as it is similar to the prototype of a business corporation. Please use this illustration as an example:

The **voters** (stockholders) elect the **Commission** (board of directors), including the **Mayor** (chairman of the board), which in turn, appoints the **City Manager and in Gainesville five other charter officers – the City Attorney, General Manager of the Utility, City Clerk, Director of Equity & Inclusion & the City Auditor.**

What Does the City Manager Do?

Appointed to an indefinite period by the mayor, with advice and consent of Commission, the City Manager is directly responsible to the Commission for the day-to-day management of the city. The City Manager directs, supervises and coordinates the various city departments under their jurisdiction, appoints and removes the directors of those departments, prepares the budget for Commission's consideration, and makes reports and recommendations to the Commission. All department heads (except charter officers and their departments) report to the City Manager. The City Manager also advises the Mayor and Commission regarding city operations and policy.

What Does the Mayor do as "Chairman of the Board?"

The mayor presides at City Commission meetings and votes on all matters, as the mayor pro-tem will do in the mayor's absence. He/she must know the basic operations of parliamentary procedure, rules for public comment and other procedural etiquette.

The mayor serves as the ceremonial head of the city; he/she executes contracts and represents the city in all agreements with other governmental entities. The mayor is an important political figure, but no decision-making role in the day-to-day administration of city government.

What is the Function of City Commission?

The Commission's main functions may be categorized as the following:

- Passage of Local Laws
- Determination of Policy
- Selection of a Charter Officer
- Board/Committee Appointments

Passage of Local Laws

This function flows directly from the authority granted the commission by the voters who elected them. The

review and adoption of ordinances by Commission establish the rules by which all commission actions, staff work and appointed boards should be governed.

Determination of Policy

This is the process of deciding what is to be done. The Commission should not confuse this with how a program is to be administered, which is the job of the respective charter officer. In its simplest terms, WHAT TO DO is policy making; HOW TO DO IT is administration.

Charter Officer Appointments/Hiring

The City Commission provides advice and consent to the appointment of a City Manager, City Attorney, GRU General Manager, City Auditor, Director of Equity & Inclusion and City Clerk to carry out the duties stated in the city charter. These charter officers serve at the pleasure of Commission, and they are to advise both the City Commission and the entire city staff/administration on matters within their area of expertise. The Human Resources department coordinates the hiring process with the Commission and usually with an independent nationwide search firm. Interim appointments are made for any time during which a search is conducted by soliciting applications from internal employees who serve until the time an employment agreement is reached for a permanent candidate.

Interference with Administration: Commission members are encouraged to closely scrutinize, question and observe the operation of city government so as to obtain independent information to assist them in the formulation of sound policies to be considered by City Commission. However, any recommendations for improvement in city government operations are to be made through the charter officers, so that they may coordinate efforts of their departments to achieve the greatest possible savings through the most efficient and sound means available. No member should give orders, either publicly or privately, to employees under the direction and supervision of a charter officer.

Board/Committee Appointments

The City Commission provides advice and consent in the appointment of members to any of the various advisory boards serving the city. A full listing of advisory boards/committees are available under the Clerk's page on the city website.

Chapter 2: CITY CHARTER, RELATED LAWS & POLICIES

2.1 The Municipal Charter

The charter is an essential and fundamental element of the city. No municipal government may be created without a proposed charter, and no municipal government may exist without a charter. It contains the basic provisions for the organization of our government. According to the National League of Cities, a good charter is one which "...sets before the citizens a clear picture of their own responsibilities and powers and before the officials and employees a statement of their duties and mutual interrelations."

The charter must originate within the community and must be formally approved by the citizens as represented by a majority of the registered voters of the community. The charter is, in a sense, the statement from the residents regarding the extent and form of government, which they desire.

City of Gainesville Charter Highlights

- Powers as a city
- Composition and powers of the Commission
- Procedures regarding vacancies in Commission membership
- Charter officers' powers and duties
- Fiscal year and budget/city finances
- Issuance of general obligation and revenue bonds
- Capital improvements
- Personnel issues
- Election requirements, initiative, referendum and recall
- Municipal annexation/contraction

How is the Charter Amended?

Chapter 166 of the Florida Statutes governs the general provisions for charter amendments:

F.S. 166.031 CHARTER AMENDMENTS

*"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 election, submit to the electors of a 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 municipalities. The governing body of the municipality will 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."*

The charter then may be amended from time to time. However, there is no set requirement as to how often the charter will be amended.

Please read the charter and become very familiar with it, and feel free to ask questions for clarification. The charter, more than anything else, is your guidebook to the way the City of Gainesville will be governed, and the voters of Gainesville have ratified it.

Charter Review Commission

In March 2019, Gainesville voters approved the creation of a Charter Review Commission to establish a process for amending the City Charter. The Charter Review Commission will be assembled once every ten years to engage with the public and to propose a list of potential amendments to be placed on the ballot for voter approval or rejection. Every tenth year, the City Commission will appoint eleven citizen volunteers from a pool of applicants to serve as members on the Charter Review Commission (CRC). The CRC meets to review and discuss potential charter amendments. Three required public hearings are held on any proposed amendments before draft ordinances with recommended changes are presented to the City Commission for final consideration. Any amendments not vetoed by the Commission then go on to the voters for approval during the November election.

2.2 Charter Laws

The City of Gainesville, created by chapter 12760, Laws of Florida, 1927, as amended, shall continue and is vested with all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except as otherwise provided by state law.

Basic Framework of City Government

The City of Gainesville is a **municipal corporation** vested under Article VIII, Section 2 of the Florida Constitution **with corporate, proprietary and governmental powers**. Similar to private corporations, the City is comprised of a board of directors (City Commission – who set policy and enact local laws), an executive team (the 6 Charter Officers – who manage and administer the daily operations of the City) and shareholders (taxpayers/electors – who we all serve). In contrast to private corporations, the primary purpose of the municipal corporation is to provide public services and safeguard the public health, safety and welfare.

The Municipal **Home Rule Powers** Act (Chapter 166, Florida Statutes) acknowledges that the Florida Constitution grants cities broad powers necessary to conduct municipal government, functions and services, and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by general or special law. This broad grant of power is commonly referred to as “Home Rule Power.”

The City of Gainesville has adopted its own **Charter** as the highest level of local law. The City Charter can only be amended by: 1) ordinance approved by the Commission and then approved by vote of the City electors; 2) petition signed by 10% of the registered voters of the City and then approved by vote of the City electors; or 3) Special Act of the State Legislature.

2.3 Code of Ordinances

The City of Gainesville’s Code of Ordinances is a compilation of the municipal laws adopted by the City Commission. An “ordinance” is defined as “an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law” (Section 166.041, Florida Statutes.) Each ordinance must be presented in writing, noticed in accordance with law and, per 2.07 of the City Charter, must be approved by affirmative vote of 4 or more members of the City Commission. The City

Clerk keeps a permanent copy of each ordinance adopted by the City Commission; however, the ordinances are then codified into a 30 chapter Code of Ordinances by the Municipal Code Corporation.

A searchable version of the City Charter and Code of Ordinances is available at:

https://www.municode.com/library/fl/gainesville/codes/code_of_ordinances

The City Commission also adopts **Resolutions** which are defined as “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” (Section 166.041, Florida Statutes.) Each resolution must be presented in writing and per 2.07 of the City Charter, must be approved by affirmative vote of 4 or more members of the City Commission. The City Commission adopts, by resolution, its own **rules of procedure** to govern the order and conduct of its meetings.

2.4 Government in the Sunshine Law

What is the Government-in-the-Sunshine Law?

The “Sunshine Law,” as it is commonly referred to, is both a Florida Constitutional guarantee (Article I, Section 24, Subsection (b), Florida Constitution) and a statutory right (Sections 286.011 and 286.0114, Florida Statutes.) The purpose of the law is to maintain the faith of the public in its government by requiring open meetings and allowing for public input in governmental decisions. The Office of the Attorney General each year prepares the Government-in-the-Sunshine Manual (a very thorough reference for compliance with the Public Records and Sunshine Laws) a searchable version is available at <http://www.myfloridalegal.com/sun.nsf/sunmanual>.

Who is Subject to the Sunshine Law?

The Sunshine Law applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision.” Members-elect of public boards or commissions are covered by the Sunshine Law immediately upon their election to public office. Members-elect should not discuss the board’s business with other board members who will serve with them, except in a publicly held meeting. Members-elect can however, meet privately with the member they are replacing, as the two will not serve on the same board concurrently.

What is a Meeting?

The Sunshine Law applies to **any gathering**, whether formal or casual, of two or more members of the same board or commission **to discuss some matter on which foreseeable action will be taken by the public board or commission**. The Sunshine Law applies to all discussions or deliberations as well as the final action taken by a board or commission. The Sunshine Law does not apply to a meeting between individuals who are members of different boards; unless one or more of the individuals has been delegated the authority to act on behalf of his/her board, then any meeting he/she attends for that purpose is subject to the Sunshine Law. With the rapid advancement of technology, what qualifies as a meeting is ever evolving. For example, the following (when they involved two or more public officials and a topic of public business) are “meetings” for purposes of the Sunshine Law:

- Telephone conversations;
- Written correspondence, such as letters, emails, text messages and even a report circulated among board members for comments;
- Facebook, Twitter or similar social media posts; and

- Website or blog posts

Remember the method of communication is not important, but rather the topic of the communication. If it is about a matter on which foreseeable action may be taken by the Commission, it should only be discussed by Commissioners in a public meeting.

Two or more members of the Commission are not prohibited under the Sunshine Law from meeting socially at non-Commission functions, provided the members refrain from discussing any matter that may foreseeably come before the Commission. However, when attending a non-Commission function, be careful that a discussion with a non-Commission member doesn't become an indirect conversation with other members of the Commission. For example, at a private breakfast meeting during which commissioners individually questioned a sheriff but did not communicate directly with one another, the court found that the meeting was in violation of the Sunshine Law as the sheriff was a common facilitator who received comments from each commissioner in front of the other commissioners.

What are the Requirements of the Sunshine Law?

There are four basic requirements of the Sunshine Law:

1. **Reasonable notice** of meetings must be given (reasonable = notice at such time and in such manner as will enable interested members of the public to attend the meeting);
2. Meetings of the commission must be **open to the public**. While the Sunshine Law does not specify where a meeting of the Commission must be held, it does prohibit boards or authorities from holding meetings at any facility which discriminates, which is not accessible by persons with disabilities or otherwise operates in such a manner as to unreasonably restrict public access to such a facility. There are few exceptions that allow the City Commission to hold a meeting that is not open to the public, the most common include: settlement negotiations or strategy sessions related to litigation expenditures; meetings relating solely to the evaluation of claims or offers of compromise of claims, filed with the risk manager; and collective bargaining sessions;
3. **Minutes** of the meeting must be taken (minutes = a brief written summary reflecting the events of the meeting); and
4. The **public must be given a reasonable opportunity to be heard** prior to the Commission taking official action on a proposition. Again, the law provides a number of exceptions, such as emergency situations affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the commission to act; ministerial acts, such as the approval of minutes and ceremonial proclamations; meetings exempt from the Sunshine Law requirements; and quasi-judicial proceedings. In addition, the law makes clear that the City can continue to maintain orderly conduct and proper decorum at City meetings and can establish certain reasonable time and manner restrictions on the opportunity to be heard.

Penalties Imposed for Violations of the Sunshine Law

Non-criminal Infractions. Any public official violating the provisions of the Sunshine Law may be adjudicated guilty of a non-criminal infraction punishable by a fine not exceeding \$500. The state attorney may pursue actions on behalf of the state against public officials that result in findings of guilt for a non-criminal infraction (Section 286.011(3) (a), Florida Statutes.)

Criminal Penalties. Any person subject to the Sunshine Law, who knowingly violates the Sunshine Law, is guilty of a misdemeanor of the second degree which is punishable by a term of imprisonment not to exceed 60 days and/or a fine up to \$500 (Section 286.011(3) (b), Florida Statutes.)

Attorney Fees. Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Such fees may be assessed against the individual members of the board except in those cases where the board or commission sought and took the advice of its attorney; in the latter case, such fees may not be assessed against the individual members of the board.

2.5 Public Records Law

What is the Florida Public Records Law?

Florida's "Public Records Law" is also both a Florida Constitutional guarantee (Article I, Section 24, Subsection (b), Florida Constitution) and a statutory right (Sections 119.01 through 119.19, Florida Statutes.) The purpose of the law is to ensure open public records so that Florida's citizens can directly observe the actions of the government.

The City has adopted Public Records Policy No. G-5 to provide guidance to employees and elected and appointed officials concerning their individual obligation to comply with the Public Records Law. A copy of Policy G-5 is available on the city's intranet under Human Resources.

What is a Public Record?

Section 119.011(1), Florida Statutes defines public records to include: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Again, as technology advances this definition evolves.

The Florida Supreme Court has interpreted this definition to encompass **all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge**. All such materials, regardless of whether they are in final form, are open for public inspection unless the legislature has exempted them from disclosure. Non-transitory city business materials on an official's home computer or personal email are public records, so the city highly recommends that Commissioners use their city email and city computers for public business. When a private computer or email is used, the Commissioner is responsible for retaining and providing those records.

Some documents are not "records," in that they are not intended to communicate or formalize knowledge regarding the public business, such as:

- Drafts, outlines or notes to yourself, which are intended and used to aid only you
- Letters or computer e-mails to and from family members or private business associates, that do not relate to public business
- Communication of a transitory, fleeting nature, such as an e-mail stating "Meet me at 5pm"

How must a Public Records Request be made? And to Whom?

Although it is helpful if a public records request is made in writing, as this focuses both the requester and records custodian on exactly what is being asked for, thus limiting unnecessary efforts and expenses in complying with the request. A written request cannot be required. If a request is not made in writing, the custodian should record what he/she understands to be the request, so that if some documents not produced

are later alleged to have been the subject of the request, an evaluation of the actual request and the actual documents claimed to be responsive, can be made.

A request will only reach the public records that are in the custody of the person to whom the request is made. For example, a public records request made to a City Commissioner, requesting records related to a particular rezoning, will not trigger an obligation on the part of the City Attorney or the Planning Department to produce documents in their custody and control. If you receive a public records request and have no records, you should so reply, and if you know who might have such records, it is helpful (though not required) to forward the request or provide the requestor the contact info for the person who you believe may have such records. In the City, the clerk's office staff often receives public records requests and routes the requests to the appropriate departments for response.

What is the Difference between "Exempt and Confidential" Records and "Exempt" Records?

All public records must be disclosed upon request unless the type of record has been designated by the Legislature as either "exempt and confidential" or "exempt." Both are commonly referred to as "exemptions", but there is a meaningful distinction between the two. If a record is "exempt and confidential" then the record is not subject to inspection by the public and may be released only as allowed by law. If the City releases the record to anyone else, the City or City employee/official may be held liable for the violation. In contrast, if a record is merely "exempt," then the City is not prohibited from disclosing it, although the City may choose not to disclose it. However, once the City releases an "exempt" record to one requestor, it must be released to all other requestors (or stated another way, when the City chooses to release an exempt record, the City cannot later pick and choose who it releases the exempt record to.)

Exemptions from disclosure are narrowly construed so they are limited to their stated purpose. When the City claims an exemption from disclosure, the City bears the burden of proving the right to the exemption under the law. There are hundreds of exemptions to the Public Records Law in various sections of the Florida Statutes. A fairly comprehensive listing can be found in the Government-in-the-Sunshine Manual referenced on page 3 of this Handbook.

Retention of Public Records

Section 119.021(4) (a), Florida Statutes provides that whoever has custody of public records shall deliver such records to his successor at the expiration of his term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. Public records are not the personal property of public officers.

Section 119.021(2)(b), Florida Statutes requires agencies to establish programs for disposing of records without sufficient legal, fiscal, administrative or archival value pursuant to retention schedules established by the Division of Library and Information Services at the Department of State. Any specific questions regarding the retention and disposal of public records should be referred to the Clerk of the Commission, the City Attorney, or the Division of Library and Information Services at the Department of State.

Penalties for Refusal to Produce Public Records

Civil Action. Any person denied access to public records under Chapter 119, Florida Statutes may institute a civil action in circuit court against the City in order to compel compliance with the law. Section 119.11(1), Florida Statutes provides that when such an action is filed, it is entitled to an immediate hearing and takes priority over other pending cases. If the person seeking public records prevails before the trial court, the City must comply with the court's judgment within forty- eight (48) hours unless (1) otherwise provided by the trial court or (2) such determination is stayed within that period by an appellate court.

Criminal Penalties. Section 119.10(1) (b), Florida Statutes provides that a public officer who knowingly violates the Public Records Law is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by a possible criminal penalty of one (1) year in prison, \$1,000.00 fine, or both.

Attorney's Fees. Section 119.12(1), Florida Statutes provides that if a civil action is filed against the City to enforce the provisions of the Public Records Law, and if the court determines that the City unlawfully refused to permit a public record to be inspected, examined, or copied, the court must assess the reasonable costs of enforcement, including reasonable attorney's fees, against the City. Attorney's fees are recoverable even when access is denied in good faith or under the mistaken belief that the documents are exempt from disclosure. Attorney's fees may also be awarded for a successful appeal of a denial of access.

Public Records: Employee's Personal Notes

Florida Attorney General – Advisory Legal Opinion December 29, 2010

**Florida Attorney General
Advisory Legal Opinion**

493.Y
12/29/2010

Number: AGO 2010-55
Date: December 29, 2010
Subject: Public Records, employee's personal notes

Mr. Isaac D. Turner
City Manager
City of Venice
401 West Venice Avenue
Venice, Florida 34285

RE: PUBLIC RECORDS - PUBLIC EMPLOYEES - NOTES - whether public employee's personal notes are public records. Ch. 119, Fla. Stat.

Dear Mr. Turner:

As the City Manager for the City of Venice, Florida, you have asked for my opinion on substantially the following question:

Are personal notes, taken by a city employee in the course of conducting his official duties and made for the purpose of assisting him in remembering matters discussed, public records subject to public disclosure?

In sum:

Personal notes, taken in the course of conducting official business by a public employee, are not public records subject to the provisions of Chapter 119, Florida Statutes, if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge.

According to your letter, you serve as the City of Venice's Chief Administrative Officer and are responsible for the management and supervision of all city departments. Earlier this year, you undertook an assessment of the city police department's operations and management. As part of this assessment, you interviewed police department personnel. During and after these interviews, you made handwritten notes for your own personal use to assist you in remembering matters discussed. These notes have not been transcribed or shown to anyone. You assert that your personal notes were not intended to perpetuate, communicate, or formalize knowledge of any type. [1] You have requested an opinion of the City Attorney on this question and been advised that it is the City Attorney's opinion that

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"notes prepared by a City employee for the employee's own personal use are not public records and therefore not subject to public disclosure." Florida case law supports this conclusion and your City Attorney's admonition that "[e]ssential to this legal opinion is the fact that the notes are utilized only by the writer. Should the writer distribute the notes to anyone for any purpose, then the notes shall be deemed public records subject to Chapter 119 of the Florida Statutes."

Florida's Public Records Law, Chapter 119, Florida Statutes, requires that records made or received in connection with the transaction of official business by any public body, officer, or employee of the state, county, or municipality shall be open to public inspection and copying, unless there is a legislatively created exemption making such records confidential or exempt from disclosure.[2] Section 119.011(12), Florida Statutes, defines "[p]ublic records" to include

"all documents, papers, letters . . . or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Thus, any portion of your handwritten notes that was not made or received in the official course of business would not be a public record. However, numerous court opinions and opinions of this office have concluded that if the purpose of a document prepared in connection with official business is to perpetuate, communicate, or formalize knowledge, then it is a public record without regard to whether it is in final form or the ultimate product of the agency.[3] Moreover, nonfinal documents need not be communicated to anyone in order to constitute a public record.[4]

As this office has noted, there is no "unfinished business" exception to the public inspection and copying requirements of the Public Records Law.[5] If a document is prepared in connection with the official business of a public agency and its purpose is to perpetuate, communicate, or formalize knowledge, then that document is a public record regardless of whether it is in final form or the ultimate product of an agency.[6]

Thus, any agency document, however it may be prepared, if it is circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. Examples of such materials would include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.[7]

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Similarly, personal notes can be public records if they are intended to communicate, perpetuate, or formalize knowledge of some type. In a 2005 Attorney General Opinion discussing the nature of personal notes, the handwritten notes prepared by an assistant city labor attorney during her interviews with city personnel were determined to be public records when those notes were used to communicate information to the labor attorney regarding possible future personnel actions.[8] Likewise, an Informal Attorney General Opinion concluded that handwritten notes prepared by a city council member regarding research on a matter being considered by the council and used at a workshop meeting as a reference in discussing the member's position were determined to be public records.[9]

In a 2007 appellate case, *Miami Herald Media Company v. Sarnoff*, [10] the court held that a memorandum that had been prepared by a city commissioner after a meeting with a former city official to discuss the city's affairs was a public record subject to disclosure. The memorandum summarized the details of the conversation at the meeting and contained alleged factual information about possible criminal activity. The parties to the lawsuit to determine whether this memorandum was a public record stipulated that the commissioner attended the meeting in his official capacity as a city commissioner; that the meeting related to official business of the city; that the memorandum was the final evidence, record, memorialization, and explanation of the knowledge garnered from the meeting by the city commissioner; that the memorandum was the commissioner's final work product with regard to the information and was not a precursor or preliminary document used to prepare another document; and that the memorandum was the only written record of what was said at the meeting.[11] The trial court had concluded that the memorandum did not fall within the meaning of a public record under Chapter 119, Florida Statutes, and the *Miami Herald* appealed. The newspaper's argument was that the memorandum was a public record because it "represents the final evidence of knowledge gained by a public official in his official capacity in connection with public business." The Third District Court of Appeal agreed and stated:

"[T]he subject memorandum in this case solely contains alleged factual information about possible criminal activity. It is undisputed that Commissioner Sarnoff is an "agency" for purposes of Chapter 119; he attended the subject meeting in his capacity as an elected city official; official city business was discussed at the meeting; and he drafted the May Memorandum to formalize and perpetuate his final knowledge gained at that meeting. The subject document was not a draft, or a note containing mental impressions that would later form a part of a government record." [12] (citations omitted)

However, Florida Courts have consistently held that under Chapter 119, Florida Statutes, public employees' notes to themselves which

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are designed for their own personal use in remembering certain things do not fall within the definition of "public record." [13] The Florida Supreme Court's decision in *Shevin v. Byron, Harless, Schaffer, Reid and Associates*, [14] identified a "public record" as "any material prepared in connection with official agency business that is intended to perpetuate, communicate, or formalize knowledge of some type" [15] and concluded that handwritten notes did not constitute public records. Subsequently, the First District Court of Appeal held that public employees notes to themselves "which are designed for their own personal use in remembering certain things do not fall within the definition of 'public record.'" [16] In *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, the First District Court of Appeal stated:

"Individual member's notes are not public record. The supreme court has elaborated on what does and does not constitute a public record in *Shevin v. Byron, Harless, Schaffer, Reid & Assocs.*, . . . As here, the plaintiffs in *Byron, Harless* specifically sought documents related to potential applicants for a public position. The court interpreted "public record" as any material prepared in connection with official agency business that is intended to perpetuate, communicate, or formalize knowledge of some type. . . . The court specifically noted that materials prepared as drafts or notes which constitute mere precursors of governmental records, are not in themselves intended as final evidence of the knowledge to be recorded. . . . The court concluded that handwritten notes made during or shortly after interviews with job prospects did not constitute public records." [17] (citations omitted)

Thus, it appears that public employees' notes to themselves which are designed for their own personal use in recollecting certain matters are not public records subject to inspection and copying pursuant to Chapter 119, Florida Statutes. You have advised this office that your notes do not perpetuate, communicate, or formalize knowledge, but were prepared for your own personal use to assist you in remembering matters discussed and that they have not been transcribed or shown to anyone else. Based on your characterization of these notes and the case law discussed above, I concur in your attorney's opinion that these personal notes are not public records. However, I would also caution you that the longer these notes are maintained, the closer in nature they appear to documents which would "perpetuate, communicate, or formalize knowledge" and could be characterized as public records.

In sum, it is my opinion that personal notes, taken in the course of conducting official business by a public employee, are not public records subject to the provisions of Chapter 119, Florida Statutes, if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge.

Sincerely,

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Bill McCollum
Attorney General

BM/tgh

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[1] I must advise you that the discussion and conclusions reached in this opinion are based on the facts as you have presented them. This office may not act as a fact finder, but must rely upon the factual presentation of the requestor in responding to requests for Attorney General Opinions. See s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Opinions available at: www.myfloridalegal.com.

[2] See also Art. I, s. 24, Fla. Const., establishing a right of access to any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.

[3] See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980). See also *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department was a public record); and *State ex rel. Copeland v. Cartwright*, 38 Fla. Supp. 6 (Fla. 17th Cir. Ct. 1972), affirmed, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for public building project must be open for public inspection, even though it was a preliminary working paper).

[4] See, e.g., *Church of Scientology Flag Service Org., Inc., v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (drafts and notes of an autopsy performed by the medical examiner are public records); *Florida Sugar Cane League v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (handwritten notes of agency staff "utilized to communicate and formulate knowledge within [the agency], are public records subject to no exemption"); and Inf. Op. to Michael S. Davis, dated March 16, 1992, in which this office advised that a personnel director's retention of notes which were originally handwritten, but were subsequently typed and kept by the director in his office for two years, "might well be construed by a court as evidence of the director's intent to perpetuate the information contained therein."

[5] *Id.* And see Pt. II, s. A. 2., Government in the Sunshine Manual (2010 ed.), "When are notes or nonfinal drafts of agency proposals

subject to Ch. 119, F.S."

[6] See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 at 640 (Fla. 1980) ("Interoffice memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business."). See also *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department was a public record); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (working papers used in preparing a college budget were public records); and *State ex rel. Copeland v. Cartwright*, 38 Fla. Supp. 6 (Fla. 17th Cir. Ct. 1972), affirmed, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for public building project must be open for public inspection, even though it was a preliminary working paper).

[7] See also Op. Att'y Gen. Fla. 97-23 (1997) (written comments and performance memoranda of school board members that were discussed with superintendent were public records); Inf. Op. to Richard B. Fulwider, dated June 14, 1993 (handwritten notes taken by negotiator for fire control district during collective bargaining sessions were public records).

[8] See Op. Att'y Gen. Fla. 05-23 (2005). See also *City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) (rejecting city's argument that employee responses to survey are "notes" which are not subject to disclosure because "as to each of the employees, their responses were prepared in connection with their official agency business and they were 'intended to perpetuate, communicate, or formalize knowledge' that they had about their department"); and *Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992), stating that handwritten notes of agency staff, "utilized to communicate and formulate knowledge within [the agency], are public records subject to no exemption."

[9] See Informal Opinion to Suzanne McLean, dated December 31, 1998. The handwritten notes were prepared to document communications between the city council member and officials from other municipalities regarding emergency medical services and collection rates in various municipalities. The council member brought the notes to the workshop and used them as a reference for her position on the issue and specifically cited to factual material contained in the notes. During the meeting, the council member stated that she had

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conducted a study and discussed her conclusions based upon that study, referring to her handwritten notes as containing information upon which she based her conclusions. Finally, the member distributed a document she had generated from the information contained in a portion of her notes. The informal opinion concluded that the handwritten notes represented formalized knowledge and were public records. Further, the opinion noted that the use of portions of the notes to generate another document to be distributed to other members of the council would not create an exception from the Public Records Law for such portions of the notes.

[10] 971 So. 2d 915 (Fla. 3d DCA 2007).

[11] *Id.* at 916.

[12] *Supra* n.10 at 917.

[13] *See Lopez v. State*, 696 So. 2d 725 (Fla. 1997). *Accord Johnson v. Butterworth*, 713 So. 2d 985 (1998) (finding state attorney's outline of evidence, a proposed outline for trial, handwritten notes were not public records); *Bryan v. Butterworth*, 692 So. 2d 878 (1997) (finding legal pads regarding Attorney General's impressions and strategy, sheets summarizing psychological reports prepared by paralegal for later use by AG, and annotated map prepared by AG were not "public records").

[14] 379 So. 2d 633 (Fla. 1980).

[15] *Id.* at 640.

[16] *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *And see Lopez v. State*, 696 So. 2d 725 (Fla. 1997); *Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988).

[17] *Id.* at 192.

2.6 Use of Information Technology Systems and Resources – Human Resources Policies – Number G-7

I. Policy

Information Technology (IT) Systems and Resources enable the City of Gainesville (“city”) to effectively and efficiently fulfill its municipal purposes. The purpose of this policy is to ensure that the city’s IT Systems and Resources are used for their intended purposes, to define authorized and prohibited uses of the city’s IT Systems and Resources, and to protect the integrity, availability, and performance of the city’s IT Systems and Resources. Based on the foregoing purposes, it shall be the policy of the city to allow use of its IT Systems and Resources so long as Users conduct themselves in a responsible, efficient, professional, and ethical manner and in accordance with all city human resources policies, procedures, guidelines, and practices, as well as federal, state, and local laws.

In addition, the purpose of this policy is to address the use of IT Systems and Resources not owned or leased/licensed by the city to conduct official city business. To ensure that electronic information related to official city business is properly stored and protected, it is the preference of the city that users conduct all official city business on city IT Systems and Resources instead of Personal IT Systems and Resources.

II. Scope

This policy, and all policies referenced herein, apply to all members of the city workforce, including staff, interns, temporary employees and independent contractors (the “user(s)” or “you”) who use, access, or otherwise employ, locally or remotely, the city’s IT Systems and Resources, whether individually controlled, shared, stand-alone, or networked.

III. Definitions

- a. “City IT Systems and Resources” includes computing, networking, communications, applications, telecommunications systems, infrastructure, hardware, software, data, databases, personnel, procedures, physical facilities, cloud-based systems, Software as a Service (SaaS) systems, and any related materials and services owned or leased by the city or licensed for use to the city.
- b. “Personal IT Systems and Resources” means any computer system, software, accounts, or network (wireless or otherwise) used to receive, store, process, or distribute data that is not owned or leased by the city. Such devices should not be used to store any official city business information but may be used to access web-based applications that contain city resources (such as webmail, web-based applications, etc.). Such systems include desktop computers, laptop computers, portable storage devices, telephones, cellular phones, pagers, personal handheld devices, printers, global information systems, voicemail, electronic mail, internet, intranet, social media networks, text messaging services, instant messaging services, and any other computer system, software, or network used to receive, store, process or distribute data.
- c. A “User” is any person or entity who uses any city IT System or Resource or any Personal IT System or Resource from any location, whether authorized or unauthorized, including, but not limited to, City Commissioners, Board Members, regular employees, probationary employees, temporary employees, interns, volunteers, guests, vendors, and contractors.

IV. Authorization of Use

- a. The city authorizes Users to use city IT Systems and Resources only to conduct and support official city business.
- b. Only authorized Users have the privilege to access and use the city IT Systems and Resources. Access and use is limited to the purposes that are consistent with the business of the city.
- c. Users are responsible for any activity originating from their accounts, which they can reasonably be expected to control. Accounts and passwords may not be shared or be used by persons other than those to whom they have been assigned by the account administrator. In cases when unauthorized use of accounts or resources is detected or suspected, the user should change the password and report the incident to the appropriate account administrator.
- d. All digital content used to conduct and support official city business must be stored on city IT Systems and Resources and should not be stored on Personal IT Systems or Resources, regardless of the method by which such content was generated or obtained.
- e. The city purchases and licenses the use of different types of licensed content, including music, videos, graphics, text, and software to conduct and support official city business on city IT Systems and Resources. Often the city does not own the copyright, its related documentation, nor does the city have the right to reproduce such content for use beyond the licenses purchased by the city. Users may only use licensed content on city IT Systems and Resources according to the city's license agreement(s).
- f. Users are permitted De Minimis personal use of city IT Systems and Resources so long as such personal use does not conflict with official city business, is at no cost to the city, does not interfere with the ability of the User to accomplish the functions of his/her position with the city, and otherwise complies with this policy and all other city human resources policies, procedures, guidelines and practices, as well as federal, state, and local laws. Specifically, users are permitted de Minimis personal use of city IT Systems and Resources, limited to after or before regular business hours, or during breaks, unless otherwise authorized by a user's supervisor. De Minimis personal use may be temporarily or permanently suspended, limited, or extended at the discretion of the user's supervisor. In accordance with section V of this policy, users shall have no expectation of privacy or confidentiality in their use of city IT Systems and Resources, even if such use is personal in nature.

V. No Privacy or Confidentiality

Users shall have no expectation of privacy or confidentiality when using City IT Systems and Resources.

The city IT Systems and Resources can and will be monitored at management's sole discretion through random and direct inspections, with or without notice to ensure compliance with this policy; all city human resources policies, procedures, guidelines, and practices; federal, state, and local laws; and the terms of applicable contracts including software licenses. In addition, at any time, city IT Systems and Resources are subject to inspection and imaging to comply with the public records law, preserve evidence for litigation purposes or defend the city in litigation. All contents of city IT Systems and Resources are the property of the city.

VI. Prohibited Uses of City IT Systems and Resources

Unless expressly authorized by the city, Users are prohibited from accessing or using city IT Systems or Resources to engage in the following activities:

- a. Initiating or participating in unauthorized mass mailings to news groups, mailing lists or individuals, including, but not limited to, chain letters, unsolicited commercial email (commonly known as “spam”) or political activity;
- b. Using personal cloud-based accounts by employees to transmit, share, store, download city Information/Data, without the prior approval of the city;
- c. Improperly storing, transmitting, accessing or securing HIPAA material;
- d. Access and use of music and video sharing, trading, streaming or purchasing services;
- e. Giving others, by password or other means, unauthorized access to any User account or the IT Systems and Resources;
- f. Seeking to, without authorization, wrongly access, improperly use, interfere with, dismantle, disrupt, destroy, or prevent access to any portion of the city IT Systems and Resources including User or network accounts;
- g. Violating or otherwise compromising the privacy, or any other personal or property right, of other Users or third parties through use of the city IT Systems and Resources;
- h. Disguising or attempting to disguise the identity of the account or other city IT Resource being used including “spoofing” resource addresses, impersonating any other person or entity or misrepresenting affiliation with any other person or entity;
- i. Using the city IT Systems and Resources to gain or attempt to gain unauthorized access to networks and/or computer systems;
- j. Engaging in conduct constituting wasteful use of city IT Resources or which unfairly monopolizes them to the exclusion of others;
- k. Engaging in conduct that results in interference or degradation of controls and security of the city IT Resources;
- l. Exploiting or otherwise using the city IT Systems and Resources for any non-sanctioned commercial purpose;
- m. Intentionally or unintentionally violating any applicable local, state, federal or international law;
- n. Engaging in computer crimes or other prohibited acts;
- o. Knowingly or negligently running, installing, uploading, posting, emailing or otherwise transmitting any computer code, file, or program, including, but not limited to, computer viruses, Trojan horses, worms, or any other malware, which damages, exposes to unauthorized access, disrupts or places excessive load on any computer system, network, or other IT Resource;
- p. Using any IT System or Resource, including email or other communication system or content to post or transmit any information, including data, text, files, links, software, chat or collaboration, that is

abusive, disparaging, discriminatory, combative, threatening, harassing, intimidating, defamatory, pornographic or obscene; that insults or embarrasses others; or to create a hostile or offensive environment; and

- q. Interfering unreasonably with an individual's work, research or educational performance.

Periodically, the city will conduct information sessions to present, or provide through official communications, specific examples of inappropriate uses of the city IT Systems and Resources. In the interest of creating a well-informed User community, the IT Department also encourages questions about proper use. Please direct inquiries to the city IT Service Desk or the city Human Resources Department.

VII. Public Records

In the course of using city IT Systems and Resources and Personal IT Systems and Resources, Users may create or receive public records. If public records are in fact created or received, Users are required to retain such records and make them available for inspection and copying in accordance with Florida's public records law. For additional information regarding public records requirements, Users should refer to the City's public records policy and procedure – policy G5.

VIII. Retention

Each individual User designated as the custodian of their records is responsible for adherence to Florida Statute FS 119, City Policy and Administrative Guidelines for document retention and management.

IX. Non- Compliance with Use of Technology Policy

Violations of this policy may cost the city money, expose the city to risk, waste scarce resources, tarnish the city's image, and violate the law. Users who violate this policy are subject to a full range of penalties, including loss of use of city IT Systems and Resources without notification, disciplinary action, up to and including termination of employment, and all other penalties available under the law. In the event a User is suspected of violating federal, state, or local laws, all relevant materials will be made available to law enforcement for investigation and possible criminal prosecution.

X. User Obligation to Review

The city will periodically update this policy. By accessing and using the city IT Systems and Resources, each User represents and acknowledges that he or she has checked and read this policy on an annual basis.

Code of Ethics

The “Code of Ethics for Public Officers and Employees” adopted by the Legislature is found in Chapter 112 (Part III) of the Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.¹

Some of the more pertinent points are:

1. Conflict of interest. No Commission member shall vote in their official capacity upon any measure, which would inure to their special private gain. The conflict must be noted at the meeting and the proper forms must be filed.
2. Financial disclosure. You must file financial disclosure forms each year with the Supervisor of Elections. These forms will be mailed to you prior to the filing date.

You will be provided with a copy of the “Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees” and the city’s Code of Conduct and Ethics which contains more detailed information. The applicable laws are the “Sunshine Amendment”, Article II, Section 8, of the Florida Constitution. The Code of Ethics for Public Officers and Employees is contained in Part III of Chapter 112, Florida Statutes.

If you ever feel uncomfortable about a situation, please see the City Clerk or City Attorney to discuss the matter and see if there is a violation of the law. In some instances, you may be advised to contact the Commission on Ethics.

2.7 Ethical Behavior in Office

Members of the City Commission, certain appointed board members and certain city employees are subject to the “Code of Ethics for Public Officers and Employees” (Chapter 112, Part III, Florida Statutes.) The purpose of the Code is to maintain the respect of the people for their government by ensuring that public officials conduct themselves independently and impartially and do not use their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.

The Florida Commission on Ethics (the “COE”) is a public agency, with an appointed Board, created by the Florida Legislature to “to serve as guardian of the standards of conduct” for public officials, state and local. In addition to its constitutional duties regarding the investigation of complaints, the Commission renders advisory opinions to public officials; prescribes forms for public disclosure; prepares mailing lists of public officials subject to financial disclosure for use by Supervisors of Elections; makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws, since it does not impose penalties; administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure; and each year publishes the “Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees” which is a comprehensive overview of Florida’s ethics laws and requirements for public officials.

In addition to prohibiting certain conduct, the State ethics laws also require certain disclosures and annual training, including:

- At the time of filing qualifying papers to run for City Commission, each candidate should have filed a completed Commission on Ethics Form 1 titled “Statement of Financial Interests” with the Supervisor of Elections. Once elected to office, each Commissioner is then required to file a Form 1 by July 1st following each calendar year in which they hold office. The Form 1, along with other disclosure forms, are updated annually and are available on the Commission on Ethics website www.ethics.state.fl.us.
- Commissioners are required to complete 4 hours of ethics training (at a minimum covering certain portions of the Florida Constitution, the Code of Ethics for Public Officers and Employees, the Public Records laws and the Government-in-the-Sunshine laws) each calendar year and to certify compliance with this requirement on their annual Form 1 filing. Commissioners assuming office after March 31 do not have to complete this ethics training requirement until the next calendar year (i.e., between January 1 and June 30, so that completion can be certified by July 1). There are many opportunities for this training around the state and via on-line programs, the City Clerk will assist you with scheduling your annual training.

IMPORTANT: While the “Guide to Sunshine Amendment” is a good starting point for the elected or appointed official, it is important to understand that the answer to ethics questions depends on the facts of each circumstance. Ethics violations carry significant civil and criminal penalties, including removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of salary, civil monetary penalties, restitution of pecuniary benefits received and imprisonment. Because of this, ethics issues merit careful consideration on a case-by-case basis.

In addition, ethics issues are often personal to the individual official and as such the City Attorney’s Office generally does not provide legal representation regarding an ethics issue that an individual Commissioner is facing. The City Attorney’s Office may provide informal guidance on the matter if it is one likely to be faced by several/all Commissioners (such as, can I accept a ticket to sit in the President’s box at a UF home football game). In addition,

the City Attorney's Office may provide guidance on a voting conflict matter, as it may have an impact on the validity of the decision being made by the entire City Commission.

When the City Attorney's Office does provide guidance, it is with the express understanding that the Office serves as the attorney for the City, not for the public officer or employee who requested the opinion. Therefore, in addition to or in place of informal guidance, or at any time the public officer or employee desires further assurance as to the propriety of his/her conduct with respect to ethics issues, the City Attorney's Office recommends that the public officer or employee speak to or request a binding written opinion directly from the COE. The COE staff may be reached at 850-488-7864 or the City Attorney's Office can assist you in contacting the COE. In addition, you can find helpful resources on the COE website at: <http://www.ethics.state.fl.us/>.

Ethics

Ethical Behavior in Office: Know the Law, Trust Your Conscience

by John Hubbard

I have been a city attorney since 1972, and I have been the Dunedin city attorney since 1974. During that time, I have had extensive experience with Florida's ethics statute and how it affects the elected officials and other employees in the cities I have represented.

It seems to be the case with many communities that there is a very limited or no discussion of the state's ethics statute initiated by those cities. Public officials who are willing to attend the Institute of Elected Municipal Officials (IEMO) programs get a two-hour training session on the statute. However, even that much time is not really sufficient to fully discuss it. When teaching the IEMO course, I attempt to briefly discuss the common law (case law), as well as state and federal statutes that deal with some of the subjects that are also found within Chapter 112, Florida Statutes.

The following article is a quick summary of many of the subjects that I cover in my IEMO presentation. I have found that IEMO students appreciate specific, real-life examples, as they are very helpful in understanding the scope of the statute. (See page 28 for information about upcoming IEMO sessions.)

Please understand that some of the comments made in these materials are somewhat "editorial" in nature since I have rather strong opinions on the importance of ethical behavior by public officials and employees.

It is appropriate to give credit to Phil Claypool, director of the Florida Commission on Ethics, since he was

nice enough to review these materials. Any misstatements or typographical errors are mine, not his.

A Brief Overview of the Ethics Law (Chapter 112, Part III, Florida Statutes)

The ethics law in the State of Florida is based primarily on three principles:

1. "A public office is a public trust."
2. A situation that "tempts to dishonor."
3. No man can serve two masters.

The first statement is from Article II, Section 8 of the Florida Constitution. The second statement is from Florida case law and opinions of the state Commission on Ethics. The third statement is from the Bible and Florida case law.

The application of these three concepts in a situation where an elected or appointed public official is concerned about an issue of ethical behavior will generally yield an answer consistent with statutory and case law.

You Can't Always Know What to Do by Reading the Statute

The ethics law for the State of Florida is set forth in Part III of Chapter 112, Florida Statutes. You can read the statute and still be somewhat uncertain as to your ethical duties. The statute is interpreted by Commission on Ethics formal opinions, informal opinions, Florida's attorney general opinions, and case law.

It's Not Just Statutory

Long before the people of Florida put in their constitution that we would have an ethics law, certain principles of appropriate conduct for an elected official or a public employee were articulated in the common law (case law) of Florida.

In the case of *Lainhart v. Barr* in 1905, the Florida Supreme Court ruled that a county commissioner could not buy supplies for the county from himself. At least two of the underlying principles are implicated here:

1. No man can serve two masters, and
2. Don't get yourself into a situation that "tempts to dishonor."

The case is interesting because of the fact that the court ruled that this was unlawful conduct not because a wrong inevitably results, but because it may and probably will result. The court said proof that no wrong was intended or committed, or that no fraud resulted, does not make the behavior legally acceptable. In this case, the contract for the sale of goods was voided by the court.

In 1934, the Florida Supreme Court decided the case of the *City of Leesburg v. Ware*, in which the court voided a bond-purchase transaction as being against public policy because the city bond trustee was also the president of the bank from which the bonds were purchased. This was in the middle of the Great Depression, and the president of the bank sold certain bonds to the city. The bonds were of little value,

and there was certainly an apparent conflict in the duties of the president to his bank and the duties of that same person as a city bond trustee. The opinion in this case is wonderfully written and articulates the underlying principle that no man can serve two masters or be a judge in his own cause.

What is important to remember here is that the common law of Florida, as well as Chapter 112, Florida Statutes, defines appropriate conduct of elected and appointed officials in Florida and that even if a gap exists in the statutory language, the common law principles may serve to void or otherwise punish unethical conduct.

Criminal Statutes

Certain criminal statutes are also applicable to specific types of unethical conduct. Chapter 838, Florida Statutes, deals with bribery, unlawful compensation, official misconduct (for example, falsifying or concealing public records, or obstructing information about a felony), misuse of confidential information, bid tampering, and other unlawful acts by public officials. Chapter 839, Florida Statutes, addresses the misuse of confidential information, withholding official records, falsifying records and withholding records from a successor by public servants. Some of these criminal statute concepts are reflected in Chapter 112, Part III, Florida Statutes, with different standards and different penalties.

When considering the issue of ethical conduct while holding an elective or appointive office, or working as a public employee, there are at least three areas of the law that govern proper conduct:

1. The common law;
2. The criminal law; and
3. Chapter 112, Part III, Florida Statutes.

All of these are potentially applicable to a given fact situation and may provide relief against the unethical (or illegal) conduct of a public official.

Honest Services Fraud

Besides the criminal statutes quoted above, there has been a recent trend of prosecution of public officials by fed-

eral prosecutors on the basis of what is commonly referred to as "honest services fraud."

In 1988, Congress enacted the Honest Services Fraud statute, 18 U.S.C. §1346, to provide federal prosecutors with another method of criminally prosecuting public officials who forget that public service is not undertaken to benefit themselves but to provide "honest services" to their constituents. Federal prosecutors have used this statute to react to many different types of abuse of office by elected officials. The application of the statute to public officials still generates substantial discussion in the courts, but as of the writing of this analysis, the statute has not been deemed to be unconstitutional and has been applied in many different situations.

Essentially, the case law has defined violations of honest services as follows: "When a political official uses his office for personal gain, he deprives his constituents of their right to have him perform his official duties in their best interest." The Eleventh Circuit has opined that "public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest. If the official instead secretly makes his decision based on his own personal interest . . . the official has defrauded the public of his honest services."

The cases fall into two broad categories: 1) bribes or kickbacks, and 2) cases involving self-dealing. The failure to disclose a conflict of interest falls within the intent of the statute. South Florida has been particularly subject to prosecution based on honest services fraud.

Some recent examples may be helpful:

1. A Palm Beach County commissioner voted on multiple bond awards to underwriting firms where her husband was employed without disclosing this information to the public;
2. That same person and her husband received gifts, such as free and discounted stays at hotels, from parties who had matters before the County Commission;

3. Another Palm Beach County commissioner voted to extend development rights that increased the value of properties in which he held a secret interest and received a share of the profits therefrom; and

4. A Palm Beach County commissioner advocated and voted for a real estate transaction that benefited his secret financial interests in the subject realty.

Cases throughout the country sometimes involve what used to be expected political behavior, but which are no longer lawful, including 1) giving out thousands of civil service jobs based on political patronage, and 2) hiring or promoting based on nepotism. Secrecy as to the relationship or act appears to be a common theme in these cases.

The Constitution and the Commission on Ethics

Article 2, Section 8 of the Florida Constitution is the basis for governmental ethics in the State of Florida. Its first sentence is: "A public office is a public trust." The next sentence is: "The people shall have the right to secure and sustain that trust against abuse."

As mentioned earlier, the ethics statute is found in Part III of Chapter 112, Florida Statutes. This statute is enforced by the Commission on Ethics. The commission has nine members. Five members are appointed by the governor, two members are appointed by the president of the Senate, and two members are appointed by the speaker of the House of Representatives. Appointments are bipartisan. Appointments are for two years, and members may be reappointed only one time. There can be no more than five members from any one political party.

The commission has two duties. The first is to issue legal opinions when requested by a public officer or employee. Opinions of the Commission on Ethics, unlike those of your city attorney, or even the attorney general of the State of Florida, are legally binding determinations of law subject to appeal to a District Court of Appeal. Of course, all of the pertinent facts must

be accurately provided to the Commission on Ethics for that opinion to be truly binding.

The Commission on Ethics' second duty is to investigate violations of the ethics law. The commission may not institute an investigation, and its powers begin when it receives a legally sufficient complaint, which must be submitted on the forms provided by the commission. All of these materials may be obtained online.

It has been my experience that a wide variety of people file ethics complaints. You don't have to have any special knowledge or special interest in the behavior of an elected or appointed official, or public employee, to file a complaint. Sometimes they are filed based only on newspaper reports. Unsurprisingly, the great majority of ethics complaints are filed either by citizen activists or political opponents.

The Essence of Ethics

The Florida ethics statute is not about ethics taught on an academic level, which generally discuss a body of principles of right or good conduct, or the study of the general nature of morals or moral choices. It is, rather, money-based or personal benefit-based. The statute's primary thrust is using an office or a position to obtain a benefit for yourself, a member of your family, an employer, or others. Essentially, it is about using an office or a position to benefit yourself in a manner that would not be possible without the use of that office. The ethics statute deals with conflicts between the duties and responsibilities of an office or position and the personal interests of the person holding that office. It concerns itself with situations in which a regard for a private interest tends to lead to a disregard of a public duty.

What Does the Statute Include?

The primary topics of the ethics law in Florida are:

1. **Solicitation or Acceptance of Gifts.** This is essentially a bribe, which requires the acceptance by a public officer, spouse or minor child of anything of value that the public officer should

have known was given to him or her to influence a vote or other action. In other words, it is a quid pro quo understanding. The title makes it sound like a true gift, but it is, in fact, a bribe.

2. **Doing Business with One's Agency.** This statute includes two different relationships. A public official cannot do business for his agency with an entity in which he or his spouse or child is an officer, partner or proprietor or in which he, his spouse or child has a material interest of 5 percent or greater. This statute also covers that same public official in his private capacity doing business with his agency.
3. **Unauthorized Compensation.** This part of the statute provides that a public official, spouse or minor child may not accept anything of value if the official, with exercise of reasonable care, should have known that it was given to influence a vote or other action. This is not a quid pro quo. This is not a bribe. This part of the statute helps to define a legal gift – that is, a gift that is given but does not influence the actions of the public official. There will be more about this later in the article.
4. **Misuse of Public Position.** This part of the statute does not allow a public official to "corruptly" use his official position or any property or resource of that position to secure a special privilege or benefit for himself or for others. Keep in mind that this deals with the powers of the office as well as the resources (property) of the office. There are lots of Commission on Ethics cases on this particular part of the statute, including a circuit court clerk who prevented a person from purchasing property at a foreclosure sale in order to acquire the property for his son (misuse of office); a

county commissioner who used county equipment and personnel to repair a road on his farm (use of public property); and a county commissioner who threatened to fire a county employee if the employee's wife did not withdraw as a candidate for the school board against the county commissioner's friend (misuse of office). There are also several cases or situations involving attempts to avoid a traffic ticket (misuse of office).

5. **Conflicting Employment or Contractual Relationship.** This portion of the statute precludes public officials from having an employment or contractual relationship with a business entity doing business with the agency, or having employment or contractual relationships that create a continuing or frequently reoccurring conflict between the official's private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. Particularly in small communities, this provision can be difficult. It has the added requirement that the public official, in the event of such conflict, must choose between continuing in office or continuing the employment or contractual relationship. This often leads to a fairly harsh result, and that fact is acknowledged by the Commission on Ethics. This portion of the statute is highly dependent on the facts of each situation.
6. **Disclosure or Use of Certain Information.** As most public officials and employees are aware, they often will have access to information not generally available to members of the public. This type of information cannot be used for the official's personal gain or benefit, or the personal gain or benefit of any other person or business entity.
7. **Nepotism.** Nepotism is the employment or promotion of

relatives. The issue is addressed in Section 112.3135, Florida Statutes. There is a specific exemption for municipalities with a population of fewer than 35,000 people, but this exemption does not apply to boards with land planning or zoning responsibilities. The term "relative" is quite broad in its scope. The public official is precluded from appointing, employing, promoting, advancing or advocating an individual who is a relative of the official. The limitation is on the individual employee as well.

General Rules

Use of the following general rules may help avoid charges of unethical behavior:

1. If you think it might be wrong, it is.
2. Don't get yourself into a situation that "tempts to dishonor."
3. Is there anyone who gives you something who doesn't want or expect something in return, except your mother? (And you can't be sure about her.)
4. People don't give elected officials or government employees gifts because they like them, but because they want something – at best, it is a sense of obligation.
5. Can you accept a gift that does not influence you?

The Gift Law

As was previously discussed, the statute deals with the subjects of Solicitations or Acceptance of Gifts [Chapter 112.313(2)], which is essentially a bribe and is absolutely unlawful under any circumstances. The statute also deals with Unauthorized Compensation [Chapter 112.313(4)], which discusses gifts that are legal. To be legal, the elected official or employee must reasonably conclude that the gift was not given to the official to influence a vote or other action.

A City's Right to Require More Stringent Standards

Chapter 112.326, Florida Statutes, allows political subdivisions and agencies to establish more stringent standards of conduct than those specified in Chapter 112, Part III, Florida Statutes, provided that those standards don't conflict with the state statute. Several Florida communities are adopting their own ethics ordinances.

Among the cities I represent, one has established substantially more stringent gift standards, precluding gifts of any kind to a city employee, elected official or board member. This can be done by ordinance, if desired.

If people give you gifts when you are in office and you think it is because they like you, why do the gifts stop when you leave office?

Gifts

The two biggest areas of questions that I get as a city attorney are 1) conflicts of interest, and 2) gifts.

The statute contains a definition of the term "gift." The statute is so broad that it basically covers anything of value. It covers things (tangible property), the use of things, the use of land, forgiveness of a debt, food and beverages, entrance fees and personal services, and then concludes by including "any other similar service or thing having an attributable value not already provided for in this Section."

The term "gift" does not include salaries, benefits, fees associated with employment, political contributions, an honorarium, an award, certain honorary memberships, the use of a public facility or public property made available by a government agency for a public purpose, transportation provided to a public officer or employee by a governmental entity in relation to an officially approved governmental business, or gifts provided directly or indirectly by a state or national organization primarily composed of elected or appointed officials or staff, if your city is a member of that organization.

You can see, then, that the term "gift" is very inclusive. You should always look behind a gift as to who is the donor and ask yourself the reason

why such a gift is being given to you. Can you accept it? Do you want to accept it? What is the public perception if you accept it? If it doesn't feel right, don't accept it.

As discussed previously, you cannot solicit or accept a gift based on an understanding that you would be influenced by that gift. That is essentially a bribe, and it is absolutely prohibited. Unlike legal gifts, the amount of such a gift is not relevant. [See Chapter 112.313 (2), Florida Statutes.]

The other part of the statute dealing with gifts is titled "Unauthorized Compensation" and says that a public officer or employee will not accept anything of value when that person knows it was given to influence a vote or other action. You can accept a gift in any amount: 1) if it is not based on an understanding that your vote or judgment would be influenced by the gift, and 2) if you reasonably know that it was not given to you to influence a vote or other action.

The result of this is that you can accept a gift from most regular people. A major exception to this is gifts from lobbyists. Lobbyists are addressed in Chapter 112.3148, Florida Statutes. A lobbyist is a natural person who is paid by someone over the preceding 12 months to influence your decision making, if you are someone who is required to file public disclosure of your financial interests (or if you are a state procurement employee.)

You need to be particularly careful about lobbyists, because not only is the actual lobbyist covered by this statute, but the principal of the lobbyist is as well. That is to say, the person hiring the lobbyist comes under the same limitations and requirements as does the lobbyist. A lobbyist has to be a natural person.

Also, some agencies require lobbyists to register with the agency. Perhaps yours does, perhaps it does not. In either case, you need to identify who is a lobbyist, and you also need to identify who is the person who hired that lobbyist. You need to be particularly careful as to both.

Solicitation of Gifts

Except for very limited circumstances, you should never solicit a gift. This is true whether it is from a lobbyist or anyone else. You are specifically prohibited by the statute from soliciting a gift from a lobbyist. This limitation also includes a partner, firm, employer or principal of a lobbyist. You are allowed to solicit gifts if they are not for your personal benefit or that of another reporting individual or procurement employee, or any member of the immediate family of that person.

You are absolutely prohibited from accepting, directly or indirectly, a gift from a lobbyist if you know or reasonably believe that the gift has a value in excess of \$100. Any gift from a lobbyist that exceeds \$25 must be reported by the lobbyist. Please note that the absolute limitation on a gift from a lobbyist is \$100.

The amount of a gift from a normal person (which is unlimited) does not apply to lobbyists or the people who hire lobbyists. An example of how this limitation can sneak up on you is found in a Commission on Ethics opinion in which a state legislator accepted a gift of football tickets from a county commission chairman. The gift value was in excess of \$100. The Commission on Ethics ruled that the gift was unlawful because the county employed a lobbyist to lobby the Legislature. The commission opinion concludes that the legislator did not know that the acceptance of the gift would be unlawful.

It was a fine decision for that particular legislator, but given the fact that the commission has now issued that opinion, it is unlikely that the assumption of innocence would benefit another person in the same situation. Always look behind a gift and make sure that whoever is giving you the gift does not hire a lobbyist to lobby your city, even if the person is another elected official.

A lobbyist may give you a gift in excess of \$100 if you are accepting it on behalf of your governmental entity or a charitable organization, but you may not have custody of this gift for a period of time in excess of that necessary to arrange for its transfer to the

custody of your governmental entity or charity.

You may not solicit an honorarium related to your public duties from anyone. You may not accept an honorarium from a lobbyist for any reason.

Theoretically, you can accept a gift of any amount (except from a lobbyist and the principal of a lobbyist) as long as you reasonably know that it was not given to you to influence a vote or other action. Obviously, the greater the gift in amount or value, the more likely it is that it will influence you in some fashion. Any gift creates a sense of obligation under the theory of "reciprocity." However, the law presumes that you can receive a gift in any amount that does not influence you as to your public duties.

Exceptions

There are certain statutory exemptions [Chapter 112.313(12), Florida Statutes] to the limitations as described in "Doing Business with One's Agency" and "Conflicting Employment or Contractual Relationship."

These limitations can be waived as to advisory boards by the appointing body (normally a city commission or city council) upon full disclosure to the appointing body prior to the waiver, and an affirmative vote by that body by a two-thirds majority.

Other exceptions are: 1) a rotation system; 2) competitive bidding with no participation by the official and no effort to persuade agency employees, and filing a statement disclosing the official's interest or the interest of the official's spouse or child; 3) purchase or sale of legal advertising, utilities service or for passage on a common carrier; 4) an emergency purchase; 5) a sole source of supply with full disclosure; and 6) if the total amount of the transaction is less than \$500 per calendar year. There are certain exemptions for stockholders, officers or directors of banks that will not bar a bank from becoming a depository for public funds. There is an additional exemption for elected public officers having conflicting employment or contractual relationships, if that officer maintains an employment relationship with a

501(c) IRC tax-exempt organization that enters into a business relationship with the officer's agency and: 1) the officer's employment is not directly or indirectly compensated as a result of such contract; 2) the officer in no way participated in the agency's decision to contract; and 3) the officer abstains from voting.

Chapter 112.3143(3)(b), Florida Statutes, provides an exception to the voting prohibition because of conflict for a commissioner of a community redevelopment agency.

Limitation on Appearances and Lobbying by Employees and Elected Officials

A person who has been elected to a municipal office may not personally represent another person or entity for compensation before the governing body of the city for a period of two years after vacating office. There are also specific limitations on local government attorneys.

City Employees Holding Office

An employee of a city is precluded from holding elective office as a member of a city commission or city council while that employee continues to work for the city. In other words, you can't be both an employer and an employee within the same city government.

Limitation on Appointed Official Representation

A city has the right to adopt an ordinance providing that an appointed officer or a regular employee may not personally represent another person or entity for compensation before that city for a two-year period following vacation of the office or termination of the employment (except for the purposes of collective bargaining). Your city has to adopt an ordinance to this effect, and if it has not already done so, it should seriously consider this type of limitation in order to avoid the appearance of conflict. Elected officials are not allowed to conduct lobbying activities for a period of two years, and it seems logical that this same type of limitation should pertain to appointed officers and employees.

Duty to Vote

Chapter 286.012, Florida Statutes, requires members of municipal governmental boards or commissions who are present in a meeting to vote unless and except "there is, or appears to be, a possible conflict of interest" pursuant to Chapter 112. Failure to vote requires the filing of the disclosure requirements, both orally and in writing. The bottom line on this is that if you are an elected or appointed official on a board that is voting on a matter, you must vote unless you have a conflict of interest.

Voting Conflicts

The law on voting conflicts is found in Chapter 112 at Section 112.3143, Florida Statutes. This is probably the portion of the ethics law that creates more questions than any other (with the possible exception of the gift law). Most city attorneys deal with voting-conflict questions on a fairly frequent basis.

For there to be a voting conflict, the matter being voted on must inure to the officials "special private gain or loss," or to the gain or loss of a principal by whom such official has been retained or to a relative or business associate. As previously mentioned, a specific exception is found in this statute for commissioners of community redevelopment agencies.

The Commission on Ethics has devised two basic rules to determine whether or not a conflict of interest exists. They are:

- a. The size of the class test, and
- b. Remote and speculative test.

Commission on Ethics decisions boil down to a 1 percent rule for the size of the class test. In other words, if the number of people or properties being affected by a particular vote is so sizeable that the elected official's interest represents 1 percent or less of that class, no conflict of interest exists because the elected official's interest in the matter is not "special," meaning it is enjoyed by a large number of people or properties.

The remote and speculative test provides that if there is uncertainty at the time of the vote as to whether there will be any gain or loss to the elected official, then there is no special private gain or loss that can be identified.

In the event that an elected official or appointed official has some concern about whether or not a voting conflict exists, the best practice is to discuss the matter with the attorney for the entity and request that the attorney's opinion be rendered in writing. Not voting and declaring a conflict in a questionable situation is almost always without risk, and, often is seen as a careful and responsible decision.

My experience has been that the great majority of elected officials want to act ethically. Most violations are committed unintentionally and without forethought.

Conduct If There Is a Conflict

The voting-conflicts portion of the ethics law (Chapter 112.3143, Florida Statutes) treats appointed and elected public officials somewhat differently.

An elected public official may not vote if there is a conflict, and prior to the vote being taken must reveal the conflict, abstain from voting and file the necessary written document explaining such conflict within 15 days. That document must be incorporated into the minutes of the meeting. (City clerks should be aware of this.) State officers may vote.

An appointed public officer may not participate or vote in a conflict situation and must file a written memorandum reflecting such conflict prior to the meeting at which the matter is considered. This memorandum also must be incorporated into the minutes of the meeting, must be provided to the other members of that board or committee, and must be read publicly at the next meeting held subsequent to the filing of the written memorandum. If the conflict is unknown prior to the meeting, a disclosure has to be made

orally at the meeting following when the conflict is known, a written memorandum has to be filed within 15 days, the memorandum must become part of the minutes, and the memorandum has to be distributed to the other members of the agency and read publicly at the next subsequent meeting.

In the instance of an appointed public officer being considered for appointment or reappointment, the appointing body is supposed to consider the number and nature of the memorandums of conflict filed.

There is an interesting distinction between the duties of an elected official and an appointed official. The elected official must state the conflict,

but there is nothing in the statute that appears to limit the participation of the elected official on the matter before the elected body. The fact of the conflict only needs to be made public

prior to the vote. This could obviously occur long after the elected public official gave his or her opinion on the issue and attempted to persuade the other members of the city commission or city council to a particular decision.

An appointed public official is much more restricted because that official cannot "participate" without first disclosing the conflict. The statute defines the term "participate" to mean any attempt to influence the decision by oral or written communication. From the reading of this statute, it appears that an elected official can attempt to influence a decision even though that official has a conflict. Appointed officials are not so privileged. There must have been a public-policy reason why the statute was written this way, but it seems to me that if elected officials took full advantage of their ability to try to influence a vote, and then declared a conflict at the last second before the vote was actually taken, the public would have a hard time understanding why this was proper ethical behavior. Surprisingly, state officials can participate and vote in a conflict situation.

My advice to clients is that if a voting conflict is known, it should be announced as soon as possible. Usually they are known well before the meeting, if the commissioners or council members are diligent in reviewing the materials distributed to them before the meeting. The smart ones clarify the conflict issue, determine what they must do, and give me a call to get my opinion on it as well. Even if I have told them there is no legal conflict, I encourage them to bring the matter up at the meeting, get it on the record, and have me tell them in a public forum that they do not have a voting conflict.

Further, I advise my clients to leave the dais and absent themselves from the room, if that is possible. I think that the appearance of someone with a voting conflict sitting on the dais during the discussion (even if not participating in the discussion) sends a bad message to citizens. Eye rolling, nodding, smiling and other types of body language certainly are a form of communication. I think the public and the elected official are best served by complete non-participation. Most citizens' opinion of their government is usually not particularly high, and, at the moment, is at a particularly low point. We can all improve the public's opinion of government officials and employees by not only acting ethically, but doing everything we can to appear to act ethically. Merely obeying the dictates of the statutes sometimes is not enough.

Conclusion (Almost)

The foregoing is truly a brief discussion of the ethics law. It does not begin to cover the subtleties or complexities of that law. I have not addressed all the rules on the various filings that are required annually and quarterly. I have not addressed how gifts are valued. A reading of Part III of Chapter 112, Florida Statutes, is advised. There is much detail that a brief discussion of the law cannot cover.

Penalties

The penalties for violating the ethics law in Florida are extensive. They

are found in Chapter 112.317, Florida Statutes. They include impeachment, removal from office, suspension from office, public censure and reprimand, forfeiture of salary, civil penalties and restitution. The penalties described by statute do not limit the power of the city to discipline its own officers and employees in addition to the statutory penalties. Criminal penalties also apply when criminal laws are violated.

For elected officials, the statute specifically provides that a violation of the ethics law constitutes malfeasance, misfeasance and neglect of duty for the purposes of removal from office. If the violation of the ethics statute rises to the point of being a felony, Chapter 112.3173, Florida Statutes, provides that a public officer or employee forfeits all rights under a public retirement system. In addition to those penalties, the status of a public official or public employee in their community and among their friends would be greatly affected. If nothing else, the public embarrassment of being found in violation of this statute should be more than enough motivation to discourage questionable behavior.

My experience has been that the great majority of elected officials want to act ethically. Most violations are committed unintentionally and without forethought. These are unfamiliar rules. If you have been elected or appointed recently, it is possible you have not been fully briefed on them. Reference to standard business ethics is not enough. A pure heart is not enough – *learn the statute*.

Consult Your Attorney

In most circumstances, the very best and first step that you can make is to consult with your city attorney. If the issue is a matter of some consequence, ask your attorney for an opinion in writing or that the opinion be given orally at a public meeting.

If you are in a very difficult situation with great consequences, you may wish to follow this up by getting either a formal or informal opinion from the Florida Commission on Ethics. Remember: A formal opinion has the ef-

fect of law. Treat these issues seriously, for they have serious consequences.

Final Advice

The ethics statute is hard to navigate, and it is complex. Get proper advice when an issue arises. There are lots of opinions decided by the Commission on Ethics that explain the law, or, at least, help us to understand the law. (See www.ethics.state.fl.us.) A review of these opinions and the court cases interpreting the statute is best accomplished with legal help.

Also consult your inner ethical compass. Most people will be able to identify situations that at least raise a red flag requiring further study, or may just discourage an act that will come back to haunt you. Most elected officials enjoy the prerogatives of their office, but be careful in using them in circumstances that bring a question to your mind. Nobody gives you gifts because they like you, except longtime friends and family members. If they didn't give you gifts before you got elected to office, be careful about accepting them when an elected official. By the way, gifts from relatives are an exception to the definition of "gifts" in the statute. Using your office to get a benefit for yourself or others that you couldn't accomplish without that office is probably going to violate the statute.

There are criminal statutes and case law (common law) that also come into play in proper circumstances.

Finally, occasionally refer back to the five "general rules" provided earlier in this article. They are a pretty good litmus test. It is very difficult to "serve two masters," you should do everything you can to avoid a situation that "tempts to dishonor," and the guiding principal in Florida ethics law is "A public office is a public trust."

John Hubbard has been a city attorney since January 1972, and has been city attorney of Dunedin since 1974. He has also served as city attorney for several other municipalities in Pinellas County, including Belleair Beach, Belleair Bluffs, Oldsmar and Tarpon Springs.

Chapter 3: COMMISSION ADMINISTRATION

3.1 City Commission Meetings

Commission meeting procedures and the maintenance of records are the heart of local government activity. Proper meeting conduct is essential to ensure successful municipal functioning. Formal decisions must be made in an orderly, timely manner, with adequate input from an informed public. Commission members and city staff must conscientiously seek to meet these requirements.

Regular Commission Meetings

Held the first and third Thursday of every month at 10:00 AM in the Commission Chambers (City Hall Auditorium), these meetings vary in length depending on the agenda.

The Mayor, Commissioners and Charter Officers hold **Agenda Review** on Wednesday afternoon a week prior to the regular commission meeting to ensure that all items to be heard are disclosed and to manage the items on the draft agenda. To place a business item on the agenda for consideration, Commissioners may submit the information to the City Clerk or their Executive Assistant before the conclusion of Agenda Review.

Committee Meetings

The Commission maintains the following standing committees, which follow the same laws, policies and procedures that govern regular Commission meetings.

General Policy Committee (GPC)

The General Policy Committee, comprised of seven members of the City Commission, meets the second and fourth Thursday of every month at 1:00 PM in the Roberta Lisle Conference Room 16. Items included on the General Policy Agenda are referrals made by the City Commission during the regularly scheduled meetings.

Audit Committee

The Audit Committee is an important governance body for the independent function of the Office of the City Auditor. Audit Committee responsibilities include reviewing City Auditor reports and updates, approving the annual audit plan, selecting the City's external financial statement auditors for General Government and the City's utility, and reviewing external auditor reports, including the City's Annual Comprehensive Financial Report (ACFR).

The Audit Committee is comprised of three members - Mayor, Mayor Pro Tem, and an appointed external subject matter expert. The committee meets on an as-needed basis, but not less than once every quarter. Committee recommendations are placed on the City Commission agenda for review and approval.

Finance Committee

The Finance Committee is comprised of three members. The Finance Committee reviews and monitors and provides policy oversight and guidance to management regarding the City's financial affairs of the city. The Committee responsibilities financial statements and all other audit and finance-related matters.

Board of Trustees/General Employees' Pension Plan

The Board of Trustees/General Employees' Pension Plan is comprised of seven members of the City Commission. The Committee meets on an as-needed basis.

Every election year following the swearing-in ceremony, the Mayor appoints Commissioners to serve on the various **local/county/state committees**. Commissioners may express committee preferences, but their requests are not guaranteed. All committee meetings are added to the Commissioners' calendars, and Executive Assistants will prepare required meeting materials in advance of each meeting. The current list of *City Commission Committee Assignments* can be requested from your executive assistant.

Special Meetings & Workshops

Throughout the year the City Commission may hold special meetings and workshops when deemed necessary. Per the Florida Sunshine Law, any meeting of two or more Commissioners requires public notice to be given and minutes to be recorded.

Special Meetings: Meetings of the Commission outside of regular meetings, usually for a specific topic. Action can be taken but no items outside of those advertised may be discussed.

Workshops: Workshop meetings are for discussion only, no action taken.

Work Sessions: Two or more commissioners may meet to discuss any topic as long as the public is noticed, and the meeting is open to the public. In order to schedule a meeting with two or more Commissioners outside of full commission meetings, you may coordinate with your executive assistant.

- The Clerk's Office provides **public notice** a minimum of forty-eight hours in advance of the meeting unless an emergency meeting of the full Commission is requested. Please refer to the City Commission Rules resolution for Commission meeting scheduling.
- The Clerk's Office maintains **records** of all meetings of multiple commissioners, including when audio/video technology is used in addition to taking minutes for each meeting. The Communications Staff provides media services to ensure that meetings are recorded and copies are made available upon request by city staff and/or members of the public. While not required by state law, these recordings have become a practice of the City of Gainesville and help to ensure full transparency for the public.
- **Work sessions** between two or more Commissioners must also be open to the public in compliance with the open-meeting law. Members of the public (and media) are welcome as observers, and participants at the appropriate times during the meeting.

Joint Meetings with Local Government Agencies (County, School Board, etc.)

- Each year joint meetings are scheduled with the Board of County Commissioners and other local agencies/boards.
- Dates will be identified that the entire Commission is available unless a particular date is specified; and placeholders will be added to the Commission's calendars based on your availability. *All commissioners should be available unless they confirm they agree to miss the meeting.*
- All topics are confirmed in advance of the meeting date.

3.2 Public Meeting Procedures

“The City Commission will determine and adopt its own rules and order of business.” [Attached is a copy of the City Commission Rules.](#)

3.3 Ordinances & Resolutions

A principal activity of municipal Commissions is the adoption of ordinances and resolutions. Section 166.041 of the Florida Statutes provides the procedure for the adoption of municipal ordinances and resolutions.

1. Must be introduced in writing, and address only one subject, and that subject will be clearly stated in the title.
2. Must be approved by an affirmative vote of the majority, except that a two-thirds vote is required for an emergency ordinance.
3. Must be voted on by roll call vote, and must be recorded on the official minutes as such.
4. Become law ten days after passage or as otherwise provided.
5. Will, upon final passage, be recorded in a book kept for that purpose and will be signed by the mayor, City Clerk and City Attorney.
6. Are generally read by title on two separate readings (except emergency ordinances and resolutions) and will be published in a newspaper of general circulation at least ten days prior to adoption
7. Ordinances rezoning specific parcels of private real property or substantially changing permitted use categories in zoning districts have more strict guidelines — they must typically be advertised 15 days in advance and surrounding property owners must be notified.

3.4 Quasi-Judicial Proceedings

When is a quasi-judicial hearing required?

The requirement for a quasi-judicial proceeding is determined by the character of the local government action. The general rule is that a quasi-judicial hearing is required when a local government is applying policy, as opposed to setting policy (“legislative decisions”), and when the number of persons or size of property affected is limited, as opposed to affecting a large segment of the population, or a large part of the land within the jurisdiction. Rezoning, special use permits, site plans, subdivision plats and other similar development orders on a specific property are examples of quasi-judicial matters.

What are the requirements for quasi-judicial proceedings?

The difference between a “judicial” proceeding and a “quasi-judicial” proceeding is that a quasi-judicial proceeding does not require the same level of due process as a full judicial hearing and does not require adherence to the strict rules of evidence.

When a legislative decision (remember – setting policy) of the Commission is challenged, a court will uphold the Commission decision as long as it is “fairly debatable” (which means is the decision reasonable based on the information presented to the Commission). The standard of review is higher when the Commission is acting in its quasi-judicial capacity, a court will uphold a quasi-judicial decision only if it finds the three requirements described below are met.

The three basic requirements of a quasi-judicial decision are as follows:

- a. Procedural due process must be provided (this consists of three parts: adequate prior notice, fair opportunity to be heard, and an unbiased decision maker);
- b. The essential requirements of the correct law must be applied; and
- c. The findings must be supported by competent, substantial evidence (this means evidence a reasonable person would accept as adequate to support a particular conclusion). Reasons for denial expressed in a staff report may constitute competent, substantial evidence.

Where technical expertise is required (such as whether a project will result in increased traffic congestion or increased noise), opinion testimony of citizens is not competent, substantial evidence upon which a decision can be based, unless a citizen has the technical training, education, or experience that allows them to render expert opinion testimony. The Commission should inquire as to the speaker's education or experience on a particular issue. The Commission can then decide what weight and credibility to give that opinion.

However, testimony is permissible and constitutes competent, substantial evidence, as long if it is fact-based and not merely a generalized statement of opposition. A quasi-judicial decision cannot be based on generalized statements of opposition or concern.

Hearsay evidence is evidence the testifying witness heard from someone else; it is not based on the personal knowledge of the individual testifying. Generally, hearsay is not admissible in judicial proceedings; however, it is admissible in quasi-judicial proceedings. Hearsay should not be the sole basis supporting the Commission decision but may be used to support a decision if it is corroborated by other competent, substantial evidence.

How the Commission Conducts Quasi-Judicial Hearings

The City Commission Rules provide the procedures for conducting quasi-judicial proceedings before the City Commission. The hearings are either formal or informal. A party must request a formal proceeding in advance; otherwise, the proceedings are informal by default. In a formal proceeding, each party to the hearing has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.

The Commission shall hear and consider all testimony offered and shall examine and consider all the evidence presented. After the conclusion of the hearing, the City Commission deliberates, and a motion is made.

In an informal proceeding, the approved City Commission motion constitutes the oral order of the Commission. In a formal proceeding, the oral order must be reduced to writing and contain findings of fact and conclusions of law. The order must also specify any conditions, requirements or limitations on the approval of the matter. The written order is presented at a future Commission meeting for approval/ratification.

The Rules prohibit ex-parte communication in quasi-judicial matters but do provide a procedure for each City Commissioner to disclose for the record any inadvertent ex-parte communications, in order to erase the presumption of prejudice before final action is taken on a matter.

ADVERTISEMENT
NOTICE OF PROPOSED ENACTMENT OF ORDINANCE
BY CITY COMMISSION, GAINESVILLE, FLORIDA

Notice is hereby given that the proposed ordinance, whose title appears below, will be considered for adoption reading on the 15th day of July, 2010, at the City Commission meeting. The meeting begins at 6:00p.m. and the ordinance will be read as soon thereafter as may be heard. The meeting is held in the City Commission Auditorium, on the First Floor of City Hall, 200 East University Avenue, Gainesville, Florida. A copy of said ordinance may be inspected by any member of the public at the office of the Clerk of the Commission on the First Floor of City Hall during regular business hours located at 200 East University Avenue, Gainesville, Florida. On the date mentioned above all interested parties may appear at the meeting and be heard with respect to the proposed ordinance. Persons with disabilities, who require assistance to participate in the meetings, are requested to notify the Equal Opportunity Office at 334-5051 or TDD line at 334-2069 at least 2 business days in advance.

ORDINANCE TITLE

Ordinance 0-10-20

An ordinance of the City of Gainesville, Florida, amending the Capital Improvements Element of the City of Gainesville 2000-2010 Comprehensive Plan by updating Table 14 "5-year Schedule of Capital Improvements" to reflect projects for the planning period of FY 2010/2011–2014/2015; updating Table 15 "School Board of Alachua County 5-year District Facilities Work Program" to reflect projects for the planning period of FY 09/10–13/14; providing directions to the city manager; providing a severability clause; providing a repealing clause; and providing an effective date

Note: "All persons are advised that, if any person decides to appeal any decision made at any of these meetings, they will need a record of the proceedings and, for such purpose, they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

Wednesday, June 30, 2010
Publish Date

Kurt M. Lannon
Clerk of the Commission

Sample Ordinance

ORDINANCE NO. 180479

An ordinance of the City of Gainesville, Florida, amending section 2-358 of the Code of Ordinances relating to non-voting members of the Utility Advisory Board; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least 10 days' notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of public hearings to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact heard.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. Section 2-358, Division 7 of Article V, Chapter 2, is amended to read as set forth below.

Chapter 2 – ADMINISTRATION

ARTICLE V. – BOARDS, COMMISSIONS AND COMMITTEES

DIVISION 7. – UTILITY ADVISORY BOARD

Sec. 2-358. - Utility board; membership; terms; officers; procedural rules.

(a) *Voting Members.* The utility board shall have seven voting members. All voting members' permanent residence shall be within the utility service area and receive utility service. A minimum of one voting member shall reside outside the Gainesville city limits. Applicants with any of the following types of experience are encouraged to apply for a voting member seat:

(1) experience as a utility demand customer;

1

CODE: Words ~~stricken~~ are deletions; words underlined are additions.

Sample Resolution

RESOLUTION NO. 180419

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA
AUTHORIZING THE GRANTING OF A DEED FOR LAND RIGHTS TO BE USED AS PUBLIC
RIGHT OF WAY BY THE FLORIDA DEPARTMENT OF TRANSPORTATION TO IMPROVE
STATE ROAD 26.**

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road Number 26, Parcel 138.1, Section Number 26070, F. P. Number 4305422, in Alachua County, Florida; and

WHEREAS, it is necessary that certain lands now owned by the City of Gainesville, Florida, be used by the State of Florida Department of Transportation; and

WHEREAS, said property is not needed for City purposes; and

WHEREAS, the State of Florida Department of Transportation has made application to the City of Gainesville to execute and deliver to the State of Florida Department of Transportation a deed, or deeds, in favor of the State of Florida Department of Transportation, conveying all rights, title and interest that said City has in and to said lands required for transportation purposes, and said request having been duly considered.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Gainesville, Florida, that the application of the State of Florida Department of Transportation for a Deed is for transportation purposes which are in the public or community interest and for public welfare; that the Deed, in favor of the State of Florida Department of Transportation conveying the land rights in and to said lands should be drawn and executed by the Mayor of the City of Gainesville and that this resolution shall become effective immediately upon adoption.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at Lake City, Florida.

Dated the 6th day of December, 2018.



Lauren Poe, Mayor

ATTEST:



Omichele D. Gainey, Clerk of the Commission

Approved as to form and legality:



Nicolle M. Shalley, City Attorney

City of Gainesville, Florida

Office of Mayor Lauren Poe
PROCLAMATION

WHEREAS, 144 years after J. Sterling Morton first proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, we continue his vision with our own tree planting ceremony; and

WHEREAS, the National Arbor Day Foundation has certified that in 2018, Gainesville met the requirements of the "Tree City USA" program for the 35th consecutive year; and

WHEREAS, 70 shade trees have been planted in City Parks and Open Spaces in honor of this occasion; two trees for every year Gainesville has been a Tree City USA; and

WHEREAS, this is the 35th year celebration as a "Tree City USA" so the City of Gainesville has planted in total 70 trees due to our passion with this honor.

NOW, THEREFORE, I, Lauren Poe, by the authority vested in me as Mayor of the City of Gainesville, do hereby proclaim January 18, 2019 as

Arbor Day

in the City of Gainesville and invite all our citizens to join me in celebrating Gainesville's beautiful tree canopy.

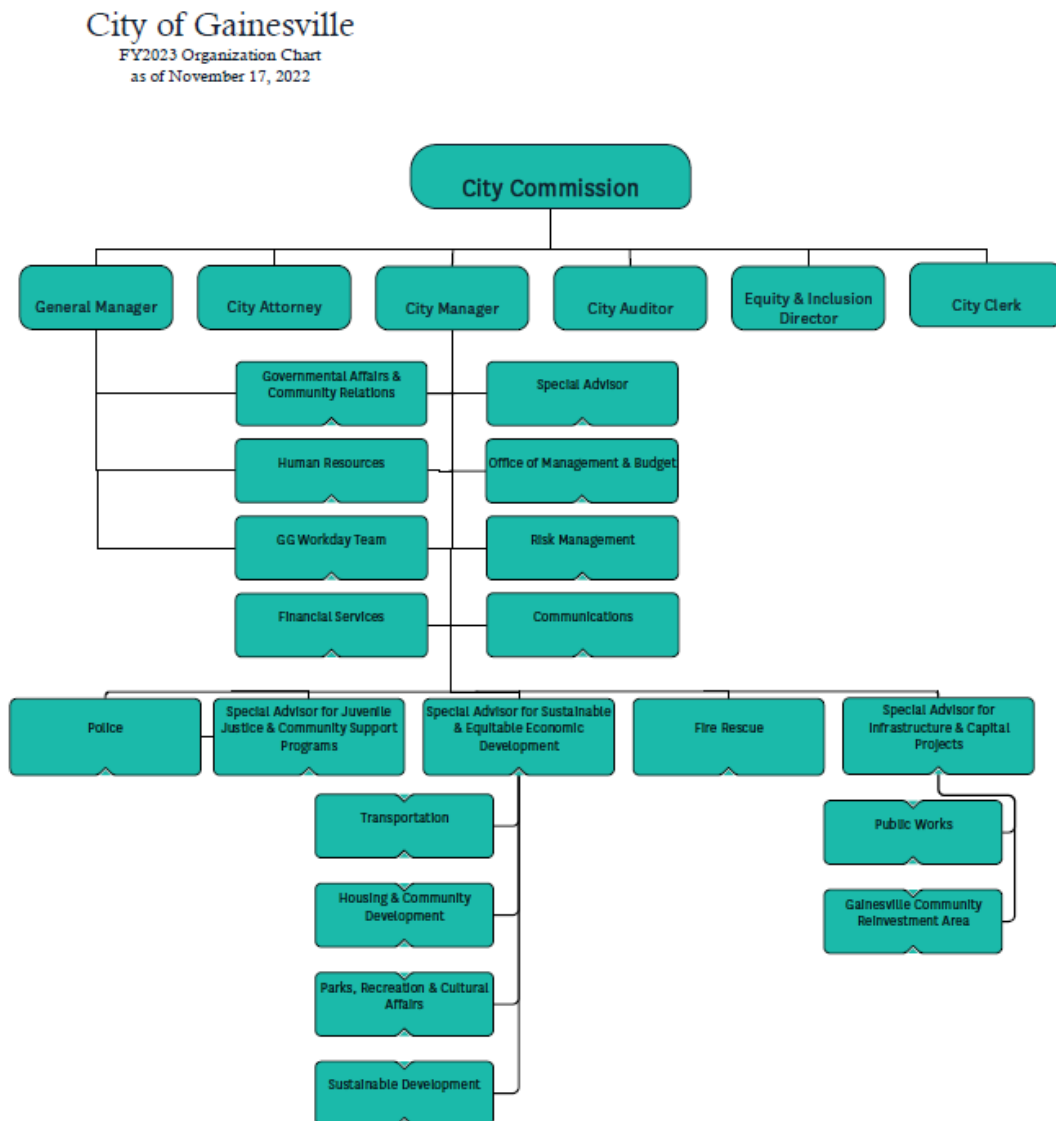
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of Gainesville, Florida, this 16th day of November, A.D., 2018.



Lauren Poe
Mayor

Chapter 4: DEPARTMENTAL ADMINISTRATION

1.1 General Government Organizational Chart



1.2 Charter Officers

City Manager

The City Manager is appointed by the City Commission and serves as the chief executive officer responsible for operations. Primary duties include implementing policies established by the Commission as well as making recommendations to the City Commission regarding the annual budget, efficient delivery of city services, coordination of all special events, community relations and strategies for achieving the community's vision.

City Clerk

The City Clerk is appointed by the City Commission. The mission of the city clerk's department is "to be a progressive clerk's office dedicated and motivated to providing elite service, (and mission), guiding public access to the commission, city legislation and earning the trust and respect of our neighbors, employees and elected officials." The City Clerk acts as the head of the department of records and custodian of official records of the city and the office serves as the legislative office for local city government. As records custodian, the clerk functions as a conduit for all requests for access to official records in their various formats. The City Clerk serves as clerk to the City Commission, recording the body's official actions, acting as election official, attesting all written contracts and instruments on behalf of the city, and administering oaths. In addition, the clerk's office facilitates community engagement and oversees the policy process and research as directed by the Commission.

The eminent political scientist, Professor William Bennett Munro, writing in one of the first textbooks on municipal administration, stated: "No other office in municipal service has so many contacts. It serves the mayor, the City Commission, and all administrative departments without exception. All of them call upon it, almost daily, for some service or information. Its work is not spectacular, but it demands versatility, alertness, accuracy, and no end of patience. The public does not realize how many loose ends of city administration this office pulls together."

City Attorney

The City Attorney is responsible for the city's legal affairs. To successfully perform this role, the City Attorney must be knowledgeable in all aspects of municipal and local government law.

The City Attorney attends all City Commission meetings and meetings of various city boards and commissions. Other responsibilities include the preparation and review of ordinances and resolutions, contract preparation and administration, and representation of the City of Gainesville in litigation, administrative proceedings, and appellate matters.

General Manager of the Utility

The General Manager of the Utility directs all Gainesville Regional Utility activities and advises the City Commission with respect to all matters concerning GRU.

The general manager of the utility attends all City Commission meetings and meetings of various city boards and commissions.

City Auditor

The City Auditor performs risk-based audits and non-audit services citywide to improve governance, risk management, and internal controls. Auditor recommendations strive to improve efficiency and effectiveness of operations, ensure compliance with regulations, mitigate fraud risk, and support an effective strategic management process. Audits are conducted with unrestricted access to employees, property and records as appropriate for the performance of audit activities which are reported to the City's Audit and Finance Committee and/or the City Commission. Professional audit staff are independent, objective, and competent, and must follow professional standards for conducting internal audits, such as *Generally Accepted Government Auditing Standards*, and the Institute of *Internal Auditors International Professional Practices Framework*.

Director of Equity & Inclusion

The Director of Equity & Inclusion is responsible for overseeing the city's anti-discrimination policies, by investigating complaints of discrimination, harassment and retaliation. The Equal Opportunity also prepares and monitors the city's affirmative action plans, conducts training and workshops with regards to equity, diversity and inclusion. The office also proposes changes to employment policies, procedures and guidelines. The Director of Equity & Inclusion is also responsible for implementing and monitoring the city's Equity Plan.

1.3 Departmental Leadership

Information about each city department, including responsibilities, staffing, goals and objects can be found in the City's annual budget book (available from Budget and Finance).

Charter Officers

City Manager	Cynthia W. Curry
City Clerk	Omichele D. Gainey
City Attorney	Daniel Nee
Interim Equity & Inclusion Director	Zeriah Folston
Interim City Auditor	Brecka Anderson
General Manager for Utilities	Anthony Cunningham

City Manager's Executive Team

Special Advisor to the City Manager <i>for Juvenile Justice & Comm. Support Programs</i>	Tony Jones
Special Advisor to the City Manager <i>for Infrastructure and Capital Projects</i>	Philip Mann
Special Advisor to the City Manager <i>for Sustainable & Equitable Economic Dev.</i>	Andrew Persons
Special Advisor to the City Manager <i>for General Government Administration</i>	Cintya Ramos
Government Affairs & Community Relations	Yvette Carter
Communications	Jennifer Smart

City Manager's Leadership Team

Financial Services	Sue Wang
Fire Chief	Joseph Dixon
Gainesville Community Reinvestment Area	Phil Mann (Acting)
Human Resources	Laura Graetz
Housing & Community Development	Corey Harris
Parks, Recreation and Cultural Affairs	Roxanna Gonzalez
Police Chief	Lonnie Scott, Sr.
Public Works	Brian Singleton (Acting)

Office of Management & Budget
Risk Management
Sustainable Development
Transportation

New Office, Director TBD
Steve Varvel
Forrest Eddleton (Acting)
Jesus Gomez (Acting)

GRU Executive Management Team

Chief Information Officer
Chief Operating Officer
Chief People Officer
Chief Financial Officer

Walter Banks
Vacant
Cheryl McBride
Claudia Rasnick

GRU Leadership Team

Interim Energy Delivery Officer
Communications Director
Acting Water/Wastewater Officer
Utility & Safety Training Officer
Compliance Officer
Interim Chief Customer Officer
Energy Supply Officer
Chief Business Services Officer
Interim Chief Sustainability Officer

Tony Carroll
David Warm
Debbie Daugherty
Doug Beck
David Owens
Kinnzon Hutchinson
Dino De Leo
Lewis Walton
Eric Walters

1.4 City of Gainesville Budget

The annual budget is the planned overview and allocation of finances available to accomplish the City's goals during the fiscal year.

Typical Date	Procedures
March	Budgets are prepared by department and division heads
March	City manager and the Budge Division review department's proposed budgets
June	City manager and General Manager of the Utility presents proposed budget to City Commission
June	Workshop meetings take place. City Commission can make changes, deletions and adjustments to the proposed budget.
Beginning of July	City Commission must set a maximum millage rate for the budget. This millage rate is advertised on the Truth in Millage (TRIM) notice. The TRIM notice is mailed to all property owners showing how the increases will affect them. This millage rate cannot be raised but can be lowered during the budget process.

September	Two public hearings on the budget:
	<u>First public hearing - proposed millage and budget</u> Prior to adoption of the final budget, two public hearings must be held. They must be held after 5:00 p.m., and are typically held at 5:01 p.m. By this time, the property appraiser has mailed the TRIM notice to citizens. The notice contains information regarding the date, time and place of this hearing, and of citizens' opportunity to discuss the tentative millage rate and proposed budget. At the first meeting, the proposed millage rate and tentative budget should be read by ordinance and voted upon.
	<u>Second public hearing - final budget and millage</u> The final millage rate and the fiscal year budget is adopted.

The General Fund is the main operating fund for the City of Gainesville and is utilized to account for all general government operating activities. General Accepted Accounting Principles (GAAP) prescribe that the general fund is to be used "to account for all financial resources except those required to be accounted for in another fund". It is presumed that all of a government's activities are reported in the general fund unless there is a compelling reason to report that activity in another fund.

1.5 Commission Travel Budget

Each fiscal year, the Commission receives \$5,000 for travel and training. Commissioners approve their own travel and are reimbursed for travel expenses while on official city business according to approved city policy.

Additionally, effective January 1, 2023, the allocated budget of \$5,000 can be used for other discretionary spending to support Commission Office Operations. Uses that are allowed under this policy include but are not limited to expenses for communications, townhalls, and supplies. Purchases must meet a public purpose and are subject to the City's procurement and travel policies. A copy of the spending policy is attached.

It's Time for Budget 101

By Ken Small *(This article is intended to act as a primer for newly elected officials.)*

The budget process generally begins between February and April, and culminates in September, just prior to October 1, the state-mandated beginning of all local government fiscal years. A budget is the “plan of attack” that sets forth the program priorities and allocation of resources available to accomplish the goals of the municipal government during the upcoming fiscal year. It is developed through the combined efforts of staff, citizens and elected officials.

Development of an operating budget generally utilizes one of two approaches: line item budgeting or program budgeting. Line item budgeting, the simplest and most common method, adds next year’s proposed increase on top of the current year’s total. This is also called traditional or incremental budgeting. A basic assumption in this budgeting method is that the current level of expenditures is fully justified, and that programs/operations/administration are fully effective and productive.

Program budgeting is designed to fund the implementation of goals established by the elected officials. It concentrates on the total cost to achieve the goal. This approach provides opportunities to prioritize and select among competing programs and service alternatives. A common variation of this approach includes performance indicators that measure efficiencies and effectiveness within each program area, which is known as program-performance budgeting.

Zero-base budgeting, which received substantial press during the 1970s, is designed to build the annual spending plan from scratch. Programs or services are ranked in priority order on the basis of how effectively and efficiently each accomplishes the municipality’s goals and objectives. The lowest ranked may be eliminated, funded at a lower level, or redirected to a program or service that better reflects the stated goals. While this approach appeared sound in theory, it was found not to work effectively in practice, and has all but disappeared today. For example, many of those municipalities that attempted to utilize this approach found that significant areas of the general fund budget, such as police and fire/EMS, were determined off-limits and therefore untouchable under this concept.

In addition to the operating budget, municipal officials also will consider a capital budget. A capital budget reflects the fiscal year expenditures required to implement the municipality’s capital program. The capital program usually is a 5-year plan outlining in priority order the capital improvements previously determined to be necessary and the method of financing. Examples of capital improvements would include road resurfacing, construction of new fire stations and other similar projects.

Once the capital program has been established, projects move forward each year for consideration in the capital budget.

An important consideration in the budgeting process is the recognition of the additional operating costs associated with the completion of most capital projects. For example, additional personnel costs will be reflected in the operating budget for additional staffing of a new fire station funded in the capital budget. The opposite may be true for new fleet vehicles and equipment that lower operating and maintenance costs.

Capital projects may be financed through the issuance of bonds. A bond is evidence of a municipality’s obligation to repay a specified amount on a future maturity date, plus interest. General obligation (G.O.) bonds pledge future property tax dollars to repay the debt. Revenue bonds pledge a particular source of revenue, usually generated by the new asset, as a means of repayment. Debt service is the amount of funds

required to pay interest on the outstanding bonds, principal on the bonds maturing in the budget year, and sinking fund requirements in the budget year. These costs should be reflected in the operating budget.

Some municipalities issue their own bonds, while others enter into a bond pool. The advantage of joining a bond pool is that the cost of issuance is spread among the participants, resulting in a lower cost for the municipality. There are several bond pools in the state, such as the Florida Municipal Loan Commission administrated by the Florida League of Cities.

The municipal budget document should provide sufficient, meaningful and useful information to elected officials, the general public and municipal staff. A budget document serves various functions. It is:

- a policy document
- a financial plan
- an operations guide
- a communications device

Together, these define what a municipality has done, what it plans to do and how it will accomplish this task. How well a municipality's budget documents convey these functions to elected officials, the public and other entities is a valid measure or indicator of the municipality's accountability and will ultimately determine the probability of success in securing financial support to accomplish its goals.

The Government Finance Officers Association (GFOA) has developed a "Distinguished Budget Presentation Awards Program" that evaluates budget documents on the basis of its management elements and effectiveness in a policy and public environment. The awards program is not intended to convey approval of the substantive material or budgeting methods, but rather, how well the budget document presents information necessary to accomplish four budget functions.

Florida municipal governments utilize a variety of revenues to pay for the many services provided to their citizens. Each municipality attempts to balance its revenue sources to produce long-term solvency while utilizing a revenue mix that is compatible with local circumstances. Depending upon these circumstances, which could include such variables as the federal income tax status of its citizenry or the proportional amount of property tax exemptions in relation to the property tax base, municipal officials conscientiously formulate the mix of revenues to best fund their operations and services. A municipality with many or most residents in higher incomes may wish to structure more revenues being generated from the property tax since it is deductible from the federal income tax. Likewise, a municipality with lower-valued properties and a high value of homestead exempt property may choose to keep its millage rate low and maximize other non-property tax sources.

Municipalities in Florida, by virtue of the state Constitution, have general home rule authority in all areas except taxation. A municipality is allowed discretion to perform any public service or to enact any ordinance unless specifically prohibited by the state. However, when it comes to taxation, municipalities do not have home rule authority. The Constitution requires that municipalities can only levy taxes that the Legislature has specifically authorized by general law, with the exception of the property tax. The property tax is the only local tax source that is authorized by the Constitution, and it is capped at 10 mills.

A major component of the budget process is the setting of the ad valorem tax millage rate necessary to raise the required property tax for the upcoming fiscal year. The setting of the property tax rate involves a formal process defined in Chapter 200 of the Florida Statutes. This is commonly referred to as TRIM (the Truth in Millage Act).

The TRIM law requires the advertisement of a local government's proposed millage rate as compared to a theoretical millage rate referred to as the "roll-back rate." This theoretical rate is defined as the millage rate (for the upcoming budget) that would raise the same amount of property tax dollars that was raised in the current fiscal year, excluding annexations and new construction. For example, if the municipality's tax base has increased 5 percent due to increased assessment from the county property appraiser, the municipality's roll-back rate would be 5 percent lower than the current year, assuming no annexations or new construction occurred during the past year.

The municipality's property tax is based on the value of real and personal property located within the boundaries of the municipality. These values, in total, are referred to as "assessed value." After subtracting all lawful exemptions including homestead exemptions, the remaining value is called "taxable value." This is also referred to as the municipality's "tax base."

The property tax is calculated by multiplying the taxable value by .001, and then multiplying this number by the "millage rate." A rate of one mill is equivalent to \$1 per \$1,000 of taxable value. For example, if you own your own home, and the property appraiser has set the assessed value at \$150,000, the taxable value would be \$100,000 after subtracting your \$50,000 homestead exemption. If your municipality's millage rate is 5.0 mills, you would owe \$500 in property taxes to the municipality ($\$100,000 \times .001 = \100 ; $\$100 \times 5.0 = \500).

Please note that the non-school homestead exemption is on the first \$25,000, and the second \$25,000 is on the taxable value between \$50,000 and \$75,000. If the home's taxable value is between \$50K and less than \$75K, the second additional homestead exemption would only be the amount above \$50,000. Example: a home with a taxable value of \$60,000 would have a homestead exemption of only \$35,000 (\$25K + \$10K).

Other revenues currently available to municipalities are public service taxes (aka municipal utility tax) on sale of electricity, heating/cooking fuels, and water service; communications services tax; local business tax; various franchise fees; various user fees; state-shared revenues (municipal revenue sharing and half-cent sales tax); local option taxes (gas tax and sales tax); impact fees; investment income; various assessments; and fines and forfeitures.

For additional information, depending on the form of government in your municipality, the city manager, administrator, finance/budget director, or city clerk can provide you with detailed information about your budget, as well as specific vocabulary and processes associated with the development and adoption of your budget. Another useful source of information designed specifically for newer elected officials is the Institute of Elected Municipal Officials (IEMO), presented by the League and the Florida Institute of Government. There is an excellent budgeting/accounting element that is offered in the basic IEMO class.

Ken Small retired as the technical services manager within the League's Financial Services Department and an instructor for the finance and taxation element of the Advanced Institute for Elected Municipal Officials (IEMO), offered by the League and the Florida Institute of Government.

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Chapter 5: CITY CLERK ADMINISTRATION

5.1 The Office of the City Clerk

The city clerk's duties are many and varied, but one of her most important tasks is to serve as a link between the City Commission and its constituency. This is accomplished by assisting Commission members with requests for information, responding to telephone and written inquiries, keeping the Commission apprised of pertinent issues, maintaining the Commission calendar, distributing daily mail, and scheduling appointments. The city clerk's general and statutory duties include, but are not limited to, the following.

General Duties

Responsibilities historically performed in support of the City Commission and city administration:

- Provide for records and information management, including record indexing and retention scheduling
- Support policy research work and serve as liaison between the Commission, stakeholders and other city departments
- Maintain all city agreements and contracts
- Coordinate requests to vacate rights-of-way or easements
- Direct complaints, correspondence and inquiries for action
- Research records
- Provide notary services
- Conduct business with other city, county, state and federal agencies as directed by the governing body
- Administer city elections
- Provide notification to municipal departments of expiration dates on various matters
- Maintain codification of city ordinances (Code of Ordinance Book)

Statutory Duties

Responsibilities of the city clerk required by various state laws or local ordinances:

- Secretary to the Commission
- Records minutes of Commission, boards, and committees
- Handle municipal correspondence, both incoming and outgoing
- Process, record, file and advertise ordinances and resolutions
- Advertise and file the municipal budget
- Perform liaison work between the public and Commission
- Administer and record oaths of office
- Maintain custody of official records
- Secretary to the municipal corporation
- Maintain custody of the municipal seal
- Sign official documents
- Maintain receipt of any and all petitions, initiative or otherwise
- Responsible for supervising municipal elections

Executive Assistant Responsibilities

Each Commissioner's designated Executive Assistant provides administrative support including, but not limited to, the following:

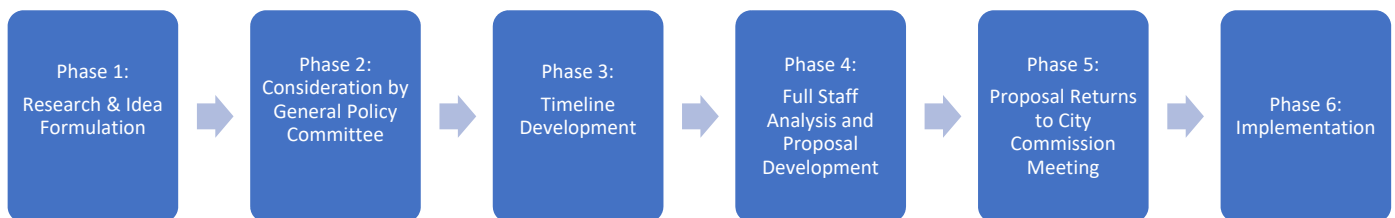
- **Calendar Management** – scheduling meetings with Charter Officers, staff and constituents
- **Meeting Preparation** – ensuring you have all meeting materials in advance
- **Materials and Supplies** – ordering for your office (e.g., pens, paper, letterhead, tablets)
- **Travel Arrangements** – ensuring that travel arrangements are made, and reimbursements are processed in accordance with City policy
- **Event Coordination** – coordinating the State of the City Address, Swearing In, Orientation, Community Engagement meetings of the Commissioners and others upon request/approval by the Commission
- **Issue Tracking** – both from constituent services and action items for individual commissioners

5.2 Policy Research Process

The City Commission developed a policy process to add structure and support to its legislative work. The Clerk's Policy Research team provides early-stage, high-level, objective research on policy concepts proposed by the full Commission or individual Commissioners. The team typically produces a research report that explores the topic, highlighting how other jurisdictions, academia, and think tanks are approaching the issue. The research also identifies potential unintended consequences of action and inaction.

If Commissioners wish to advance a researched idea to the full body, they may request a discussion by the General Policy Committee (GPC). The policy research team is available to present their findings during this conversation and will assist in coordinating other stakeholders as desired. Research reports that do not advance in the process are archived for future reference.

If the General Policy Committee wishes to pursue a policy idea or proposal, the item is assigned to the relevant Charter Officer for further development and community engagement. The Charter Officer continues to hone and focus the idea for our local community. In the final stages of the process, the City Commission approves and deploys the policy.



5.3 Annual Calendar (subject to change)

January	<ul style="list-style-type: none"> • All Month – Martin Luther King Events • Attendance Records from all Boards/Committees • Swearing In Ceremony (as applicable)
February	<ul style="list-style-type: none"> • State of the City Address • Strategic Plan Update • Attendance Records from all Boards/Committees • Budget Workshop • State of the City Address – February 14, 2023 • GRU Budget – February 15, 2023
March	<ul style="list-style-type: none"> • National Mayor’s Challenge for conservation (if current Mayor would like to participate) • Bike Ride w/Mayor for “Bike Month” (if current Mayor would like to participate) • Attendance Records from all Boards/Committees • Budget Workshop • National Mayor’s Challenge for conservation (if Mayor participates) • City Commission Spring Recess 3/11– 3/19, 2023 • District Town Hall – March 27, 2023 • GRU Budget – March 20, 2023 • The GCRA became a City of Gainesville department effective October 1, 2019. Per Ordinance No. 181001, sec. 2-407, the City of Gainesville and Alachua County Commissions must meet on or before April 1 of each calendar year to present an annual work plan and a report of the previous year’s activities. Tax increment funds remain in the trust funds for the former Community Redevelopment Areas, and the GCRA will continue to report on those funds until they are spent to meet the requirements of F.S. Chapter 163. The Annual Report will be formatted as a mailer for easy distribution to the taxing authorities, district residents, and businesses. It will be posted to the GCRA website in perpetuity for accessibility.
April	<ul style="list-style-type: none"> • Budget Workshop • GRU Budget – April 24, 2023 • Commissioner Orientation Week (as applicable) • COG Employee Rally • Attendance Records from all Boards/Committees
May	<ul style="list-style-type: none"> • Attendance Records from all Boards/Committees • New Commission Committee Assignment • Budget Workshops • GRU Budget – May 15, 2023 • Gen Govt. Budget – May 17, 2023 • GRU Budget – May 22, 2023 • GRU Budget – May 31, 2023

June	<ul style="list-style-type: none"> • Attendance Records from all Boards/Committees • Budget Workshops • GRU Budget – June 12, 2023 • Gen Govt. Budget – June 14, 2023 • Election Candidate Qualifying Week • City Commission Summer Recess 6/24 – 7/16/23 • District Town Hall – June 20, 2023
July	<ul style="list-style-type: none"> • Attendance Records from all Boards/Committees • Budget Workshop • Gen Govt. Budget – July 20, 2023
August	<ul style="list-style-type: none"> • Attendance Records from all Boards/Committees • Budget Workshop • Gen Govt. Budget – August 21, 2023
September	<ul style="list-style-type: none"> • Attendance Records from all Boards/Committees • Final Budget Hearings • Adoption Ordinances by Resolution 9/7/23 • Adopt Ordinances by Resolution - 9/21/23 • District Town Hall – September 25, 2023 • City Commission Fall Recess 9/30 – 10/8/23
October	<ul style="list-style-type: none"> • Attendance Records from all Boards/Committees • City Government Week – October 16-22, 2023 • Town Hall Meeting (TBD)
November	<ul style="list-style-type: none"> • Advisory Board/City Commission Meet & Greet (TBD)
December	<ul style="list-style-type: none"> • Town Hall Meeting (TBD) • Winter Recess -12/16– 1/4/23

5.4 Compensation

Compensation for the Mayor and Commission is set forth in Section 2-66, Gainesville Code of Ordinances. Currently, the Mayor as of January 1, 2023, receives \$51,399.94 annually and Commission members receives \$40,386.49 annually.

5.5 Benefits

Direct deposit of payroll checks can be arranged to almost any financial institution where a Commissioner has a checking or savings account.

Group health and dependent insurance are available. Coverage is through the city's self-insured health plan.

An **optional benefit plan** is also available. This may include vision, dental and supplemental life insurance, as well as other pre-tax products and accounts.

Commissioners will automatically be enrolled in the **Florida Retirement System** as city employees. The city contributes a percentage of the employee's earnings toward that plan.

Human Resources provides a **parking decal** and a **photo I.D. card** needed to access City Hall.

T-shirts – Commissioners may order one (2) articles of apparel (T-shirt, long-sleeve shirt, and jacket) per year.
Note: Commissioners are responsible for paying the applicable tax on these items.

Please contact the Clerk's office staff at any time for assistance.

We are here to serve you!