Chapter 6

Public Services

Section 6-1
Streets and Highways

A. Traffic Control Powers

The authority to regulate traffic and other activities on streets and highways is implicit in the general grant of government powers in Article 8, Section 2(b), Florida Constitution, and Chapter 166, Florida Statutes. This implicit grant is confirmed and clarified in Chapter 316, Florida Statutes, where municipalities are explicitly granted "original jurisdiction over all streets and highways located within their boundaries, except state roads…" It is also stated that enactment of the State Uniform Traffic Control Law in 1971 does not restrict local authorities in reasonably exercising their police powers with respect to streets and highways under their jurisdiction. A long list of appropriate exercises of said powers is given in the Florida Statutes.

Local traffic control and parking laws are supplemental to the State Uniform Traffic Control Law and must not be in conflict with it. The State Uniform Traffic Control Law applies in all municipalities and is to be enforced by all municipal law-enforcement officers.

B. Functional Classification of Roads

Roads in Florida are functionally classified, meaning that the assignment of roads into systems is made according to the character of service they provide in relation to the total road network. Basic functional categories include arterial roads, collector roads, and local roads which may be subdivided into principal, major or minor levels. Those levels may be additionally divided into rural and urban categories.

Since classification is by function ("arterial," "collector" and "local") rather than by location, many roads located within municipal boundaries are classified as state or county roads.

The Florida Department of Transportation (DOT) is responsible for all elements of the state highway system, including interstate highways, rural arterial roads, urban extensions of rural arterials, and urban principal arterials. The county commission is responsible for all elements of the county road system, including all urban extensions of rural collector roads and all urban minor arterials. Municipal governments are responsible for all municipally owned streets and highways located within their boundaries.

Title to the rights of way of all roads in the state highway system and in the county road system shall be in the state and the county, respectively. Likewise, the city shall have title to all rights of way of city streets. Liability for torts shall be in the governmental entity having operation and maintenance responsibility.

Except as otherwise provided by the law, a municipality has, on state and county roads within the city's boundaries, the same traffic-control powers that it has on streets that are property of the city.

C. Funding

The construction and maintenance of streets in the city street system may be financed through the city's general revenues, through a state-levied one-cent tax on motor fuels, and through certain local-option gas taxes.

1. State-Levied Gas Tax

The state levies a one-cent-per-gallon tax on motor fuel, the proceeds of which go into the Revenue Sharing Trust Fund for Municipalities, for ultimate distribution to municipal governments. Funds received from this source are to be used only for transportation facilities and road construction. This state tax, which is allocated for municipal uses, was once referred to as "the eighth cent" of gas tax, and now is officially labeled "the municipal gas tax." (See the "Municipal Finance" chapter of this manual for more information.)

2. Local-Option Gas Taxes

In addition to the state-levied gas tax, certain local-option revenue possibilities exist. They include:

1. One to six cents gas tax,
2. Additional one to five cents gas tax, and
3. Ninth cent gas tax.

These local-option gas taxes are explained in the "Municipal Finance" chapter of this manual.

D. Acquisition of Property

Cities are authorized to exercise the power of eminent domain for the purpose of obtaining property for public use as "streets, lanes, alleys and ways" (s. 166.411, F.S.).

When a road constructed by a municipality has been maintained continuously for four years by the municipality, it shall be deemed to be dedicated to the public, "whether or not the road has been formally established as a public highway" (s. 95.361, F.S.).

E. Special Assessments

A municipality may make street improvements, including improvements to related storm-drainage facilities, and recover the costs thereof by levying special assessments on the owners of the benefited property. This normally is done only with the prior approval of a majority of the affected property owners, but the city is not required by state law to have the consent of owners.

Special assessments usually are levied only on the owners of property immediately adjacent to the improved street area, but may be levied on "other specially benefited property." Assessments usually are levied on a "foot frontage" basis, but they may be levied by another method so long as assessments are "in proportion to the benefits to be derived therefrom."

The expense of a street-improvement project may be recovered through special assessments either in whole or in part. Some municipalities may undertake the initial paving of a street only when the owners of affected property agree to cover 100 percent of the cost; other municipalities will apply public funds to a portion of the expense. For example, some municipalities employ a "1/3-1/3-1/3" formula for regular street footage – that is, one-third each is paid by the city, the owner of the abutting property on one side of the street and the owner of the abutting property on the other side of the street; in addition, the city bears all expense of paving the areas within street intersections.

A municipal government should have an established policy in place regarding payment for initial street improvements and should consistently adhere to that policy. To have no such announced policy or to make exceptions to an announced policy is to open the door to accusations of favoritism or unequal treatment.

Procedures for declaring a special assessment are detailed in Chapter 170, Florida Statutes. They include the preparation and publication of an assessment roll, the holding of a public hearing, the hearing of complaints by the council (sitting as an equalizing board), and the adjustment of assessments on a basis of justice and right. When finally approved by resolution or ordinance, the assessments stand as first liens on the assessed property until paid; payment periods usually are for several years, e.g., 10 years. The municipality may issue bonds for the total amount of the assessed liens, with revenue from the assessments going into a separate fund in order to pay off the bonds. Such bonds are not a charge on the general revenues of the municipality; they must be paid off solely out of the revenues of the special assessment. (Refer to the “Municipal Finance” chapter of this manual for more information.)

F. Transportation Corridors

A transportation corridor is an area of land designated by the state, a county, or a municipality which is between two geographic points and is suitable for use for the movement of people and goods by one or more modes of transportation. Transportation corridors must include existing publicly owned rights of way and all property necessary for future transportation facilities for the purpose of securing and utilizing future transportation rights of way.

Local governments may designate a transportation corridor by including the corridor in its local comprehensive plan by adoption of a local ordinance. DOT may designate a corridor by establishing the corridor in conjunction with local government comprehensive plans. Local governments, DOT and state and local natural resource and environmental agencies shall cooperate in the review of corridors prior to the designation of the corridor. (See the “Growth Management” chapter of this manual for more information concerning local comprehensive plans.)

G. State Role

1. State Comprehensive Plan

The state Legislature adopted the “State Comprehensive Plan (SCP)” to provide “long-range policy guidance for the orderly social, economic, and physical growth of the state.” Regarding transportation, the SCP provides for a “state transportation system that integrates highway, air, mass transit, and other transportation improvements with state, local, and regional plans. (Refer to the “Growth Management” chapter of this manual for discussion of local comprehensive plans.)

2. Florida Transportation Plan

The Department of Transportation (DOT) is responsible for the development and update of a statewide transportation plan, consistent with the State Comprehensive Plan. This transportation plan is commonly known as the “Florida Transportation Plan.” This plan shall establish long-term goals and short-range objectives and policies. Statutes provide a detailed listing of what should be considered in developing the SCP.

Municipalities may request DOT to, under its direction, develop and design transportation corridors, arterial and collector streets, vehicular parking areas, and other support facilities consistent with the plans of DOT. In planning for an intrastate highway system, the department shall to the highest extent feasible, ensure that proposed projects are consistent with local government comprehensive plans.

3. Toll Facilities Revolving Trust Fund

A Toll Facilities Revolving Trust Fund has been created to encourage the development and enhance the financial feasibility of revenue-producing road projects undertaken by local governments in a county or contiguous counties. DOT is authorized to advance funds for preliminary engineering, traffic and revenue studies, environmental impact studies, financial advisory services, engineering design, right-of-way map preparation, other appropriate project-related professional services, and advanced right-of-way acquisition to expressway authorities, counties, or other local governmental entities that desire to undertake revenue-producing road projects.

References

Florida Constitution: Article 8, Section 2. Florida Statutes: Chapters 163, 166, 170, and 316; Sections 95.361, 166.411, 187.201(19), 206.605, 206.61, 335.04, 335.20, 336.021, 336.025, 337.29, 339.175. Laws of Florida: Chapters 85-180, 86-243. *Florida Municipal Record*: M. Sittig, "Functional Classification of Roads and Transfer of Responsibility," Volume 56, No. 1.

Section 6-2
Public Transit

A. Municipal Authority

In the provision of public transit, a municipality may:

1. operate a municipal public-transit system;
2. grant one or more franchises to private operators;
3. provide, by interlocal agreement, for service within the city by another governmental unit (e.g., the county or special authority); or
4. do nothing.

If the county levies a local-option gas tax, each city receives a share of the proceeds to expend on transportation facilities and services, which may include public-transit programs. Cities may also finance public-transit systems through special assessments on specially benefited property. (Refer to the "Municipal Finance" chapter in this manual for additional information.)

B. Regional Transportation Authorities

The Legislature has encouraged a multi-jurisdictional approach to the provision of public transportation by providing for "regional transportation authorities" (RTA). An RTA may be established by two or more contiguous counties, municipalities or other political subdivisions, with "municipality" defined as "any city with a population of over 50,000" within the RTA. Methods for establishing an RTA are outlined in the Florida Statutes. Municipalities of less than 50,000 population may be admitted to an existing RTA by approval of three-fourths of the RTA's board of directors. An RTA may operate public-transportation facilities or may contract with other providers of public transportation.

An RTA is a special tax district and may levy an ad valorem tax, not to exceed 3 mills, on taxable real property. Such tax, however, must be approved by the governing bodies of the participating political subdivision and, in a referendum, by a majority of the electors in each affected political subdivision.

C. Metropolitan Planning Organizations (MPO)

A metropolitan planning organization (MPO) shall be designated for each urbanized area of the state. An MPO is designated by an agreement between the governor and units of local government. An MPO shall consist of five to 19 voting members representing local governments, as appointed by the governor and approved by the local governments. "The authority and responsibility of an MPO is to manage a continuing, cooperative, and comprehensive transportation planning process that results in the development of plans and programs which are consistent, to the maximum extent feasible, with the approved local comprehensive plans of the units of local government" within the MPO. An MPO is responsible for the development of a transportation improvement program within its area. The powers, privileges, and authority of an MPO are specified in the Florida Statutes.

D. State Role

1. Department of Transportation (DOT)

DOT's "Florida Transportation Plan" must include the development of public-transit facilities. Program objectives of DOT include the promotion of all forms of public transit. DOT is to cooperate with and assist local governments in the development of transportation programs, and the public-transit element of the state transportation plan "shall be consistent" with local plans. (See the "Streets and Highways" section in this chapter for additional information on the Florida Transportation Plan.)

DOT has specific responsibilities in regard to public-transit programs. Chapter 341, Florida Statutes, states that DOT:

1. develop a statewide plan for public transit needs at least five years in advance; this plan will incorporate plans adopted by local planning agencies which are consistent to the maximum extent possible with adopted strategic comprehensive plans and approved local comprehensive plans;
2. provide technical and financial assistance to municipalities, based on the analysis of public transit problems and needs;
3. may assist public agencies that provide public transit with department-owned vehicles and equipment available for lease to agencies with needs of a limited duration;
4. shall also assist municipalities in the planning and development of public transportation programs and procedures and in the identification of alternatives for achieving the most effective use of available transportation resources and increasing revenue sources as needed;
5. may, under certain conditions, advance the municipality, on a matching funds basis, state funds for capital improvements to transit properties;
6. shall assist municipalities in achieving a condition wherein transit systems are operated at a service level that is responsive to identified transit needs.

2. Public Transit Block Grant

Municipalities are authorized to receive federal grants or apportionments for public-transit and commuter assistance projects. A public-transit block grant has been created at the state level to be administered by DOT. These funds may be expended for costs of public:

1. bus transit service development;
2. local fixed guideway capital projects,
3. transit service development and transit corridor projects, and
4. bus transit operations.

References

Florida Statutes: Sections 163.01, 166.021, 170.01, 212.055, 334.044, 334.046, 336.025, 336.026, 339.155, 339.175, and 241.051.

Section 6-3
Airports

A. MUNICIPAL POWERS

The Legislature has been unusually explicit in specifying certain municipal powers regarding the provision of airport facilities, including the following:

1. Property needed for an airport or related purposes may be acquired by a municipality through any unusual means, including that of condemnation; this power extends outside the territorial limits of the municipality.
2. A municipal council may levy taxation, as necessary, in order to meet the community's needs for airport facilities.
3. Bonds may be issued to pay for airport facilities.
4. Airport property or facilities may be leased, but not for more than 30 years.
5. Federal funds may be used.
6. Two or more municipalities may cooperate in the operation of an airport facility.

B. AIRPORT ZONING

1. Zoning Regulations

A municipality may regulate land use in areas adjacent to an airport, guided by the provisions of Chapter 333, Florida Statutes.

Public-use airports are eligible for approach zone protection. In the interest of public health, safety, and general welfare, the establishment of hazard areas is essential. An airport hazard area is defined as "any area of land or water upon which an airport hazard might be established if not prevented." Federal obstruction standards for airports are set out in Part 77, Code of Federal Regulations.

In order to prevent the creation or establishment of airport hazards, every municipality having an airport hazard area within its jurisdiction is required to adopt, administer, and enforce airport zoning regulations. If an airport hazard zone extends into the jurisdiction of another municipality, the two jurisdictions shall either:

1. through interlocal agreement, establish and enforce airport zoning regulations; or
2. by ordinance or resolution, create a joint airport zoning board.

In the event of a conflict between any airport zoning regulations and any other regulations, the more stringent limitation requirement shall prevail. Procedures for the adoption or amendment of airport zoning regulations are detailed in s. 333.05, F.S., including the requirement of a public hearing.

Zoning regulations may require that a permit be obtained from the municipality prior to new construction or renovation of property within the airport hazard zone. No permit will be granted which would allow the creation of a new hazard or the worsening of an old one. If a regulation would cause "practical difficulty or unnecessary hardship," an individual may appeal to a board of adjustment for a variance. If a variance is granted, the owner of the nonconforming structure or tree may be required to install and maintain markers necessary to indicate the presence of an airport hazard.

Violation of any state or local airport-zoning law, regulation, order, or ruling constitutes a second-degree misdemeanor, punishable by a term of improvement not to exceed 60 days and a $500 fine. A municipality may seek a court injunction in order to abate a violation of airport zoning regulations.

2. Airport Zoning Commission

Prior to the initial zoning of any hazard area, an airport zoning commission must be established. The responsibilities of the commission are to recommend boundaries of the various zones and to promulgate regulations for the zones. A city planning board or comprehensive planning commission may be appointed as the airport zoning commission. All airport zoning regulations shall be “reasonable,” and all requirements and restrictions must be “reasonably necessary.” Regulations should reflect the character of the flying operation expected to be conducted at the airport, the nature of the terrain within the hazard area, the character of the adjacent neighborhood, and the uses to which the property to be zoned is put. Regulations shall not require the removal, lowering, or alteration of any pre-existing structure or tree; however, if the nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down, destroyed, or deteriorated, the owner may be compelled to remove it within 10 days of notice.

3. Board of Adjustment

“All airport zoning regulations…shall provide for a board of adjustment…” This board of adjustment is empowered to hear appeals of airport regulations and may grant variances to the zoning regulations. A zoning board of appeals or adjustments that already exists may be appointed to the capacity of airport board of adjustment, or a new board may be created by the municipal council. Any person affected by a decision of the board of adjustment may present his case to the circuit court.

4. State Role

The Florida Department of Transportation (DOT) is responsible for assisting the development of a viable aviation system in the state. It shall develop a statewide aviation system plan, which shall consist primarily of the master plans of local airports and which may include plans adopted by local and regional planning agencies. Upon request, it shall provide financial and technical assistance to cities which operate public-use airports.

DOT administers a program of matching grants in support of the planning, design, and construction of proposed airport projects, with special emphasis on projects for runways, taxiways, lighting, and other air side activities. DOT may fund up to 50 percent of the non-federal share of the costs of many eligible projects. For land acquisition, DOT may lend funds for 75 percent of total costs, to be repaid when federal funds are received or within 10 years.

DOT is also authorized to approve airport sites, license airports, and renew licenses annually. Airports owned or operated by a municipality are required to be licensed, but pay no site-approval or licensing fee. An airport is exempt from the site-approval and licensing requirements if it is under the jurisdiction of a municipal aviation or port authority. It should be noted that DOT has no authority over municipal aviation or port authorities or over any airport under the control of such an authority.

REFERENCES

Florida Statutes: Chapters 330, 332, and 333.

Section 6-4
Water Service and Sanitation

It is often said that a city's greatest expenses are the pipes beneath the roads and the road itself – this is true for those Florida cities which choose this service.

A. Water Services

A city government may choose to provide a centralized potable water system for residents and commercial/industrial uses. This choice requires a significant commitment for physical infrastructure, as well as regular updating of the system for federal and state regulatory compliance.

Cities also may choose to take over a private water system, or a neighborhood's package water plant, in order to provide this service as a public service. The city council must establish rates to charge for this service that will sustain its operation and satisfy any related debt. Debt financing is often necessary because of the expense of a centralized system.

In Florida, cities with centralized water systems are governed by Chapters 180, 373 and 403, F.S., and implementing regulations promulgated by the state. When a city operates a water utility, two of the council's chief responsibilities are setting water rates and reviewing city water policies.

Water issues facing Florida's cities include: water capacity and growth management, re-use water and its uses, funding alternative water sources, and regional water issues. For more on these topics, please review the Florida League of Cities' annual legislative priority statement.

B. Sanitation Services

As defined here, if a city chooses to provide sanitary sewer (also called wastewater treatment), municipal responsibility for sanitation includes providing for the collection, treatment and disposal of sanitary sewage (liquid waste).

1. Liquid-Waste Management

Sewage treatment is classified as either primary, secondary, or tertiary (advanced). Primary treatment removes coarse and suspended solids from the raw sewage. Secondary treatment aids oxidation and disinfects sewage which has already been through a primary treatment. Tertiary treatment removes phosphorous and adjusts the acidity level in the sewage. Secondary treatment is required for all liquid waste disposed of through ocean outfalls or disposal wells, and the Department of Environmental Protection (DEP) may order advanced treatment as deemed necessary. Noncompliance may be punished by a fine of $500 per day.

a. Effluent

"Effluent" is the liquid remaining after treatment. It can be disposed of in a number of ways. It can be directed into a lake, bay, stream, or wetland; it can be used, as for watering a golf course or as water for large cooling systems; or it can be evaporated.

b. Sludge

"Sludge" is the solid material left after treatment. The wet sludge can be decomposed by aerobic or anaerobic digestion, dumped in the sea, or buried; or it can be de-watered, then burned, buried or prepared as compost.

2. Solid-Waste Management

Cities usually choose to provide this service to residents in two ways: under county contract or through the city, either by city contract or by city employees.

Refuse systems have two components: collection and disposal. These are explained below. (Also, refer to "1988 Solid Waste Act" in this section, which describes the responsibilities of a municipality and a county concerning solid-waste management and recycling.)

a. Collection

With respect to collection, municipal practices vary. Some municipalities provide backyard collection; others require trash to be placed at the curbside or in an alley. Backyard collection might involve any of the following:

1. Collectors walk to the back and dump trash into an intermediate container;
2. Collectors take the container to the truck, dump it, and return it to the back; or
3. Collectors take the container to the truck, dump it, and leave the container on the curb. Collections may be made once a week, twice a week, or more than twice a week. Federal collection guidelines specify only that trash containing food waste be collected at least once every seven calendar days.

The type of container used by customers may be specified in either an ordinance or a regulation. These containers might be permanent, immovable, stationary storage bins; open 55-gallon drums; containers designed for mechanized collection; standard lightweight metal or plastic cans with lid; or paper or plastic bags.

Collection equipment varies greatly among cities. Personnel costs, equipment and maintenance costs are some of the issues faced in making these decisions.

b. Disposal

Burial in a sanitary land fill is the most common method of solid waste disposal. In a sanitary land fill, a layer of clay, several inches thick, is put down; the solid waste is dumped onto the layer of clay; and a top layer, or cover, of clay is put on and around the waste periodically, (e.g., at the end of each day). In this manner, the waste is rendered inaccessible to rodents and insects, and contamination of nearby land and water is minimized. The leachate (the liquid which might drain from the landfill) is regularly monitored to provide notice of possible contamination of nearby water supplies.

Technology can recover certain materials (e.g., glass, metal, and paper) from trash for recycling. Other new technology produces "refuse-derived fuel," which then is used to generate electricity, steam, or hot water. Florida has several waste-to-energy facilities. Solid waste may be burned so that only ash must be buried (along with unburnable waste, of course) in the land fill, thereby reducing possible contamination and greatly extending the life of a land-fill site.

C. Sanitation Provision Options

Authority and responsibility for sanitation functions are located in municipal governments through not only the general home-rule powers of municipalities but also, in specific language, by Chapter 180, Florida Statutes. The sanitation functions may be

performed directly by the municipality or may be franchised to a private sanitation firm; also, they may be relinquished to another governmental entity (e.g., the City of Pensacola has relinquished the liquid-waste function to the Escambia County Utilities Authority).

In choosing an administrative arrangement for providing sanitation services, municipal officials should consider the following items:

1. the community's present and estimated future service needs;
2. the changes which might occur in geographical boundaries;
3. the current costs of the facilities and their maintenance, as well as projected future costs;
4. the available methods of raising revenue and their revenue-producing potential;
5. the relative efficiency and effectiveness of the various organizational options;
6. the savings, if any, which might be affected by contracting out or relinquishment; and
7. the relative satisfactoriness of service to municipal citizens of the various organizational options.

1. Municipal Operation

A municipality may itself operate a liquid-waste or solid-waste system. Procedures for the initiation of a sanitation utility are detailed in the Florida Statutes. In the financing of a utility, a city is not confined by any statutory limits on municipal indebtedness, as long as the utility-related debt creates a lien only on the utility-related property. Requirements concerning the issuance of revenue certificates for a municipal utility are found in the Florida Statutes.

In creating and operating a sanitation utility, a municipality may exercise all of its usual corporate powers, including the power of eminent domain. The utility may be operated as a regular department or may be placed under a separate board, created by the council. Rates or charges may be set by the council and are to be "just and equitable."

2. Franchising Option

A municipal council may grant to a private firm the privilege, or franchise, of exercising the municipality's corporate powers in order to operate a sanitation utility. A franchise may not be for more than 30 years. Rates or charges of the firm shall be fixed by the city council.

D. Stormwater Services

Under federal and state laws, cities must provide stormwater management by working with the county and other cities in their region. Stormwater is the left-over water from rain that gathers pollutants as it travels on streets, canals and other pathways. In a tropical state like Florida, stormwater does not stay in any one jurisdiction, so political boundaries are not effective – a regional approach is required. These regulations are found in Ch. 403, F.S.

E. Extra-Territorial Powers

A city may exercise its corporate powers in unincorporated territory outside its corporate limits for the purpose of operating a liquid-waste or solid-waste sanitation program, as necessary or desirable for the promotion of the public health, safety, and welfare. In doing so, it may create, by ordinance, a zone, or area and may require all

persons or corporations in the area to connect with a sewerage system. Such an area may not exceed for more than five miles from the city's corporate limits.

The city shall charge consumers outside city boundaries rates, fees, and charges determined in one of two ways:

1. The city may charge the same rates, fees, and charges as consumers inside the city. In addition, it may add a surcharge of not more than 25 percent, which may be done without a hearing "except as may be provided for service to consumers inside the municipality."
2. The city may charge rates, fees, and charges that are "just and equitable" and which are based on the same factors used in determining the rates, fees, and charges for consumers in the city limits; in addition, a second 25 percent may be levied. However, the total of all rates, fees and charges shall not be more than 50 percent in excess of the total charged consumers within the city limits. A public hearing is required before the setting of any rates, fees, or charges using this form of determination.

F. State Role

Cities that operate utility systems are obliged to comply with the rules and regulations of the Florida Department of Environmental Protection (DEP), the United States Environmental Protection Agency (EPA), and other appropriate state and federal agencies. On the state level, sanitation-related responsibilities are carried out by DEP and the Department of Health.

1. Department of Environmental Protection (DEP)

The bulk of state sanitation-related authority is exercised by DEP as set forth in Chapter 403, Florida Statutes, which generally sets out the powers and duties of the department. DEP has broad responsibilities and powers in matters affecting air and water quality. Its powers, in respect to water quality, extend to surface, coastal, and underground waters. DEP is the state permitting agency for any "stationary installation which will reasonably be expected to be a source of air or water pollution;" hence, it exercises permitting authority over municipal sewage-treatment plants and land-fill operations. DEP's authority is found under Chapter 403 of the Florida Statutes:

> The department shall issue permits…only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules promulgated by the department…"

DEP is the lead agency in the operation of a groundwater-quality monitoring program designed to detect or predict groundwater contamination. DEP creates rules for the general operation of solid-waste disposal areas, and in general, establishes rules for the processing of solid-waste. Another important function of DEP is the implementation of the state solid-waste management program established by the "1988 Solid Waste Act."

2. Other State Departments

a. Department of Health

The primary responsibilities of the Department of Health are the monitoring of septic-tank effluent and enforcement of regulations concerning septic tanks. The department also certifies laboratories for the testing of water-quality samples.

b. Florida Public Service Commission (PSC)

The PSC has no regulatory authority over sanitation programs owned, operated or controlled by government authorities.

G. Financing

Large expenses may be involved in the initiation and/or operation of a sanitation system, whether for liquid or solid wastes. These expenses may be met through operating revenues, impact fees, general taxes, borrowing or state assistance. (Refer to the "Municipal Finance" chapter in this manual for further information concerning financing.)

1. Operating Revenues and Impact Fees

The monthly charge for services (user fee) imposed on the user of a sanitation service may include some amount to pay for capital indebtedness and the cost of capital expansion. Moreover, a user-fee schedule for sewage services may include one-time payments of front-footage fees (a charge levied by the foot to pay for water and sewer lines that run by a person's property), payments for initial installation of lines to serve the property, and connection fees. An increasingly common approach in recent years has been the use of capital-facilities charges (or impact fees). This requires the property owner to make a lump-sum payment toward the capital costs of treatment facilities, transmission systems, and disposal sites; the amount of the payment should reflect the fiscal "impact" which the property has on the municipality.

2. General Taxes

Some municipalities finance solid-waste collection and disposal through general tax revenues; in other words, no fee is charged to the recipients of this service.

Ad valorem (property) taxes, either assessed as a part of the general revenue sources of the municipality or levied specifically to pay for general-obligation bonds, may be employed to pay for capital costs. For this purpose, ad valorem taxes have some disadvantages. For one, the amount paid by a property owner is not necessarily related to the value conferred on the property by the availability of the service or related to the amount of services used by the property owner. Ad valorem taxation has the advantage, however, of reducing residential property owners' federal income-tax liability; the charges for services and special assessments do not accomplish this. This is not an advantage for commercial property owners, however, because the utility charges are tax deductible as business expense in any form.

3. Borrowing

Usually, utility operators will borrow money to purchase, construct, and improve utility systems. This is an appropriate way to proceed because a utility operation requires a large capital investment that can be paid off by the revenue which it generates over a long period of time. Ordinarily, the city would sell bonds to obtain money from investors for this purpose. The bonds may be either revenue bonds or general-obligation bonds.

a. Revenue Bonds

"Revenue bond" implies that the source of funds to pay back the money borrowed is the revenue generated by the capital system purchased with the borrowed money. Revenue bonds represent borrowing on the strength of utility service charges to be imposed in the future. Issuing revenue bonds imposes on the utility an obligation to

operate, maintain and extend the system and to pay all debts as they become due. Typically, only revenues of the system are pledged, and bondholders may not force the governing body to use any other source of revenue, such as ad valorem taxes, to pay off the bonds. Cities may pledge the utility property itself, as well as the revenue to be earned, but it is advisable to pledge only the revenues. (Note: to pledge the property without a referendum would most likely violate Article 7, Section 12, Florida Constitution, as construed by the Supreme Court.)

b. General-Obligation Bonds

General-obligation bonds are paid for by ad valorem taxes imposed within the district served. In the case of a city, the entire city would be taxed for this purpose. General-obligation bonds must be approved by a vote of the electors within the affected area before they may be issued. Holders of general-obligation bonds will be able to obtain a court order to have the taxes levied and collected each year if the appropriate governing agency were to default in its obligation. In most instances, the use of general-obligation bonds is not as desirable to finance utility systems as the use of revenue bonds, because it is a less fair way of allocating the costs of the system. In some instances, however, the anticipated revenue from the system might be so poor as to make revenue bonds unmarketable; in such cases, it might be necessary to issue general-obligation bonds.

4. State Financial Assistance

a. DEP Assistance

State grants for the construction or reconstruction of sewage treatment or disposal facilities, including collection or transmission lines, are provided through DEP. Details are outlined in Chapter 403 of the Florida Statutes. DEP is also authorized to issue bonds and to make the proceeds thereof available to local governments for the financing or refinancing of water supply and distribution facilities, air and water pollution-control facilities, and solid-waste disposal facilities. Also, DEP is authorized to make loans to local governments to assist them in the planning, designing, and preparation of environmental assessment studies for sewage-treatment facilities. DEP administers a program of grants for solid-waste management, including recycling programs.

b. Small County Sewer Construction Assistance Fund

The “Small County Sewer Construction Assistance Fund” was established to provide funds to assist “financially disadvantaged small communities” with their needs for adequate sewer facilities. An eligible community is defined as a municipality with a population of 7,500 or less and an annual per capita income less than the state per capita income. Any project satisfactorily planned in accordance with the requirements of the Environmental Regulation Commission is eligible for funding, and grants may be provided by DEP for up to 100 percent of the costs of the project.

H. 1988 Solid Waste Act

Major legislation on solid waste management was enacted by the Florida Legislature in 1988. Legislative objectives were to encourage **county-city cooperation** in consolidating solid-waste management efforts and to promote the recycling of solid waste in order to achieve a 30-percent reduction in the amount of solid waste disposed of in land fills and incinerators by the end of 1994.

1. Counties as Lead Agencies

County governments are designated as the lead agencies in establishing and providing solid-waste disposal facilities to meet the needs of both incorporated and unincorporated areas of the county. Counties may charge reasonable fees for use of disposal facilities; however, cities may not be charged fees higher than those assessed to other users. Fees collected by a county on a countywide basis must be used to fund countywide solid-waste disposal and management services.

2. Municipality's Role

A city must provide for collection and transportation of solid waste within its jurisdictional boundaries to county-operated disposal facilities (if it does not operate its own disposal facility). **Cities are generally prohibited from operating disposal facilities,** but may continue to operate facilities permitted on or before October 1, 1998. A city may operate its own disposal facility only if it can demonstrate that use of county facilities places a significantly greater financial burden on city residents than on other residents of the county.

Unless otherwise approved by interlocal agreement or special act, a city may construct and operate a resource-recovery facility, with related on-site disposal facilities, only if the city can demonstrate:

1. that the operation of its facility will not affect financial commitments of the county, and
2. that operation of a city facility will not increase the cost of solid-waste disposal to county residents outside the city limits.

If a city establishes a solid-waste facility and later abandons it, the city will be responsible for the cost of expansion of county disposal facilities as may be necessary to handle the city's solid wastes for the remaining life of the county facility. In addition, in abandoning its facility, the city must comply with applicable landfill-closure requirements.

3. Cost Accounting

Each city is required to determine the full cost of its solid-waste management services and to inform city residents annually of this cost. The city is encouraged, but not required, to levy solid-waste charges for services (user fees) to recoup the full cost of providing the service. Cities may continue programs of grants and loans to low-income families to help them pay for the solid-waste services which they receive.

4. Required Recycling

Each county is required to operate a recycling program. Construction and demolition debris must be separated from the solid-waste stream and segregated in separate locations at the disposal facility. At least a majority of the newspaper, aluminum cans, glass, and plastic bottles must be separated and offered for recycling. Local governments are encouraged to separate all plastics, metals, and all grades of paper for recycling and to recycle yard trash and other wastes into compost available for agriculture and other uses.

Counties and cities are encouraged to form cooperative recycling programs. Counties are encouraged to obtain city participation through interlocal agreements. However, if a city decides to undertake a separate program, the county may require that the city provide information on its program and recycling efforts in order to determine if the waste-reduction goals of the Solid Waste Act are being achieved within the county.

REFERENCES

Florida Statutes: Chapters 180, 403; ss. 367.022(2), 381.0062-381.0067. Also see *Quality Cities*, "Summary of the 1988 Solid Waste Act: A Status Report," (1988).

Section 6-5
Parks and Recreation

A. Municipal Powers

More than any other area of functional responsibility, recreation allows the municipality the freedom to choose its own level of service. There are no state or federal enforcement agencies assigned the task of upholding recreational standards. A municipality is free to assess the community's recreational needs and desires and provide services accordingly. However, a municipality is required to include in its local comprehensive plan an element providing for a comprehensive recreation system. (Refer to the "Growth Management" chapter of this manual for more information.)

Municipal authority to establish and operate recreation facilities and programs is found in the general home-rule powers of Chapter 166, Florida Statutes, and in Chapter 418, Florida Statutes, which predates the grant of home-rule authority.

Most of the provisions of Chapter 418 are covered by the home-rule powers. However, one notable provision of Chapter 418 is that which provides for the establishment of a "playground and recreation tax" for a supervised recreation system – a municipality adopting the provisions of Chapter 418 at an election and until revoked at an election by a majority of qualified voters who are freeholders, may levy and collect a playground and recreation tax in like manner as the general tax of the municipality.

B. Establishing Facilities

Municipalities may obtain land for recreational purposes through donation, negotiation, or condemnation. In many cases, volunteer labor and contributions may be obtained from neighborhood residents, civic clubs, or business firms.

Many times municipal officials have found that parks and other recreational areas are under-utilized and/or costly to maintain. (See the "Maintaining Facilities" section for further discussion.) Consequently, officials should carefully consider several points prior to initial investment in a recreational facility. These include:

1. community support of the project – prospects for long-term community support and use of a facility must justify its creation;
2. accessibility of the facility to the user – parks and recreation areas should be accessible to all municipal residents, and the planning process should include accommodations for projected population growth;
3. proximity of similar facilities or programs – care should be taken in not creating an overlap of recreational services which would dilute the effectiveness of the recreational dollar;
4. maintenance costs – serious consideration must be given to the local government's continued ability to provide the required maintenance services;
5. value of the program/facility to the community – a well-conceived parks and recreation program is an asset to the total community and stimulates community pride and citizen involvement; and
6. officials' role in recreation programs – municipal officials are encouraged to participate in recreation programs in order to better evaluate them.

C. Maintaining Facilities

Maintenance is a key consideration in establishing a parks and recreation program. State and federal programs may assist in the initial acquisition and development of the facilities, but maintenance rests solely with the local government.

The financing of recreation maintenance may be more difficult than anticipated. For one thing, charges for services may be restricted by state or federal rules, if state or federal money was involved in acquisition of the facility. Also, there may be public resistance to charges. In any event, demand for participation in recreational programs and for use of recreational facilities is highly elastic – that is, the higher the charge, the lower the usage; consequently, potential revenue from charges for services is limited.

Community support is important not only in establishing programs, but in sustaining them as well. Civic organizations, businesses, and neighborhood residents can supplement the municipality's maintenance program. For example, the Little League may use a municipal ball field and may, in turn, assist in maintaining that field. One approach that has been successful in some communities is the "adopt-a-park" program, in which individual organizations or businesses assume responsibility for particular parks.

A good maintenance program should always include a regular checklist procedure for replacement of damaged equipment, elimination of hazardous conditions, and correction of all other situations which could involve a liability. Municipal staff charged with maintaining parks should establish a regular maintenance schedule. Listed below are several points to be considered in establishing such a schedule:

1. Lawn care – grass should be cut to two inches or less in height and be mowed again before it is more than four inches in height.
2. Litter control – litter should be removed at least once a week during periods of heavy usage and more often if the park appears littered.
3. Walks, roadways, and parking areas – all "potholes" should receive prompt repair; a continual repair program will be less expensive in the long run.
4. Lights – proper lighting curbs vandalism and other night-time problems.
5. Trash receptacles – regular cleaning and painting will help control odor and insects.
6. Garbage pickup – garbage should be collected weekly; more often during periods of heavy usage.
7. Picnic areas – to encourage use of picnic facilities, tables must be clean and splinter-free, and charcoal pits must be cleaned at regular intervals; litter control and garbage collection are essential in picnic areas.
8. Playground equipment – the condition of such equipment must always be good because poorly maintained equipment leads to injuries.
9. Signs – signs are a prime target of vandalism and theft, so regular sign maintenance is important.
10. Restrooms – restrooms must be cleaned regularly; they should be well supplied and checked daily during periods of heavy usage; graffiti should be removed or painted over promptly in order to discourage its subsequent production.

D. Recreational Districts

A municipality may create one or more recreation districts within the municipality's territory. This shall be done by city ordinance and approved by referendum within the proposed district. A recreation district may be chartered as a corporate body which, in addition to other powers, may issue bonds (either general-obligation or revenue) and

may levy ad valorem taxes on all real property within the district in order to finance bonds.

A special form of recreation district – mobile-home park recreation district – may also be established by a municipality.

E. State Role

State responsibilities in recreation are performed by the Division of Recreation and Parks of the Department of Environmental Protection (DEP). The division is required to "provide consultation assistance" to local governments concerning the promotion, organization and administration of local recreation areas and facilities.

It is also policy of the state, as expressed in the state comprehensive plan, to expand state and local efforts to provide recreational opportunities to urban areas. The state requires, as a component of the local comprehensive plans, "a recreation and open space element indicating a comprehensive system of public and private sites for recreation." DEP, through the Florida Recreation Department Assistance Program, provides grants to local governments for the purchase of land for public outdoor-recreation purposes.

F. Sheriff's Power

A sheriff is empowered to **temporarily** close any public recreation facility when, in his opinion, a disorderly and/or dangerous situation exists there. The power of the sheriff shall be "full, complete and plenary."

G. Use of Dedicated Lands

Land often is donated to a local government for use as a park. Such land is said to be "dedicated" for park purposes. Any funds received from the sale of dedicated lands, pursuant to the law, shall be used only for park purposes. Stipulations regarding the use and ownership of such dedicated lands are to be found in Chapter 95 of the Florida Statutes.

References

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

Section 6-6
Libraries

A. Municipal Libraries

Through its home-rule authority, a municipality may operate a municipal library, if it so chooses. It is not required to do so, nor is it really encouraged to do so by the state.

Provision is made for state funding of certain local libraries which provide free library services. Municipal libraries are eligible to receive state construction grants on a 50-50 basis, and municipalities with populations of 200,000 or more are eligible to receive state operating grants on a 75-25 (local-state) basis.

B. Regional Libraries

"Stand-alone" municipal libraries are not eligible for certain other forms of state assistance, because state policy is designed to encourage the creation of **multi-jurisdictional** library agencies. Municipalities are encouraged to participate in such agencies, which usually are designated as "regional" libraries.

Regional libraries receive regional library grants and are eligible for other state grants. A municipality may participate in a regional library as the administrative unit thereof.

C. State Role

In all library matters, the responsible state agent is the Division of Library and Information Services of the Department of State. The Division of Library and Information Services establishes the operating standards under which libraries are eligible to receive state funds. Any library receiving grants under Chapter 257, F.S., must file a financial report on its operations with the division on or before December 1 of each year.

References

Florida Statutes: Chapter 257.

Section 6-7
Cemeteries

A. Operation of Municipal Cemeteries

A municipal government may own and operate a cemetery, as one of its home-rule powers; in fact, many of Florida's cities do operate cemeteries. A city must choose to assume responsibility for the maintenance of a privately owned cemetery upon conveyance to the city of all property and monies of the private operator.

Municipal cemeteries are exempt from state regulation of cemeteries.

B. Regulation of Private Cemeteries

Municipalities possess limited regulatory powers in relation to private cemeteries:

1. In applying for a state license to establish and operate a cemetery, an applicant must present development plans which have been approved by "the appropriate local government agency regulating zoning in the area of the proposed cemetery."
2. A municipality may maintain an abandoned cemetery and require reimbursement of expenses from its owner.

C. State Role

Private cemeteries of certain types are licensed and regulated by the Florida Department of Banking and Finance. Municipal cemeteries are exempt from state regulation of cemeteries, with one exception: denial of burial space on the basis of race or color is prohibited.

References

Florida Statutes: Chapter 497, "Florida Cemetery Act," particularly, ss. 497.006(6) and 497.253.

Section 6-8
Ports and Harbors

A municipality may operate port facilities, either through the "1959 Port Facilities Financing Law," or as authorized through a special act.

A. Port Personnel

For each port, one or more shipping masters shall be appointed by the mayor of the municipality, with the consent of the council. The mayor and council also may prescribe rules governing performance by shipping masters, may impose fines on them, and may bring complaints in court against them. Each shipping master must execute a bond of $2,000, payable to the mayor. County governments may appoint shipping masters for ports and harbors under county control.

Ship pilots are licensed by the Board of Pilot Commissioners of the Florida Department of Business and Professional Regulation.

As required by law, harbor masters are to be appointed by the governor. The harbor master ensures that arriving vessels have been cleared by the health authorities of the port and facilitates the loading and unloading of vessels by assigning docking space.

Stevedores may be licensed by a county government to work at harbors in the county.

B. Planning and Water-Quality Protection

In certain cities, local comprehensive plans must contain a coastal-management element which, in turn, must include a comprehensive master plan prepared by the deep water port of that city. The cities affected by this requirement are listed in Chapter 403 of the Florida Statutes.:

1. Jacksonville
2. Tampa
3. Port Everglades
4. Miami
5. Port Canaveral
6. Fort Pierce
7. Palm Beach
8. Port Manatee
9. Port St. Joe
10. Panama City
11. St. Petersburg
12. Pensacola
13. Fernandina
14. Key West

The Florida Legislature has recognized the necessity of maintaining authorized water depth in existing navigation channels, port harbors, turning basins, and harbor berths. The Florida Department of Environmental Protection is instructed to develop a regulatory process which will permit ports to maintain water depths in an environmentally sound, expeditious, and efficient manner.

Expansions to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths or other harbor facilities of the ports listed above are not to be considered as developments of regional impact if such expansions are consistent with comprehensive master plans that are in compliance with the coastal-management element requirements of “growth management.” The depositing of materials in tide or salt waters in connection with the construction of wharves, piers, jetties, quays and bulkheads is regulated by Chapter 309, F.S.

References

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

Section 6-9
Cable Television

A. Municipal Powers

A municipality may operate a cable-TV system itself or may grant one or more franchises for cable-TV services. Authority for either approach, as well as statutory provisions restricting municipal authority to grant cable-TV franchises, are found in Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act.”

B. Franchising

The more commonly chosen option concerning cable television is for a municipality to grant one or more cable-TV franchises. Regulation specific to cable-TV franchising is found in Chapter 166, Florida Statutes.

1. Public Hearing Requirement

Before granting a cable-TV franchise, a city must hold a duly noticed public hearing. In that hearing, the city council must consider certain matters specified in Chapter 166, Florida Statutes.

2. Terms of Overlapping Franchises

A municipality may grant overlapping franchises if this does not violate the terms of a prior exclusive franchise. In granting an overlapping franchise for service to an area which is actually being served by a prior franchise, the city may not grant terms to the new franchise which are “more favorable or less burdensome” than those granted to the prior franchise. However, this restriction does not apply if the prior franchise is not already providing service to the area for which an overlapping franchise is granted. At the same time, a city may impose such “additional terms and conditions” on a second franchise as it shall, in its sole discretion, deem necessary or appropriate.

C. Public Service Taxes

In granting a cable-TV franchise, a municipality may levy a tax, which must be paid by the franchise.

A municipality may levy a “public service tax” (or utility tax) on cable-TV service only if such tax was being levied on May 4, 1977, and is necessary in order to pay off bonds or certificates which were issued prior to that date. (Refer to the “Municipal Finance” chapter of this manual for more detailed information on public service taxes.)

References

Florida Statutes: Chapter 999; ss. 159.02(18), 166.046, and 166.231(1)(a).