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# TO: CITY ATTORNEY CITY OF GAINESVILLE, FLORIDA

RE: THE CODE OF ORDINANCES, CITY OF GAINESVILLE, FLORIDA—LEGAL ANALYSIS

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## PART I. INTRODUCTION

This memorandum is a legal analysis of The Code of Ordinances, City of Gainesville, Florida (ch. 30—Land Development Code excepted), as supplemented through Ord. No. 160253 and amended through November 17, 2016 (Ord. No. 160433) (“Code”), in which the Code has been researched for the following purposes:

1. Identification and elimination of conflicts, inconsistencies and obsolete provisions in connection with Florida Statutes, current with chapters from the 2016 2nd Regular Session of the 24th Legislature.
2. Identification and elimination of obsolete or conflicting provisions.
3. Identification and elimination (or curing) of potentially unconstitutional provisions.
4. Elimination of conflicts with the City Charter.

The legal analysis is presented to the maximum extent possible as recommended changes.

## PART II. PRONOUNS

Numerous provisions in the Code are drafted using pronouns such as “his/her” or “his or her.” The use of pronouns is not best practice in legal drafting. A pronoun must have an antecedent. While the antecedent may be clear when a provision is originally drafted, subsequent amendments can make it unclear exactly which noun is the antecedent. In addition, the use of pronouns in complex, compound sentences can create confusion. While degenderization of a Code is a laudable and desirable goal, it best done without the use of pronouns. Degenderization can be accomplished through one of the following methods:

1. **Method 1.** Elimination of a pronoun. (*Example:* Change “city manager or his designee” to “city manager or designee.”)
2. **Method 2.** Substitution of a noun for the pronoun or the word “the” (or in rare cases an indefinite article). (*Example:* Change “The city manager shall issue the permit if he finds that there will be compliance with all ordinances” to “The city manager shall issue the permit if the city manager finds that there will be compliance with all ordinances.”)
3. **Method 3.** Recast the sentence using the passive voice or otherwise rewording the provisions. (*Example:* Change “The city manager shall issue the permit if he finds that there will be compliance with all ordinances” to “The city manager shall issue the permit upon finding that there will be compliance with all ordinances.”)
5. **Method 4.** Alter the antecedent noun to be plural. *Example:* Change: “No person shall allow is dog to run at large” to “Persons shall not allow their dogs to run at large.”
4. **Method 5.** Change “he” to “he or she,” “he/she,” “he, she or it,” or “he/she/it,” as appropriate, making similar changes in possessive pronouns. N.B. In some situations, this is the only practical solution. (As the city uses this method frequently it is assumed that the city considers it nondiscriminatory.)

No one method of degenderization will work in every situation.

Code §§ 14.5-28 and 14.5-154 should be degenderized.

### **PART III. CITY CHARTER**

The provisions of Charter § 6.01 provides as follows:

All provisions of the charter of the City of Gainesville in effect immediately prior to the effective date of this act which are not contained in and are not inconsistent with this act are ordinances of the city subject to modification or repeal in the same manner as other ordinances of the city.

The Charter is derived from Laws of Fla. ch. 90-394, which act amended Laws of Fla. (1927), ch. 12760 in full. It seems most likely that the word “act” in Charter § 6.01 was intended to mean the 1927 act, rather than Laws of Fla. (1925) ch. 11492 (the charter that the 1927 act replaced.) As Code § 1-4(12) effectively saves the charter from repeal, certain provisions of the 1927 charter may be valid ordinance. The city will want to review this issue further.

## PART IV. LEGAL ANALYSIS—SPECIFIC PORTIONS OF CODE

### Chapter 1. General Provisions

Redundancies with this chapter have been ignored.

**Sec. 1-1. How Code designated and cited.** So as to agree with Ord. No. O-90-11, § 1, which ordinance adopted the city code, alter so that the title of the code is "The Code of Ordinances, City of Gainesville, Florida."

**Sec. 1-2. Definitions and rules of construction.** The "gender" provision in this section should be retained. Until the Code is degenderized completely, it is still needed. Even if the Code is completely degenderized, the provisions should be retained as insurance against situations where future ordinances persist in using gender-specific terms. It should be reworded to read as follows: "Words of any gender include the correlative words of the other genders."

**Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.** In subsections (a) and (b), alter the title of the Code to agree with Code § 1-1. See recommendation for same, *supra*.

## Chapter 2. Administration

### Article II. City Commission

#### Sec. 2-67. Mayor may declare state of emergency, water emergency.

1. In subsection (a), delete the reference to section 2.08 of the charter laws. This not a reference to the current charter and is inapplicable.
3. In subsection (b)(5), change “this section” to “this subsection (b).”

### Article III. Officers and Employees

### Article IV. Departments

#### Division 1. Generally

**Sec. 2-196. Directors of departments.** As Laws of Fla. ch. 90-394 is the city charter, delete reference to same as not needed in light of the references to the charter.

### Article V. Boards, Commissions and Committees

#### Division 4. Gainesville Enterprise Zone Development Agency

Delete as obsolete. See F.S. § 290.016. If retained, delete in Code § 2-302(b) provisions for initial terms of office as obsolete.

#### Division 6. Civil Citations

This division is misclassified, as it does not pertain to a board, commission or committee.

#### Sec. 2-337. Code enforcement citation procedures.

1. Delete subsection (b) as covered by F.S. § 162.21(b) and insert language authorizing a code enforcement officer to issue citations pursuant to such statute if the code enforcement officer has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance. See F.S. § 162.21(5)(d).
2. Delete subsection (c)(4) as covered by F.S. § 162.21(6).
3. In subsection (g), clarify that F.S. § 553.73 is being referenced. Alternatively, delete as covered by F.S. § 162.21(7).

#### Sec. 2-339. Applicable codes and ordinances.

1. Correct the reference to Code § 5-2(c) to be to § 5-2(1)(c) and so as to be consistent with the prohibition, change “pedestrian or bicyclist” to “person.”
2. Delete the reference to Code § 6-3. The provisions cited (§ 104.1.) no longer relate to a permit. Moreover this reference in this section references the obsolete *Standard Building Code*.
3. The references to Code § 10-70(b) need review and revision. This section distinguishes between residential and commercial violations, but does not account for other land uses---agricultural, open space, recreational, etc.
4. Correct the reference to Code § 10-70(d) to be to Code § 10-70(c).
5. Delete references to repealed Code §§ 19-34, 19-52, 19-53, and 19-112.
6. Delete references to Code §§ 21-61(a), 21-61(b), 21-62(c) and 21-62 as superseded by appendix A.

#### Division 7. Utility Advisory Board

**Sec. 2-359. Utility board; membership; terms; officers; procedural rules.** Delete subsection (g)(4) as not needed. The statutes cited apply without this provision and the city cannot make a statute apply to that to which it does not apply.

#### Division 8. Code Enforcement Board; Special Magistrate

**Sec. Sec. 2-376. Declaration of intent; authorization of board or special magistrate.** Correct state law reference to be to F.S. § 162, pt. I (F.S. § 162.01 et seq.).

**Sec. 2-379. Composition.** Except for the appointing authority, subsection (b) and the last three sentences of subsection (e), delete as covered by F.S. § 162.05.

**Sec. 2-380. Organization.** Delete as covered by F.S. § 162.05(4).

**Sec. 2-383. Powers of the board.** Delete as covered by F.S. § 162.08.

**Sec. 2-385. Enforcement procedures.** Delete as covered by F.S. § 162.06.

**Sec. 2-387. Hearing; proceedings; orders.** Delete the following provisions as covered by F.S. § 162.07: Subsection (a) (except the last two sentences); subsection (b) (first and third sentences only); subsection (c); subsection (d) (except the third—fifth sentences).

**Sec. 2-388.1. Administrative fines; costs of repair; liens.** Delete as covered by (and not consistent with) F.S. § 162.09.

**Sec. 2-388.2. Duration of lien.** Delete as covered by F.S. § 162.10.

**Sec. 2-389. Appeals.** Delete as covered by F.S. § 162.11.

**Sec. 2-390.** Delete as covered by (and in conflict with) F.S. § 162.12.

#### Division 9. Community

**Sec. 2-408. Bylaws and internal governance.** Delete the second and third sentences as covered by F.S. § 167.356. The third sentence technically is in conflict with the statute. Under the statute, the governing body, not the agency, appoints officers. While the governing body is the agency, under F.S. § 167.357 the appointment is made by the governing body while not acting as the agency.

**Sec. 2-409. Bylaws and governance.** Delete the first sentence and the last paragraph as covered by F.S. § 164.356.

#### Division 12. Tree Board of Appeals

**Sec. 2-430.16. Creation; composition; appointment; term of members; filling of vacancies.**

1. This section contracts Code § 2-430.33(8) in that this section only references that the tree board of appeals consists of three members nominated by the tree advisory board and appointed by the city commission, while Code § 2-430.33(8) states that the board of appeals consists of five members with three members recommended for appointed by the tree advisory board.

2. Delete provisions for initial terms of office as obsolete. N.B. These provisions suggest that there are only three members of the tree board of appeals.

Division 13. Tree Advisory Board

**Sec. 2-430.31. Creation; composition; appointment; term of members; filling of vacancies.**

1. Ungarble and simplify the first sentence by eliminating the words “serve on the tree advisory board.”
2. Delete provisions for initial terms of office as obsolete.

Article VII. Employee Benefits

Division 1. Generally

**Sec. 2-451. Payments on account of sickness and injury.** Delete as not needed.

**Sec. 2-452. Supplemental benefits to persons retiring prior to January 1, 1968.** Delete as obsolete. It would seem that no one could be alive today who was receiving city retirement on January 1, 1968 to whom this provision could apply.

Division 4. Old Age and Survivors' Insurance

**Sec. 2-501. Participation by city officers and employees generally.** Delete reference to part-time judicial employees as obsolete. This related to long-ago abolished municipal court.

**Sec. 2-506. Custodian of funds; records.** Per (*apparently*) Code § 2-196, change “director of the department of management and financial services” to “finance director.”

Division 6. Disability Pension Plan

**Sec. 2-546. Termination of the disability plan.** Delete as obsolete. The purpose of this section has been accomplished.

Article VIII. Registered Domestic Partnerships

It is assumed that the recent U.S. Supreme Court case legalizing same sex marriage does not render this article obsolete.

## **Chapter 4. Alcoholic Beverages**

### **Article I. In General**

**Sec. 4-1. Definitions.** In the definition of open container, delete the provisions relative to motor vehicles. Transportation of alcohol in open containers is covered by F.S. § 316.1936 and is, therefore, preempted. See F.S. § 316.007. This provision conflicts with statute because it does not have exceptions relative to buses, etc.

#### **Sec. 4-3. Schools; distance restrictions.**

1. As F.S. §562.45 (2)(a) imposes a 500-foot distance limitation from real property that comprises a public or private elementary school, middle school, or secondary school for premises (for on-premises consumption and except for premises licensed before July 1, 1999) absent specific municipal approval, the city may wish to consider changing the 400-foot limitation in subsection (a) to 500 feet.

2. If subsection (b) (*existing licenses*) is obsolete, delete it.

### **Article II. Bottle Clubs**

Delete as obsolete in light of state licensing of bottle clubs. See F.S. § 562.121. See F.S. § 562.45. If retained, conform definition of bottle club to F.S. § 561.01(15).



## **Chapter 5.5. Art in Public Places**

**Sec. 5.5-2. Establishment of the art in public places trust.** In subsection (b), delete obsolete language about temporary members.

## Chapter 6. Buildings and Building Regulations

### Article I. In General

**Sec. 6-3. Administration chapter adopted.** Delete as obsolete. This section amends the 2004 *Florida Building Code*. The state has promulgated the 2014 *Florida Building Code*. If retained, subsection 104.3 and 112.1 need to be degenderized.

**Sec. 6-4. Exception to Alachua County land development road impact fee.** Delete as obsolete. This is based upon repealed county ordinances. The current transportation impact fee applies only in unincorporated areas. See County Code § 364.02.

### Article IV. Plumbing Code

Delete as obsolete in light of the *Florida Building Code*.

### Article V. Gas Code

Delete as obsolete in light of the *Florida Building Code*.

### Article VI. Mechanical Code

Delete as obsolete in light of the *Florida Building Code*.

### Article VII. Swimming Pools

Delete as covered by the *Florida Building Code*.

### Article VIII. Construction Trades Regulations

#### Division 1. Generally

**Sec. 6-179. Contractor certificate—Required to engage in business.** Delete the first sentence of subsection (c) as obsolete.

**Sec. 6-181. Bond and insurance requirements of contractors.** Per F.S. §§ 489.131(3)(e) and 489.537(3)(d), change the bond amounts from \$10,000.00 to \$5,000.00.

**Sec. 6-185. Trades, crafts and contractors.** It is noted that the city does not regulate all trades regulated in F.S. § 489.105(3). In addition:

1. Conform subsections (d)(2)a—(d)(2)d to F.S. § 489.105(3)(f)—(3)(i), respectively.
2. Conform subsections (e)(1)a--(e)(1)c to F.S. § 489.105(3)(a)—(3)(c), respectively.

**Sec. 6-191. Revocation or suspension of certificate of competency.** In subsection (a), conform the grounds for revocation to F.S. §§ 489.129(1) and 489.533(1). Alternatively, delete the existing grounds and insert language incorporating such statutory grounds by reference.

### Article IX. Downtown Minimum Property Standards

**Sec. 6-243. City commission review of article.** Delete as obsolete.

#### Appendix A. Building and Fire Code Regulations for Historic Buildings

If obsolete in light of the *Florida Building Code*, delete.

## **Chapter 7. Cemeteries**

### **Sec. 7-20. Conduct in cemetery.**

1. Delete subsection (a) as covered by F.S. § 806.13, adopted by reference in Code § 17-1.
2. In subsection (h), add language recognizing the service animal exemption in F.S. § 413.08.

## Chapter 8. Discrimination

### Article III. Equal Employment Opportunity

**Sec. 8-47. Definitions.** As there is no mandatory retirement age (*subject to certain exceptions*), delete the maximum age from the age definition.

### Article V. Fair Housing

**Sec. 8-87. Definitions.**

1. In subsection (3)b (*disability defined*), delete from the introductory language the words “sexual and behavior disorders.” The city may wish to delete the words transvestitism and transsexualism so as extend protection to same. This would make this provision consistent with the gender identity prohibitions in this article.

2. Conform subsection (13) (*housing for older persons defined*) to F.S. § 760.29(4)(b) and (4)(c).

**Sec. 8-92. Prohibition of discrimination in provision of brokerage practices.** So as to be consistent with the other prohibitions in this article, include gender identity as a prohibited discriminatory grounds.

**Sec. 8-93. Prohibition of other discriminatory housing practices.** In subsection (4) so as to be consistent with the other prohibitions in this article, include gender identity as a prohibited discriminatory grounds.

**Sec. 8-94. Exceptions.** In subsection (e)(1), so as to be consistent with the other prohibitions in this article, include gender identity.

## Chapter 9. Elections

**Sec. 9-3. Designation, elections, runoff elections, pollworker training.** Delete subsection (a) as covered by Charter § 2.04 and Code § 9-1.

**Sec. 9-4. Special elections required; proclamation.** Delete subsection (a) as not needed.

**Sec. 9-10. Qualifications of candidates for city commission.** Correct state law references to be to F.S. §§ 99.093(1) and 99.093(2), respectively.

**Sec. 9-13. Qualifications of electors.** Delete as not needed.

## Chapter 10. Fire Prevention and Protection

### Article IV. False Alarms

**Sec. 10-43. Civil citation; collection of fees.** Delete the reference to nonexistent § 10-33(b)(6). It would seem that this section should reference Code § 10-38(a), (b), (d) and (e). See Code § 10-38(f).

### Article VI. Open and Outdoor Burning

In the following Code sections correct the F.A.C. references to be to 5I-2 (currently reads 51-2): 10-64, 10-66, 10-70.

**Sec. 10-69. Fire suppression training.** Delete subsection (g). Use of the term “should” in this subsection makes the subsection nonmandatory. Alternatively, change “should” to “shall” and advise of the specific edition to be enforced. *See Blich v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940).

## Chapter 13. Housing and Commercial Building Codes

### Article II. Housing Code

#### Division 2. Administration and Enforcement

**Sec. 13-38. Authorization and procedure for inspections.** Change “search warrant” to “inspection warrant.” See F.S. §§ 933.20 et seq., 933.02.

### Article III. Commercial Building Code

The city may wish to add to this article provisions similar to Code § 13-36 (*administrative liability*).

**Sec. 13-213. Right of entry.** Change “administrative warrant” to “inspection warrant.” See F.S. §§ 933.20 et seq., 933.02.

## Chapter 14. State Housing Initiatives Partnership (SHIP) Program

**Sec. 14-1. Definitions.** Delete subsections (1), (4)—(12), (16)—(21), and (28) as covered by F.S. § 420.9071, inserting language adopting such statutory definitions by reference. Alternatively:

1. Conform subsection (4) to F.S. § 420.9071(2).
2. Conform subsection (8) to F.S. § 420.9071(8)
3. Conform subsection (10) to F.S. § 420.9071(10), adding F.S. § 420.9071(4) and deleting the definition of adjusted gross income.
4. Conform subsection (12) to F.S. § 420.9071(12).
5. Conform subsection (15) to F.S. § 420.9071(13).
6. Conform subsection (18) to F.S. § 420.9071(16).
7. Conform subsection (19) to F.S. § 420.9071(19).
8. Conform subsection (20) to F.S. § 420.9071(20).
9. Conform subsection (25) to F.S. § 420.9071(28).

**Sec. 14-2. Local housing assistance trust fund.** Delete subsection (b) as covered by F.S. § 420.9075(6) and as not needed.

**Sec. 14-5. Administration and implementation of local housing assistance program.** Delete subsection (b)(1) as covered by F.S. § 420.9075.

**Sec. 14-6. Affordable housing advisory committee.** Delete subsections (b) and (c) as covered by (and in conflict with) F.S. § 420.9076(2). If retained, conform to same.

**Sec. 14-7. Adoption of local housing incentive strategies.**

1. Delete the last sentence (and the enumeration) of subsection (a) as covered by F.S. § 420.9076.
2. Delete subsection (c) as covered by such statute.



## Chapter 14.5. Miscellaneous Business Regulations

### Article IV. Adult Performance Establishment, Escort Service and Escort Licenses

#### Division 1. General Provisions

**Sec. 14.5-60. Immunity from prosecution.** Delete. The city cannot grant itself or others immunity from state law violations. The city may wish, however, to insert language similar to Code § 14.5-19.

#### Division 2. Licensing Provisions

**Sec. 14.5-63. Application for license; application fee; consent by applicant.** In subsection (b)(11), delete the reference to social security number. Section 7 of the Federal Privacy Act (5 USC 552a note) states, in its entirety:

Sec. 7 (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

- (2) the provisions of paragraph (1) of this subsection shall not apply with respect to--
  - (A) any disclosure which is required by Federal statute, or
  - (B) any disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

**Sec. 14.5-65. Grant; denial; rejection.** In subsection (c)(1)a., correct the reference to F.S. § 895.09 to be to F.S. § 865.09.

#### Division 4. Violations

**Sec. 14.5-90. Existing establishments.** Except for the last sentence, delete as obsolete.

#### Division 5. Escort License Provisions

**Sec. 14.5-93. Application for license; application fee; consent by applicant.** In subsection (b)(8), delete the reference to social security numbers. See recommendation for Code § 15.5-63, *supra*.

### Article V. Dance Halls

**Sec. 14.5-117. Existing establishments.** Delete as obsolete.

### Article VI. Cable Television

Delete as obsolete in light of F.S. ch. 610. See F.S. §§ 610.104, 610.106, 610.113.

#### Division 5. Design and Construction Provisions

**Sec. 14.5-150. Construction and technical standards.**

1. In subsection (f)(1), avoid adoption by reference problems by specifying which edition of the *National Electrical Safety Code* (see *Blitch v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940)) is adopted and correct the promulgating agency to be the Institute of Electrical and Electronics Engineers (IEEE).

2. Alter subsection (f)(2) to reference the *Florida Electrical Code* rather than the *National Electrical Code*, deleting the reference to the obsolete National Bureau of Fire Underwriters. See *Blitch v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940).

## Chapter 15. Noise

**Sec. 15-2. Definitions.** The definition of continuous airborne sound references ANSI § 1.5-1971. Internet research indicates that there are later editions of the ANSI standard. Please verify the standard being used and alter this section accordingly. See *Blich v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940).

## Chapter 16. Nuisances

### Article III. Perilous Land Code

#### Sec. 16-47. Definitions.

1. The definition of perilous land is worded so that the only conditions that are prohibited are “the existence of excessive accumulation or untended growth of weeds, undergrowth, or other dead or living plant life (not including trees with a trunk diameter of at least six inches) upon any lot, tract or parcel of land, improved or unimproved, which, due to its condition is inhabited or frequented by criminals, fleeing felons, fugitives from justice, or persons who loiter or prowl about, and thereby threatens and endangers the public health, safety, or welfare of the city and its inhabitants.”

2. Therefore, the definition is tied to plant life and this article is superseded by article II and should be deleted.

3. If the intent was to declare as perilous land any land “which, due to its condition is inhabited or frequented by criminals, fleeing felons, fugitives from justice, or persons who loiter or prowl about, and thereby threatens and endangers the public health, safety, or welfare of the city and its inhabitants”, revise the definition accordingly and retain this article.

### Article V. Public Nuisance Abatement

**Sec. 16-94. Declaration of public nuisance.** Add the provisions of F.S. § 893.138(2)(f) and (3).

**Sec. 16-99.2. Appeals.** Delete the first paragraph. It would seem that the proper remedy is a writ of certiorari, not an appeal. In any event the city does not have the power to provide for a judicial remedy. To insure that the order of the nuisance abatement board is reviewable, insert language stating that the decision of the administrative board is final.

## Chapter 17. Offenses

### Article I. In General

**Sec. 17-7. Items designed or marketed for use with illegal cannabis or drugs.** Delete as obsolete in light of F.S. § 893.145 et seq., adopted by reference in Code § 17-1.

**Sec. 17-8. Urinating or defecating.** Revise so that the act must be intentional, as failure to do so punishes incontinence and babies in diapers.

**Sec. 17-9. Unlawful to possess bicycles from which identification has been removed.** If obsolete, delete.

### Article II. Nudity in Public Places

**Sec. 17-20. Territory embraced.** Delete as not needed.

### Article III. Sexual Offenders and Sexual Predators

Case law is split on the constitutionality of sexual predator residency restrictions. See [http://www.abajournal.com/magazine/article/courts\\_are\\_reconsidering\\_residency\\_restrictions\\_for\\_sex\\_offenders](http://www.abajournal.com/magazine/article/courts_are_reconsidering_residency_restrictions_for_sex_offenders)

## Chapter 18. Parks and Recreation

### Article I. In General

**Sec. 18-1. Director of public recreation.** Delete as covered by (and inconsistent with) Code § 2-196(a)(2).

**Sec. 18-2. Credit for park and open space dedication; transferable development rights.** It is unclear if this is addressed in chapter 30. See Code §§ 30-308(a)(3) & 30-310.4(c)(2)b. If this section is covered by ch. 30, delete it. If it is not covered, transfer to chapter 30.

## Chapter 19. Peddlers, Solicitors and Canvassers

### Article II. Peddlers and Canvassers

**Sec. 19-17. Restrictions and requirements.** In subsection (a), avoid constitutional problems by altering so the prohibited hours are between 9:00 a.m. and 7:00 a.m. See, e.g., *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547 (7th Cir. 1986), *affd.* 479 U.S. 1048, 109 S. Ct. 919, 93 L. Ed. 2d 972 (1987), *reh. den.* 480 U.S. 926, 107 S. Ct. 1389, 94 L. Ed. 2d 703; *New Jersey Citizen Action Group v. Edison*, 797 F.2d 1250 (3d Cir. 1986), *cert. den. sub. nom. Township of Piscataway v. New Jersey* 479 U.S. 1103, 107 S. Ct. 1336, 94 L. Ed. 2d 186; *Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248 (7th Cir. 1985); *ACORN v. City of Frontenac*, 714 F.2d 813 (8th Cir. 1983); *Massachusetts Fair Share Inc. v. Town of Rockland*, 610 F. Supp. 682 (D.C. Mass. 1985); *New York Community Action Network v. Town of Hempstead*, 601 F. Supp. 1066 (E.D.N.Y. 1984); *Connecticut Citizens Action Group v. Town of Southington*, 508 F. Supp. 43 (D. Conn. 1980); *West Virginia Citizens Action Group v. Daley*, 324 S.E.2d 713 (W. Va. 1984).

## Chapter 21. Police

### Article I. In General

**Sec. 21-1. Chief of police; powers and duties generally.** If covered by job descriptions, delete.

**Sec. 21-2. Assessment of court costs for criminal justice education and training expenditures.** Correct the statutory reference to be to F.S. § 938.01 and per such statute delete the parking of vehicle exemption.

**Sec. 21-3. Chief of police—Moneys to be paid to director of finance.** If obsolete, delete. It is unclear if the chief receives money and it is likely that it is remitted more frequently than monthly.

**Sec. 21-6. Same—Feeding of prisoners.** If obsolete (because the county jail is now used), delete.

**Sec. 21-7. Purchase by police officers of property sold by city prohibited.** If obsolete, delete.

**Sec. 21-8. Presence of police at fires.** If obsolete or not needed, delete.

**Sec. 21-9. Arrest of prisoners from other cities or counties; authority of police to collect for services.** If obsolete, delete.

### Article II. Registration of Felons

Delete as unenforceable (*absent actual notice of the ordinance*). See *Lambert v. California*, 355 U.S. 225, 78 S. Ct. 240 (1957).

## **Chapter 22. Secondhand Goods**

### Article I. In General

**Sec. 22-2. Pawnbrokers.** Delete as covered by Code § 17-1. See F.S. § 539.001(17).

### Article II. Secondhand Dealers

**Sec. 22-20. Records.** Conform to misdemeanor portions of F.S. § 538.04. See F.S. § 538.17.

**Sec. 22-21. Holding period; exception.** So as to be at least as stringent as F.S. § 538.06, change the holding period from 15 to 30 days. See also F.S. § 538.17.

**Sec. 22-25. Purchase from minors.** Alter to apply to all property. See F.S. § 538.15(1)(b). See also F.S. § 538.17.



## Chapter 23. Streets, Sidewalks and Other Public Places

### Article III. Encroachments and Obstructions

**Sec. 23-41. Obstructing streets, generally; digging holes, etc.** Delete reference to fences and buildings as adequately covered by zoning.

### Article IV. Construction of Sidewalks, Curbs and Gutters

If Code §§ 23-59—23-72 are covered by adopted engineering or public works standards or mandatory FDOT standards, delete them.

### Article V. Construction and Removal of Driveways

**Sec. 23-95. Width.** If covered by adopted engineering or public works standards, delete.

**Sec. 23-99. Minimum thickness of, specifications for concrete.** If covered by adopted engineering or public works standards, delete.

### Article VI. Registration Requirements for Use of Public Rights-of-Way by Communications Services Providers and Other Wireline Users of Rights-of-Way

**Sec. 23-105. Registration required for communications facilities or other wireline occupants of public rights-of-way.** Subsection (b)(1) references a fee established in appendix A. Appendix A does not appear to establish any such fee.

## Chapter 25. Taxation

### Article II. Public Service Tax

#### Sec. 25-18. Exemptions.

1. In subsection (a), except for the provisions relative to churches, delete as covered by F.S. § 166.231(5).
2. Delete subsections (c)(1)b and (c)(1)c as covered by F.S. § 166.231(4)(a).
3. Delete subsection (d). Per subsection (d)(2), this subsection expired on December 31, 2015.

**Sec. 25-20. Records; monthly statements; payment to city.** Delete the last two sentences of subsection (a) as covered by F.S. § 155.234(1).

**Sec. 25-23. Penalties for non-payment or not filing return.** Delete subsection (2) as covered by F.S. § 166.234(7).

### Article III. Local Business Tax

#### Sec. 25-42. Business tax receipt—Required; issuance; penalty for violation.

1. Delete subsection (c) as covered by F.S. § 205.053(2) (and potentially in conflict therewith).
2. Delete subsection (d) as covered by (and in conflict with) F.S. § 205.053(3). If retained, conform to such statute by changing 180 days to 150 days.

**Sec. 25-45. Same—Transfer.** Delete as covered by F.S. § 2-5.043(2) and (3). This section is somewhat inconsistent with itself in that owner transfer fees are stated in subsection (a) while location transfer fees in subsection (b) are tied to appendix A.

**Sec. 25-46. Same—Terms; due dates for renewals; half-year business tax receipts.** Delete subsection (b) as covered by (and in conflict with) F.S. § 205.053(1). If retained conform to same.

**Sec. 25-47. Same—Penalty for delinquent renewals.** Delete as covered by F.S. § 205.053(1).

#### Sec. 25-50. Exemptions.

1. Delete subsection (a) as covered by (and in conflict with) F.S. § 205.162. If retained, delete reference to alcoholic beverages, as same cannot be taxed. See F.S. § 561.342.
2. Delete subsection (b) and covered by, and inconsistent with) F.S. § 206.171.
3. Delete subsection (d) as covered by F.S. § 205.191.
4. Delete subsection (g) as covered by F.S. § 205.065. If retained, conform to same.
5. Subsections (c) and (e) contain exemptions not found in statute. It is assumed that the city attorney believes that such exemptions are permissible. In any event, assuming Santa Fe College is also located in the city, expand the exemption in subsection (e) to apply to employees thereof.

**Sec. 25-50.1. Same—Enterprise zone.** Delete as obsolete. See F.S. §§ 205.054(6), 290.016.

## Article V. Local Communications Sales Tax

Sec. 25-81. Local communications services tax.

1. Delete subsections (a)—(e) as obsolete.
2. Review subsection (f). It provides for tax rate of 5.57 percent. F.S. § 202.20(1)(b) provides for a maximum tax of 4.90%--4.78% if a permit fee is levied. It may be better to reword to levy a tax “on the maximum amount permitted by law.”

## Article VI. Additional Homestead Exemptions for Persons 65 and Older

**Sec. 25-94. Right of survivorship.** Delete as covered by 196.075(8).

**Sec. 25-95. Penalties.** Delete as covered by 196.075(7).

## Chapter 26. Traffic and Motor Vehicles

### Article I. In General

**Sec. 26-1. F.S. Ch. 316 adopted by reference.** Delete. Complete duplication of F.S. ch. 316 is prohibited. See F.S. § 316.007. If this is done, modify Code § 26-2 to adopt F.S. § 316.003.

**Sec. 26-2. Definitions.**

1. Delete the definition of bicycle as covered by (and in conflict with) F.S. § 316.003(3).
2. Delete the definition of bicycle path as covered by (and in conflict with) F.S. § 316.003(4).

**Sec. 26-4. Powers and duties of the director of traffic engineering.** Delete the reference to a traffic engineering department. Code § 2-196 does not indicate that such a department exists.

**Sec. 26-5. Powers and duties of the director of police services.** Delete as obsolete. Code § 2-196 suggests that no such position exists. This section is better handled administratively.

**Sec. 26-7. Arrest authority of officer at scene of an accident.** Delete as covered by (and in conflict with) F.S. § 901.15.

**Sec. 26-9. Blocking of streets by trains.** Unless the Florida East Coast Railway has tracks in the city, delete as preempted to state and federal law. See *CSX Transportation, Inc. v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996). See also *Johnson v. Southern Ry. Co.*, 654 F. Supp. 121 (W.D.N.C. 1987); *CSX Transp., Inc. v. City of Tullahoma*, 705 F. Supp. 385 (E.D. Tenn. 1988); *City of Covington, v. Chesapeake & Ohio Ry.* 708 F. Supp. 806 (E.D. Ky. 1989).

### Article III. Stopping Standing and Parking

#### Division 1. Generally

**Sec. 26-52. Starting parked vehicle.** Delete as covered by F.S. § 316.154 and therefore preempted. See F.S. § 316.007.

#### Division 2. Parking Meters, Parking Lots and Parking Garages

**Sec. 26-77. Defacing, etc., meters; use of counterfeit devices.** Delete as covered by F.S. §§ 806.13, 817.32, adopted by reference in Code § 17-1.

### Article V. Bicycles

**Sec. 26-187. Equipment.**

1. Given Code § 26-10, delete subsection (a) as preempted by F.S. § 316.007, 316.2065(13). See *Thomas v. State*, 614 So. 2d 468 (1993).
2. Delete subsection (b) as a formula for noise pollution.

## Chapter 27. Utilities

The following Code sections reference a telecommunications utility. As it does not appear that the city furnishes telecommunications services, delete the references to telecommunications in Code §§ 27-1, 27-11, 27-14, 27-21 (*definition of customer*).

### Article III. Solid Waste Disposal

#### Division 1. Generally

**Sec. 27-72. Definitions.** Per F.S. § 403.7031:

1. Conform definition of construction and demolition debris to F.S. § 403.703(6).
2. Conform definition of source separated to F.S. § 403.703(36).
3. Conform definition of yard trash to F.S. § 403.703(43).

### Article IV. Water and Sewerage

#### Division 2. Water

**Sec. 27-119. Use of fluorine authorized.** Change fluorine to fluoride and delete the reference to state health board approval as same is no longer required. See generally F.A.C. 62-555.325.

### Article VI. Natural Gas

**Sec. 27-280. Meters—City to install and maintain; protection by consumer; negligent, etc., damage; right to designate locations and specifications; conformance with local, state, federal or National Fire Protection Association requirements.** Delete the reference to NFPA rules as creating adoption by reference problems. See *Blich v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940).

**Sec. 27-281. House piping—Consumer to install and maintain; right of city to inspect and approve; city not liable for loss or damage; conformance with local, state, federal and National Fire Protection Association requirements; refusal of and/or discontinuance of service.** Delete the reference to NFPA rules as creating adoption by reference problems. See *Blich v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940). The rules now are addressed in the *Florida Building Code*—the remainder of the section is legally sufficient to incorporate such standard.

**Sec. 27-282. Relocation, modification or removal of existing facilities.** Delete the reference to NFPA rules as creating adoption by reference problems. See *Blich v. City of Ocala*, 142 Fla. 612, 195 So. 406 (1940).

## Appendix A. Fees

1. Because the term of an electric service agreement are included in this appendix, this appendix should be renamed fees and related matters.
2. The better practice would be to completely number this appendix (major headings not being numbered) so that references to appendix A in the Code could be altered to reference specific provisions.
3. Because there are certain items that may not be completely supported by an ordinance requirement in the Code (see e.g., the entry in appendix A for § 27-135—nothing in § 27-135 requires that a fee be paid), the following language should be included in at the beginning of this appendix: “The inclusion of a fee or charge in this appendix is a requirement that the fee or charge be paid.”
4. As penalties have a theoretical basis that differs from the theoretical basis for fees and charges, civil penalties (denominated in this appendix as penalties) should not be included in this appendix, but rather should be included in a separate appendix. In addition, it is not always clear whether a fee is being required, as opposed to a penalty being imposed/
5. Change references to “*Florida Building Code, 2004 ed*” to “*Florida Building Code.*”
5. Unless this is a penalty charge, delete the following entry as Code § 10-40(f) specifically states no fee is required:  

Causing false fire alarm during servicing or inspection-each violation (§ 10-40(f)) ..... 159.50
6. In the following item the reference to § 10-70 should be to § 10-71:  

(9) Pyrotechnic display § 10-70 ..... 115.75
7. The reference to § 27-124.1 in the following entry should be to § 27-124: Plan review fee (§ 27.124.1) ..... 730.00
8. The reference to § 27-183.1 in the following entry should be to § 27-182.1:  

n. Permit for construction of private sewerage disposal system (§ 27-183.1) ..... 5.00