

INTRODUCTION

State law in Florida impact many provisions in the ordinances and codes of Florida municipalities. This pamphlet is intended to assist municipal attorneys in the identification of provisions in ordinances and codes that may require revision in light of state law. The information in this pamphlet is based upon the experience of the legal staff of Municipal Code Corporation in working with the ordinances and codes of Florida municipalities.

This pamphlet is current through the 2019 First Regular Session of the 26th Legislature.

Not all provisions of this pamphlet will apply to your Code, nor does this pamphlet purport to include all state laws (including preemptions) that may somehow affect the language of your Code.

The provisions of this pamphlet are intended to assist municipal attorneys and are not intended to be a substitute for the advice of counsel.

It is not the intent of Municipal Code Corporation in publishing this pamphlet to provide legal advice. An attorney admitted to practice in Florida must be consulted as to the applicability of a given statute or case to a particular situation.

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PART I
CHARTER AND RELATED SPECIAL LAWS

1. *Municipal Home Rule Powers Act.* Charters and related special laws in Florida have had many provisions repealed or converted into an ordinance by F.S. § 166.021.
2. *Annexation or contraction procedures.* Municipal charter and ordinance provisions pertaining to municipal annexation and contraction in effect on October 1, 1974, with some minor exceptions have been repealed. See F.S. § 171.022.
3. *Elections.* The Florida Election Code (F.S. chs. 97--106) governs the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision may conflict with or exempt a municipality from any provision in the Florida Election Code that expressly applies to municipalities. See F.S. §§ 97.0115, 100.3605.
4. *Vacancies in elected offices.* Municipalities are required by ordinance or charter provision, to provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. Such ordinance or charter provision shall also provide procedures for filling a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office. See F.S. § 166.031(6).
5. *Municipal courts.* Municipal courts were abolished by Fla. Const. art. V, § 20(d)(4).
6. *Taxation.* Ad valorem tax appraisals and collections are performed by the county. See F.S. §§ 166.211(2), 193.116.

PART II
CODE OF ORDINANCES
GENERAL PROVISIONS

1. *Attorney fees in actions relative to preempted ordinances.* Subject to certain exceptions, if a civil action is filed against a local government to challenge the adoption or enforcement of an ordinance on the grounds that it is expressly preempted by the state constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages to the prevailing party. See F.S. § 119.12.

ADMINISTRATION

1. *Employee severance pay.* Municipal employee severance pay is restricted. See F.S. § 215.425.

ALCOHOLIC BEVERAGES

1. *Generally.* Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law. See Fla. Const. art. VIII, § 5(a). This provision does not preempt the power of a municipality to regulate conduct in places that sell alcoholic beverages. See *City of Daytona Beach v. Del Percio*, 476 So. 2d 197 (1985).
2. *Licenses or taxes.* No tax on the manufacture, distribution, exportation, transportation, importation, or sale of alcoholic beverages may be imposed by way of license, excise, or otherwise by any municipality. See F.S. § 561.342(3).

ANIMALS

1. *Dangerous dogs.* Municipal regulation of dangerous dogs is restricted. See F.S. § 767.10 et seq.

2. *Service animals.* Individuals with a disability and trainers of service animals, while engaged in the training of such animals, may be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy. See F.S. § 413.08.

3. *Beekeeping.* The authority to regulate, inspect, and permit managed honeybee colonies and to adopt rules on the placement and location of registered inspected managed honeybee colonies is preempted to the state and any related ordinance adopted by a municipality is superseded. See F.S. § 586.10(1).

4. *Impoundment of lost or stray dogs or cats.* Policies and procedures for handling of impounded lost stray dogs or cats must meet certain minimum requirements. See F.S. § 823.151.

BUILDINGS AND BUILDING REGULATIONS

1. *Building codes.* The power of municipalities to amend the Florida Building Code is restricted. See F.S. § 553.73(4).

2. *Fire sprinklers.* Regulation of fire sprinklers is restricted. See F.S. § 553.73(17).

3. *Facility accessibility for handicapped persons.* Local standards for handicapped accessibility are preempted. See F.S. § 553.513.

4. *Construction industry.* Local regulation of certain contractors is restricted. See generally F.S. §§ 489.113(4), 489.131, 489.516(3), (4), (6), 489.537.

5. *Regulation of hoisting equipment preempted.* Subject to certain exceptions, ordinances or regulations, including, but not limited to, local building codes or building permit requirements, that pertain to hoisting equipment, including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work, are prohibited and preempted to the state. See F.S. § 489.113(11).

6. *Mobile/manufactured home installers.* The regulation of manufactured home installers or mobile home installers is preempted to the state. See F.S. § 320.8249(11).

BUSINESSES

1. *Auctioneers.* A municipality may not charge a fee for the practice of auctioneering or require any auctioneer's license in addition to a local business tax. See F.S. § 468.386.

2. *Convenience business security.* Ordinances providing for convenience business security standards that differ from those contained in F.S. §§ 812.173 and 812.174, are preempted. See F.S. § 812.1725.

3. *Movers of household goods or moving brokers.* Subject to certain exceptions, the regulation of transactions relating to movers of household goods or moving brokers is preempted to the state. See F.S. § 507.13.

4. *Pawnbrokers.* Municipal regulation of pawnbrokers is restricted. See F.S. § 539.001(20).

5. *Pest control.* The regulation of pest control businesses is preempted to the state. See F.S. § 482.242. Municipal regulation of pesticides is restricted. See F.S. § 487.051.

6. *Sellers of travel.* Except as otherwise authorized by state law, municipalities may not levy or collect any registration fee or tax (business taxes excepted), as a regulatory measure, or require the registration or bonding in any manner of any seller of travel who is registered or complies with all state laws. See F.S. § 559.939.

7. *Vacation rentals.* Subject to certain exceptions, municipal regulation of vacation rentals is prohibited. See F.S. § 509.032(7).

8. *Medical marijuana.* Local regulation of medical marijuana is restricted. See F.S. § 381.986(11).

9. *Wireless communications infrastructure.* Municipal regulation of wireless communications infrastructure is restricted. See F.S. § 337.401(7).

10. *Transportation network companies ('Uber')*. A transportation network company or transportation network company driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle. Subject to limited exceptions, local regulation of transportation network companies is preempted to the state. See F.S. § 627.748(2), (15).

11. *Gasoline price signage*. Local requirements on the design, construction, or location of signage advertising the retail price of gasoline are restricted. See F.S. § 553.79(22)(a)2.

12. *Communications services franchise fees*. Municipalities may not require franchise fees from providers of communications services, with respect to the provision of communications services. See F.S. § 337.401(3)(e).

13. *Financial or lending activities*. Subject to certain exceptions, local ordinances that regulate financial or lending activities, including an ordinance that disqualifies persons from doing business with a municipality based on lending interest rates, or that imposes reporting requirements or other obligations regarding the financial services or lending practices of persons or entities is preempted. See F.S. § 655.017(1).

14. *Automated teller machines*. Ordinances regarding consumer safety at automated teller machines are preempted. See F.S. § 655.965.

15. *Secondary metals recyclers*. Subject to certain exceptions, the regulation of purchase transactions involving regulated metals property is preempted to the state. See F.S. § 538.28. See also F.S. § 538.21.

16. *Insurance*. Subject to certain exceptions, the field of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes and fees, measured by premiums, income, or volume of transactions, upon insurers and their agents and other representatives is preempted to the state. See F.S. § 624.520.

17. *Title insurance*. The regulation of title insurers and title insurance is preempted to the state. See F.S. § 627.785.

18. *Plant nurseries*. Regulation of plant nurseries is preempted to the state. See F.S. § 581.035.

19. *Gasoline station operation during emergencies*. The regulation, siting, and placement of alternate power source capabilities and equipment at motor fuel terminal facilities, motor fuel wholesalers, and motor fuel retail sales outlets are preempted to the state. See F.S. § 526.133(4).

20. *Gasoline stations; charges for air or vacuum supply*. A political subdivision of this state may not adopt any ordinance regarding the pricing of air or vacuum supply. See F.S. § 526.142.

21. *Minimum wage*. Subject to certain exceptions, local minimum wage ordinances are void. See F.S. § 218.077.

CONSUMER PROTECTION

1. *Price gouging during states of emergency*. The evidentiary standards and defenses contained in F.S. § 501.160 are the only evidentiary standards and defenses that may be used in any ordinance adopted by municipalities to restrict price gouging during a declared state of emergency. See F.S. § 501.160(6).

2. *Retail refunds*. The regulation of retail sales establishment refunds is preempted to the state. See F.S. § 501.142.

ENVIRONMENT AND NATURAL RESOURCES

1. *Air quality*. Municipal air quality ordinances are preempted when a county ordinance provides for countywide air quality protection and the county is designated as a nonattainment area for air quality. See F.S. § 125.275.

2. *Fishing*. The right of local governments to declare commercial or recreational fishing operations a nuisance is restricted. See F.S. § 379.2351.
3. *Underground storage of petroleum products*. Ordinances pertaining to the prevention and removal of pollutant discharges from a facility maintained for the purpose of the underground storage of petroleum products for use as fuel in vehicles which has no single tank having a capacity exceeding 40,000 gallons at any time are preempted. See F.S. § 376.317(2).
4. *Vehicle noise*. The sound level limits for motor vehicles are prescribed and preempted by F.S. §§ 316.293 and 403.415. See F.S. §§ 316.007, 403.415(10).
5. *Saltwater fishing*. Subject to certain exceptions, the power to regulate the taking or possession of saltwater fish is reserved to the state. See F.S. § 379.2412.
6. *Wild animals and fresh water aquatic life*. The power to regulate wild animal life and fresh water aquatic life is preempted to the state. See Fla. Const. art. IV, § 9.
7. *Commercial or recreational fishing operations*. Municipal ordinances pertaining to commercial or recreational fishing operations are restricted. See F.S. § 379.2351.
8. *Stormwater fees on farm operations*. Stormwater fees on bona fide farm operation on land classified as agricultural land pursuant to F.S. § 193.461 are restricted. See F.S. § 163.3162(3)(c).
9. *Fertilizer generally*. Subject to certain exceptions, the sale, composition, packaging, labeling, wholesale and retail distribution, and formulation, including nutrient content level and release rates, of fertilizer is preempted to the state. See F.S. § 576.181(5).
10. *Fertilizer use*. Fertilizer use ordinances are required and restricted. See F.S. § 403.9337.
11. *Farming*. Local regulation of an activity of a bona fide farm operation on land classified as agricultural is restricted. See F.S. § 163.3162(3).
12. *Electrical power plants and power plant sites*. The regulation and certification of electrical power plant sites and electrical power plants is preempted. See F.S. § 403.510.
13. *Natural gas transmission pipeline siting*. The certification and regulation of natural gas transmission pipelines and natural gas transmission pipeline corridors is preempted. See F.S. § 403.942.
14. *Plastic bags*. No local government, local governmental agency, or state government agency may enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of auxiliary containers, wrappings, or disposable plastic bags. See F.S. §§ 403.7033, 403.708(9), 500.90; Florida Retail Federation, Inc. v. City of Coral Gables, 2019 WL 3807999 (DCA 3, 2019).
15. *Seeds*. The authority to regulate seed or matters relating to seed is preempted to the state. See F.S. § 578.012.
16. *Commercial feed and feedstuff*. Regulation over commercial feed and feedstuff is preempted to the state. See F.S. § 580.0365.
17. *Regulation of the removal or destruction of citrus plants*. Regulation of the removal or destruction of certain citrus plants is preempted to the state. See F.S. §§ 581.184, 581.1843.

FIRE PREVENTION AND PROTECTION

1. *Fire safety standards*. Municipal authority to adopt local amendments to the Florida Fire Prevention Code is restricted. See F.S. § 633.202(3).
2. *Fire sprinklers*. The power to require certain fire sprinkler systems is restricted. See F.S. § 633.208(8).
3. *Educational facilities*. Site plans of educational facilities submitted for local review are not subject to local amendments to the Florida Fire Prevention Code or local ordinances as provided in F.S. § 1013.371. See F.S. § 1013.38(1)(b).

4. *Cigarette ignition propensity standards.* Cigarette ignition propensity standards are preempted to the state. See F.S. § 633.142(11).

GROWTH MANAGEMENT AND ZONING

1. *Adoption of land development regulations.* After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof. See F.S. § 163.3194(2).

2. *Sale of malt beverages for off-premises consumption.* Vendors holding licenses for off-premises sale of malt beverages are not subject to municipal zoning. See F.S. § 563.02(1)(a).

3. *Family day care homes.* Zoning of family day care homes is restricted. See F.S. § 166.0445.

4. *Community residential homes.* Zoning of community residential homes is restricted. See F.S. § 419.001.

5. *Local planning agencies.* Local planning agencies conduct periodic evaluation and appraisal of the comprehensive plan. See F.S. § 163.3174(4)(b).

6. *Development permits.* For any development permit application filed after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit. See F.S. § 166.033.

HEALTH AND SANITATION

1. *Health regulations.* References to the state sanitary code are obsolete. F.S. § 381.00315(6) provides that rules adopted by the state department of health pursuant to F.S. ch. 381 supersede municipal regulations and ordinances and public health rules of other state departments.

2. *Food.*

a. Subject to certain exceptions, the regulation and permitting of food manufacturing, processing, packing, transporting and preparing, or selling at retail is preempted to the state. See F.S. § 500.12(5).

b. The provisions of F.S. ch. 502 and state rules preempt all municipal regulations regulating milk or milk products, or frozen desserts for wholesale. See F.S. § 502.232.

c. The regulation, identification, and packaging of meat, poultry, and fish are preempted to the state. See F.S. § 500.60.

3. *Food service establishments ranking.* Subject to certain exceptions, the ranking of food service establishments is preempted to the state. See F.S. § 509.039.

4. *Mobile home parks, RV parks, etc.* The state is the exclusive regulatory and permitting authority for sanitary standards for mobile home parks, recreational vehicle parks, lodging parks and recreational camps. See F.S. § 513.051.

5. *Smoking.* Subject to certain exceptions, regulation of smoking is preempted to the state. See F.S. § 386.209.

6. *Substance abuse.* A municipality may adopt an ordinance for the treatment of habitual substance abusers in licensed secure facilities. See F.S. § 397.702. A municipality may not adopt an ordinance which provides that impairment in public in and of itself is a violation. See F.S. § 397.701.

7. *Water; ice.* The regulation of bottled water plants, water dealers, water vending machines and packaged ice plants is preempted to the state. See F.S. § 500.511(3).

8. *Public lodging establishments and food establishments.* Subject to certain exceptions, the regulation of public lodging establishments and public food service establishments, including, but not limited to, matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. See F.S. § 509.032(7)(a).

9. *Blood banks.* Local governments may not restrict the use of public facilities or infrastructure for the collection of blood or blood components from volunteer donors based on whether the blood establishment is operating as a for-profit or not-for-profit organization. See F.S. § 381.06014(5).

10. *Biomedical waste.* The regulation and inspection of biomedical waste generators is preempted to the state. See F.S. § 381.0098(8).

MANUFACTURED HOMES AND TRAILERS

1. *Sanitation and health regulations.* Regulation of sanitation and health-related matters for mobile home parks, recreational vehicle parks, lodging parks and recreational camps is preempted to the state. See F.S. § 513.051.

2. *Mobile home lot rentals.*

a. The regulation and establishment of rights between mobile home owners and mobile home park owners is preempted to the state. See F.S. § 723.004.

b. A lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or mobile home for any duty or responsibility of the mobile home park owner under F.S. § 723.022 or against a mobile home park owner or mobile home park property for any duty or responsibility of the mobile home owner under F.S. § 723.023. See F.S. § 723.024.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Firearms and ammunition.*

a. Except as provided by the state constitution or general law, the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, is preempted to the state. Civil fines (for which indemnification may not be authorized) are authorized to be assessed against municipalities or municipal officials that impose or enforce unauthorized restrictions. See F.S. § 790.33. See also F.S. § 166.044.

b. Except as expressly provided by general law, the regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges, is preempted to the state. See F.S. § 790.333(8).

2. *Public intoxication or impairment.* Local ordinances creating offenses concerning public intoxication or drug impairment are restricted. See F.S. §§ 397.701, 397.702.

3. *Obscenity.*

a. The field concerning exposing persons over 17 years of age to harmful motion pictures, exhibitions, shows, representations and presentations is preempted to the state. See F.S. § 847.09(1).

b. The field concerning exposing persons less than 17 years of age to harmful motion pictures, exhibitions, shows, representations and presentations is preempted to the state. See F.S. § 847.013(5).

4. *Security cameras.* Subject to certain exceptions, local standards for security cameras that require a lawful business to expend funds to enhance the services or functions provided by local government are prohibited. See F.S. § 163.31802.

5. *Dextromethorphan.* The sale, distribution, receipt, or possession of dextromethorphan is preempted to the state and dextromethorphan is not subject to further regulation by a county, municipality, or other political subdivision of the state. See F.S. § 499.036(9).

6. *Vegetable gardens on residential property.* Any ordinance regulating vegetable gardens on residential property is void. See F.S. § 604.71.

7. *Employment registration.* Subject to certain exceptions, municipal ordinances providing for the registration or background screening of any individual engaged in or applying for a specific type or category of employment in the municipality or requiring the carrying of an identification card issued as a result of such registration or screening, are forbidden. See F.S. § 166.0443.

PARKS AND RECREATION

1. *Entrance fee discounts for members of armed forces, etc.* Municipalities must provide a discount on park entrance fees for members of the armed forces, certain veterans and their families and certain other persons. See F.S. § 166.0447.

TAXATION

1. *Alcoholic beverages.* No tax on the manufacture, distribution, exportation, transportation, importation, or sale of alcoholic beverages may be imposed by way of license, excise, or otherwise by any municipality. See F.S. § 561.342(3).

2. *Local business tax.*

a. As the Florida Constitution preempts all forms of taxation (ad valorem taxation excepted) to general law (see Fla. Const. art. VII, § 1(a); Fla. Const. art. VIII, § 9; *City of Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1 (Fla. 1972)), local business taxes (formerly occupational license taxes) are governed exclusively by F.S. ch. 205 and other general laws. See *City of Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1 (Fla. 1972).

b. Subject to certain exceptions, an individual who engages in or manages a business, profession, or occupation as employee of another person cannot be required to pay a local business tax or obtain a local business tax receipt. See F.S. § 205.066.

c. An individual licensed and operating as a real estate broker associate or sales associate under F.S. ch. 475 is not required to apply for an exemption from a local business tax or take certain actions relating to a local business tax. Such exempt individual is not liable for the failure of a principal or employer to comply with certain obligations related to a local business tax. See F.S. § 205.067.

3. *Cigarette tax.* No municipality may levy or collect any excise tax on cigarettes. See F.S. § 210.03.

TRAFFIC AND VEHICLES

1. *Florida Uniform Traffic Control Law.* Municipalities may not enact ordinances on matters covered by F.S. ch. 316 unless expressly authorized. See F.S. § 316.007.

2. *Traffic infraction detectors.* The use of "red-light" cameras is authorized and restricted. See F.S. §§ 316.07456, 316.0776, 316.008(8), 316.0083, 316.00831, 318.18(15).

3. *Personal delivery devices.* Municipalities regulation of personal delivery devices is restricted. See F.S. §§ 316.003(55), (56), 316.008(7)(b).

4. *Unmanned aircraft (drones)*. The authority to regulate unmanned aircraft systems is vested in the state and local regulation is restricted. See F.S. § 330.41.
5. *Autonomous vehicles*. Responsibility for autonomous vehicle operation is fixed in F.S. § 316.85.
6. *Mobile carriers (electric)*. Local regulation of mobile carriers (electric) is restricted. See F.S. § 316.008(7)(b).

WATERWAYS

1. *Local regulation of boats*. Local authority to regulate boats has been expanded. See F.S. § 327.60(2), (4), (5).