Ordinance Drafting

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Ordinance Drafting
Sunday, September 29, 2024
9:45 a.m. – 10:45 a.m.
Bonnet Creek I-VI

City attorneys draft many kinds of important documents for their clients – from contracts, policies and procedures, resolutions, to ordinances. This session will review the most common, basic elements of municipal ordinances. We'll take a look at best practices for ordinances titles, legislative findings, statutorily required provisions, common boilerplate provisions, and clear and concise legislative drafting. This session will also review some of the key sources of model ordinances and useful resources for tips on legislative drafting.

Moderator: **Jeannine Williams, Esq.**
Chief Assistant City Attorney
City of St. Petersburg, Florida

Speaker: **Kyle Shephard, Esq.**
Director, Intergovernmental and Legislative Affairs
City of Orlando, Florida

This paper is presented by an attorney licensed to practice law in the State of Florida, U.S.A. It is for educational purposes only. Most of the rules of law, statutes, case law, and other authorities covered in this paper stem from Florida law. While many of the principles and practice tips contained in this paper will be applicable to the general practice of ordinance drafting in municipal law, you should, of course, consult the binding and persuasive sources of law in the jurisdiction in which you practice.

I. What is an ordinance?

a. Etymology

The word "ordinance" used as a noun is first attested in the Middle English period (1150-1500), being found in *Statutes of Realm*, *a*1325.[1] The entry reads:

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* Acknowledgement is made to Eric E. Hartwell, Esq., Deputy General Counsel for the Florida League of Cities and Matt Kelly, Esq., Assistant General Counsel for the Florida League of Cities. Their papers and presentations, *Considerations in Adopting and Amending Municipal Ordinances*, 21st Annual Seminar, Florida Municipal Attorneys Association, and Municipal Ordinances – Considerations for Drafting, Adopting, Amending, and

Ant sal be amercied grefliche, after [th]e ordinaunce of iustises.[2]

Later documents used the term for the decrees issued in 1311 by the committee of 21 nobles and prelates who were opposed to Edward II. The members of the committee were referred to as "Lords Ordainer" or the "Ordainers." Their restrictions on Edward II were "ordinances," or the "Ordinances of 1311."[3] Soon repealed, the Ordinances of 1311 were an innovation on the almost century-old *Magna Carta*.

In this legal sense, the Oxford English Dictionary defines "ordinance" as "[a]n authoritative direction, decree, or command. In more restricted sense: a public injunction or rule of narrower scope, less permanent nature, or less constitutional character than a *law* or *statute*, such as a decree of a sovereign or (now esp. in *U.S.*) an enactment of a municipal or other local body."[4]

It was borrowed into Middle English via Anglo-Norman from the French *ordenance*.[5]

b. Historic definition

After its appearance, the word was used in England to name a variety of statutes, including the *Ordinance of the Forest* (33 & 34 Ed. I), the *Ordinance of the Staple* (27 Ed. III, st. 2), and *The Acts of the Long Parliament* after 1641 were originally known as "ordinances."[6]

Much later, Coke found a distinction between statutes (or "Acts of Parliament") and an ordinance (or an "Ordinance in Parliament"). Acts, or statutes, required the consent of the Lords, the Commons, and the King. But an ordinance "wanteth the threefold consent, and is ordained by one or two of them."[7]

Hale repeats this early distinction between statutes and ordinances. In his compendium of the ancient statutes and acts of Parliament, he begins with *Magna Carta* and concludes with the *Ordinance of the Forest* (*"Ordinatio Forestae")*.[8] He is unaware of any others, but then mentions "[t]he Ordinance called *Butler's*,..." ("Butler's Ordinance"), that was

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Construing Municipal Ordinances, 41st Annual Seminar, Florida Municipal Attorneys Association, respectively, contributed to this paper.

[1] *Oxford English Dictionary*, s.v. "ordinance (*n.*)," June 2024, https://doi.org/10.1093/OED/4624369012.

[2] *Statutes of Realm* (Rawlinson MS. B.520) (2011) vii. 33

[3] *Encyclopedia Britannica*, 15th ed., s.v. "Ordainer." Chicago: Encyclopedia Britannica, 1985.

[4] *Oxford English Dictionary*, s.v. "ordinance (*n.*)," June 2024, https://doi.org/10.1093/OED/4624369012.

[5] *Ibid*.

[6] *Ibid*.

[7] Coke, Sir Edward. "The Fourth Part of the Institutes of the Laws of England, Concerning the Jurisdiction of Courts" (1648). *The Institutes of the Lawes of England*. 3., at 25. https://irlaw.umkc.edu/coke_institutes_lawes/3.

[8] Hale, Matthew. The History of the Common Law of England. United Kingdom, E. and R. Nutt, and R. Gosling, (assigns of E. Sayer), (1739), at 17-18.

contained in the record books of Parliament, but was "never [ ] a Statute, nor ever so received, but only some Constitution of the King's Council or Lords in Parliament, and which never obtained the strength or force of an Act of Parliament."[9] This is consistent with Coke's view.

Blackstone tells us that the laws of England may be "divided into two kinds; the *lex non scripta*, the unwritten, or common law; and the *lex scripta*, the written, or statute law."[10] He then subdivides the common law into three categories of customs. The first of these are the "general customs," and include the laws relating to the inheritance of land, the acquisition and transfer of property, the obligation of contracts, offences against the public peace, and many other matters. "[A]ll these are doctrines that are not set down in any written statute or ordinance, but depend merely upon immemorial usage, that is, upon common law, for their support.[11] Thus, Blackstone uses the term ordinance to mean – as with the word statute – law that is written.

In the United States, Tiedeman points out that one of the common law powers incident to all corporations, whether public or private, was the right to pass by-laws for the purposes of carrying out the business of the corporation. "These by-laws of a municipal corporation are in this country given the name of *ordinances*, although in England they are called *by-laws*, the term *by* or *bye* meaning a place of habitation, or local community."[12]

The Fourth Edition of Black's Law Dictionary defines ordinance as "[a] rule established by authority; a permanent rule of action; a law or statute. In a more limited sense, the term is used to designate the enactments of the legislative body of a municipal corporation."[13] A later edition of Black's provides that an ordinance is "[a]n authoritative law or decree; esp., a municipal regulation…, and that "[m]unicipal governments can pass ordinances on matters that the state government allows to be regulated at the local level."[14]

Finally, McQuillin sums it up neatly: "While the term 'ordinance' has been used in various senses since the earliest of times, the term is generally used, in this country [the United States], to designate a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality."[15]

c. Florida's definition

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[9] *Ibid.*, at 19. *Butler's Ordinance* involved limits that owners of a vested future interest could seek on waste by living ancestors.
[10] 1 William Blackstone, *Commentaries* *63.
[11] *Ibid.*, *68.
[12] Tiedeman, Christopher G. *A Treatise on the Law of Municipal Corporations in the United States*, Banks & Brothers, Law Publishers, New York and Albany (1894), at 257.
[13] Black, Henry Campbell. *Black's Law Dictionary*, West Publishing Co., 4th Ed., St. Paul, Minn. (1951), at 1248.
[14] *Black's Law Dictionary*, West Group, 7th Ed., St. Paul, Minn. (2002), at 1125.
[15] 5 McQuillin Mun. Corp. § 15:1 (3d ed.).

Florida Statutes provides an express definition of an ordinance – at least as to municipalities. An ordinance is "an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law."[16]

This definition appears in the Florida Statutes' chapter pertaining to "Municipalities." An explicit statutory definition for an ordinance is not provided in Chapter 125, Florida Statutes, pertaining to "County Government." But, section 125.01, Florida Statutes, relating to the general powers and duties of county government, grants the power to "[a]dopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law."[17]

d. How different than a resolution

Ordinances and resolutions are distinct instruments of the local legislative body. They are not interchangeable and care must be taken to determine which instrument is appropriate for the legislative task at hand. In Florida, this is a fairly straightforward matter – at least when it comes to cities. Florida Statutes provide an express definition for a resolution and for an ordinance, and the methods for noticing, adopting, and formalizing an ordinance are more involved than for a mere resolution.

Whereas, an ordinance is a local law, a "resolution" is an "expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body."[18]

In *White v. Town of Inglis*, the owner of a commercial property challenged a resolution of the Town of Inglis, Florida, making it unlawful to drive from commercial properties onto a designated residential street.[19] The trial court entered summary judgement in favor of the town.

At issue was whether a resolution was the appropriate legislative instrument for implementing the public policy. The appellate court noted the statutory definitions for ordinance and resolution and reversed the trial court. Quoting *Wallace v. Leahy*, the court pointed out that "[a] resolution cannot be substituted for and have the force and effect of an ordinance, nor can a resolution supply initial authority which is required to be vested by ordinance."[20]

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[16] Sec. 166.041(1)(a), Fla. Stat. (2024).
[17] Sec. 125.01(1)(t), Fla. Stat. (2024).
[18] Sec. 166.041(1)(b), Fla. Stat. (2024).
[19] *White v. Town of Inglis*, 988 So.2d 163 (Fla. App. 1 Dist. 2008).
[20] *Ibid*., 164, citing *Wallace v. Leahy*, 496 So.2d 970, 971 (Fla. 3d DCA 1986). *See also, Brown v. City of St. Petersburg*, 111 Fla. 718, 153 So. 140 (1933), *Carlton v. Jones*, 117 Fla. 622, 158 So. 170 (1934), and *7800 Building, Inc. v. City of South Miami*, 305 So.2d 860 (Fla. 3d DCA 1975).

The court compared the character of the attempted regulation to the statutory definitions for ordinance and resolution, and found that in it "the Town regulates the use of property in a manner that is both general and permanent," and that "it is neither a matter of administration for the Town nor an expression of a temporary character."[21] Because the town should have adopted the regulation by ordinance, and adopted the ordinance in accordance with the statutory requirements for the adoption of ordinances (e.g., publication of notice of adoption in a newspaper of general circulation), the court held the resolution void.

This distinction between the two instruments in Florida law, based upon the permanent versus temporary nature of the law and its general application versus the special or administrative application of the policy, first found its way into Florida Statutes in 1973 – not long after the modern, 1968 Florida Constitution that granted municipalities Home Rule power.[22]

It may have been borrowed from Tiedeman. "Ordinances are to be discriminated from resolutions, in that the former are of the nature of a local law, prescribing a general, uniform and permanent rule of conduct; while the latter are special, temporary and limited in their creation or application."[23]

McQuillin says that a "resolution" is not an "ordinance." And that:

> *A resolution ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance. The term "ordinance" means something more than a mere verbal motion or resolution, adopted, subsequently reduced to writing, and entered on the minutes and made a part of the record of the acting body. It must be invested, not necessarily literally, but substantially, with the formalities, solemnities, and characteristics of an ordinance, as distinguished from a simple motion or resolution. A "resolution" is usually a mere declaration with respect to future purpose or proceedings, while an "ordinance" is a local law which is adopted with all the legal formality of a statute; a resolution adopted without the formality required of an ordinance cannot be deemed an ordinance. It has been said that measures that prescribe binding rules of conduct are "ordinances," while measures that relate to administrative or housekeeping matters are categorized as "resolutions."*[24]

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[21] *Ibid.*, 164.
[22] S. 1, ch. 73-129, Laws of Florida.
[23] Tiedeman, § 145.
[24] 5 McQuillin Mun. Corp. § 15:2 (3d ed.), internal citations omitted.

Because they are different legislative tools, solemnized and adopted pursuant to different procedures, an ordinance may not be amended or repealed by resolution. "It is well established in this state that a municipal ordinance cannot be repealed by a mere resolution, this result can only be accomplished by the passing of a new ordinance."[25]

While legally distinct from each other, state law may expressly require the use of either a resolution, ordinance, or allow the use of either, for a particular purpose. This is true even where the state's requirement appears inconsistent with the generally recognized distinction between the two. For example, section 376.80, Florida Statutes (2024), requires that local governments designate brownfield areas by resolution, even requiring two public hearings and special advertised notice of adoption in a newspaper of general circulation – procedures normally reserved for the adoption of ordinances. But when it comes to the annual fixing of the local government's millage rate, either a resolution of ordinance will do.[26]

II. Elements of an ordinance

a. In writing

As Blackstone recognized in the *Commentaries*, ordinances are written law. In Florida, ordinances must be introduced in writing, not just reduced to writing after verbal adoption.[27]

b. Ordinance number

Ordinances, like bills in Congress and bills in state legislature, should be assigned a unique number, and the number should be printed upon the proposed and adopted ordinance for ease of reference by municipal staff, the governing body, and especially the public. Some state and territorial governments may have laws or regulations that explicitly require ordinances to be numbered in some fashion.

Florida Statutes does not expressly require ordinance numbers, but as to voluntary annexation ordinances at least, requires that an ordinance number be included in the published notice of the proposed ordinance's adoption.[28] Numbering ordinances, whether for ease of reference or compliance with law, is a virtually universal practice, and if nothing else, a matter of basic bureaucratic hygiene.

[25] *Bubb v. Barber*, 295 So.2d 701 (Fla. 2d DCA 1974), 702, *citing City of Coral Gables v. City of Miami*, 138 Fla. 881, 190 So. 427 (1939) and *Godson v. Town of Surfside*, 150 Fla. 614, 8 So.2d 497 (1942).
[26] Sec. 200.065(2), Fla. Stat. (2024).
[27] Sec. 166.041(2), Fla. Stat. (2024).
[28] Sec. 171.044(2), Fla. Stat. (2024).

The City of Orlando's numbering convention is fairly typical – the year, followed by a dash and then each ordinance assigned a unique number in serial order. (E.g., "Ordinance 2024-36," being the 36th proposed ordinance for the year 2024.)

c. Title

Each ordinance should be given a title, the underlying purposes of which is to provide notice to the public of the general contents of the ordinance and to alert possibly affected persons that they should pay some attention to the proposed ordinance.[29]

In Florida, the subject matter of the ordinance must be clearly stated in the title.[30] As part of the noticing formalities of an ordinance, titles are usually read aloud in public (oftentimes by the city clerk) at the time(s) they are considered by the governing body.[31] The title will often be included in any required published notice.[32]

Because the purpose of the title is notice, it must be written in such a way that those expected to adhere to the law can comprehend the subject matter contained therein.[33] The title must put the public on notice of what their local government is intending to do, thereby alerting any interested party to participate in the legislative process.[34] "A title to an act need not be an index to all that it contains and need not set forth all of its exclusions or conditions. It is a label and need only set forth its object, not its product."[35] The touchstone of the clear title rule is that the law's subject be clearly expressed in the title and that it not be underinclusive.[36]

"The primary purpose of this [title] requirement is to establish a means of adequately providing the public with notice as to the contents of the act. The requirement is met if the

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[29] At the Congressional level, a proposed law is known as a "bill," and if enacted into law, becomes an "Act of Congress." Acts of Congress are given a "public law" citation (e.g., P.L.117-103, where 117 indicates that the law was passed by the 117th Congress, and the law is the 103rd Act signed into law by the President in that Congress) and are codified in the U.S. Code if the law is of a general and permanent nature. Most American state legislatures use the same basic nomenclature – "bills" are proposed laws and bills lawfully adopted by the (usually) two chambers of the bicameral legislature and signed into law or allowed to go into effect by the state's chief executive become "acts" of that legislature. Most general-purpose local governments in Florida (counties and municipalities) use the term "ordinance" to refer to both the proposed law and the law itself once enacted. Some will use the term "bill" for a proposed ordinance and then refer to the law as an ordinance only if adopted. The City of Orlando tries to distinguish between the two by referring to prospective laws as a "proposed ordinance," and an enacted law as an "ordinance."

[30] Sec. 166.041(2), Fla. Stat. (2024).

[31] Florida law requires that proposed ordinances be read by title, "or in full," on at least two separate occasions. *See* sec. 166.041(3)(a), Fla. Stat. (2024).

[32] *See e.g.,* sec. 166.041(3)(c)2.b., Fla. Stat. (2024).

[33] *See generally,* 5 McQuillin Mun. Corp. § 16:16 (3d ed.).

[34] *Boitnott v. Mayor and City Council of Baltimore*, 356 Md. 226, 738 A.2d 881 (1999), upholding an ordinance adopting an urban renewal plan.

[35] *Allied American Ins. Co. v. Comm'r,* 219 Md. 607, 615, 150 A.2d 421, 426 (1959).

[36] *Drury v. City of Cape Girardeau*, 66 S.W.3d 733 (Mo. 2002), *citing C.C. Dillon v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 1994).

title clearly indicates the subject of the enactment so as to put interested persons on inquiry as to the exact scope of the indicated subject of the enactment."[37] The title must be designed to prevent surprise or fraud upon the public or the legislative body.[38]

"The title of a statute need not index all of the statute's contents. The proper test is whether the title is so worded as not to mislead a person of average intelligence as to the scope of the enactment and is sufficient to put that person on notice and cause him to inquire into the body of the statute itself."[39]

The *County of Hillsborough v. Price* case is a colorful example of how the choice of but a few words or punctuation in a title can affect the validity of a law as to a particular set of facts. Mr. and Mrs. Price, owners of a dog, filed suit to enjoin the destruction of their dog by the county. The dog had attacked the plaintiffs' own three-year-old son. The dog was properly tagged for inoculations and was, as stipulated by the parties, not a stray. Affirming the trial court's decree enjoining the dog's destruction, Florida's Second District Court of Appeal stated:

> *We note by reference to the [law's] title that the words "stray untagged vicious dogs" are neither separated by commas, nor the conjunctive word "and," nor the disjunctive word "or." We have here a series of three adjectives preceding the noun "dogs." Thus, the title of the act restricts the subject to the described class of dogs: stray untagged vicious dogs. And yet the body of the Act contains provisions dealing with any dog found to be vicious and affecting dogs that are wearing tags. It follows that such provisions beyond the subject of the Act, as expressed in the title, are inoperative, since the general public would not be put on notice of the contents of the Act from a reading of the title.*[40]

d. Legislative findings

For some reason, strong opinions are held about the advisability of including legislative findings in ordinances. Legislative findings are often included as a "preamble," following the ordinance title, but before the enacting clause of the ordinance. They may be referred to as "whereas" clauses, as they are typically separated from one another in a list of clauses beginning with the word "whereas."[41] A preamble is not required by Florida statute or case law.

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[37] *County of Hillsborough v. Price*, 149 So.2d 912, 914 (Fla. 2d DCA 1963).
[38] *Ryder Truck Rental, Inc. v. Bryan*, 170 So.2d 822 (Fla. 1964), *citing State v. Florida State Turnpike Authority*, 80 So.2d 337, 342 (Fla. 1955).
[39] *Loxahatchee River Environmental Control Dist. v. School Board of Palm Beach Co.*, 515 So.2d 217, 219 (Fla. 1987), *citing Williams v. State*, 370 So.2d 1143, 1144 (Fla. 1979).
[40] *Price,* 915.
[41] *See e.g.,* City of Orlando Ordinance No. 2016-65, relating to impact fees, which is presented as a sample ordinance along with this paper. "The stately preamble beginning with the emphatic "whereas" was the style of

A preamble might also be referred to as the "recitals" to an ordinance and one of the common purposes of the recitations is to identify the government's authority to legislate on the matter contained in the ordinance. In a Dillon's Rule state, this could mean citing to the state enabling legislation that permits the subject local legislation. In a Home Rule state, reference might be made to authority provided by charter or city code. Justifying land development regulations might mean findings of support from provisions of the city's comprehensive or master plan.

Municipal lawyers seeking to inoculate an ordinance from a future legal challenge may be inclined to use the preamble to explain the legal justification for an ordinance to the public, and to a court. This is especially true for laws touching upon constitutionally protected conduct or that seek to address novel issues. First Amendment jurisprudence places various hurdles on government when it comes to the regulation of billboards, onsite signs, and adult entertainment establishments. In the adult entertainment context, for example, ordinance recitals are often used to demonstrate the purported negative secondary effects of such establishments as a way of preempting or defending against an attack claiming that the regulations are a content-based regulation under the First Amendment.

While Florida law doesn't expressly require such legislative findings in an ordinance, some statutes do require certain findings of fact or determinations by the local legislative body, and including a recitation of those findings on the face of the ordinance is probably good practice.[42] As one example, Florida Statutes allows the voluntary annexation of certain land into cities "[u]pon the determination by the governing board of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property...."[43] Due to the sometimes contested nature of municipal annexations, annexation ordinances of the City of Orlando include a "whereas" clause making this required determination along with others.

"A preamble has been defined as a prefatory statement or explanation or a finding of facts by the power making it purporting to state the purpose, reason, or occasion for making the to which it is prefixed."[44] Preambles are part of the ordinance.[45]

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the early day municipal legislation, but it is less frequently employed at the present time, especially in municipal legislation." 5 McQuillin Mun. Corp. § 16:23 (3d ed.).

[42] Other practices include such findings being made verbally during the hearing or hearings of the governing body (or a subject matter committee of the board) or being contained in a report created by staff and accompanying the proposed ordinance in the legislative record.

[43] Sec. 171.044(2), Fla. Stat. (2024).

[44] 5 McQuillin Mun. Corp. § 16:23 (3d ed.), *citing Hanly v. Sims*, 175 Ind. 345, 94 N.E. 401 (1911) and *Dean v. Town of Senatobia*, 142 Miss. 815, 108 So. 178 (1926).

[45] *See United Dry Forces v. Citizens for a Progressive Community*, 635 S.W.2d 478 (Ky. 1982) and *City of Rolla, to Use of Schulz v. Studley*, 120 S.W.2d 185 (Mo. Ct. App. 1938).

Legislative findings "are presumed to be correct but are not binding upon courts under all conditions. The courts will abide by such legislative decisions unless such are clearly erroneous, arbitrary or wholly unwarranted.[46] Given this conditional deference, ordinance drafters can use the preamble to avoid speculation by a reviewing court.

But municipal lawyers should be aware of a contrary view. McQuillin refers to ordinance preambles as "unnecessary."[47] Some contend that they may do unintended harm. What if a reviewing court only considers the content of the preamble when looking for the legal and factual justifications for an ordinance? In this view, if the preamble is underinclusive, or misses something, might the court refuse to look elsewhere for intent and purpose? Does including a preamble foreclose additional legislative justifications being made upon a challenge? Afterall, "[t]he preamble cannot control the enacting part of the ordinance where the enacting part is expressed in clear, unambiguous terms," and "[t]he preamble can neither limit or extend the meaning of the ordinance which is clear."[48]

e. Enacting clause

Enacting clauses are customary or an essential component of statues and ordinances since time immemorial. State constitutions or municipal charters might prescribe the precise form of an enacting clause. The Florida Constitution provides that "[t]he enacting clause of every law shall read: 'Be It Enacted by the Legislature of the State of Florida:'."[49]

The clause is used to identify the document as a legislative act and also acts to solemnize the written law. It is generally viewed as an indispensable element of a local law.[50] The City of Orlando's enacting clause is: "NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AS FOLLOWS:"

f. Severability clause

State or provincial statute or case law may create a judicial presumption of severability – that if a court strikes down or invalidates some portion of an ordinance, that the remainder continues in effect if reasonably possible to do so without the stricken element.

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[46] *Moore v. Thompson*, 126 So.2d 543, 549 (Fla. 1961), *citing Seagram-Distillers Corp. v. Ben Greene, Inc.*, 54 So.2d 235 (Fla. 1951).
[47] 5 McQuillin Mun. Corp. § 16:23 (3d ed.).
[48] *Id., citing PRB Enterprises, Inc. v. South Brunswick Planning Bd.*, 205 N.J. Super. 225, 500 A.2d 732 (App. Div. 1985), *judgement aff'd*, 105 N.J. 1, 518 A.2d 1099 (1987).
[49] Art. III, s. 6, Fla. Con., *but see City of Tarkio v. Cook,* 120 Mo. 1, 25 S.W. 202 (1894), standing for the rule that a constitutional provision requiring an enacting clause for state laws does not apply to municipalities.
[50] *See City of Winter Haven v. A.M. Klemm & Son*, 181 So. 153, 168, *rehearing den.*, 182 So. 841 (Fla. 1938), pertaining to the validity of a state law.

The City of Orlando's standard severability clause is copied from a severability clause found in Florida Statutes. It reads: "If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable."

Severability clauses are presumed valid but are not inviolably controlling. The common test for whether the unstricken remainder will continue in effect is whether "the expressed legislative purpose can be accomplished independently of those provisions which are void."[51]

g. Effective date

State law or municipal charter may provide for when an adopted ordinance goes into effect. It may go into effect upon the occurrence of the final procedural solemnity, such as the signature of the mayor or other presiding officer. There may be a standard "waiting period" between adoption and the effective date.

In Florida, "[a]ll ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein."[52] Orlando's standard effective date clause is simply "[t]his ordinance takes effect upon adoption."[53]

h. Statutorily required elements

Care must be taken to ensure that ordinances contain boilerplate provisions required by statute. In Florida, one relatively new example is a permit disclaimer. Depending on the mechanical details of a city's land development code, a zoning ordinance might fall within the definition of a "development order" or "development permit" as defined by section 163.3164, Florida Statues. If so, the city must include the following disclaimer within the ordinance: "Issuance of a development permit or a development order by a municipality does not create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law."[54]

III. Recommended resources

Christopher G. Tiedeman, *A Treatise on the Law of Municipal Corporations in the United States*, Banks & Brothers, Law Publishers, New York and Albany, 1894.

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[51] *State of Florida ex. rel. Body v. Green*, 355 So.2d 789 (Fla. 1978).
[52] Sec. 166.041(5), Fla. Stat. (2024).
[53] The statutory procedures for adopting an ordinance in Florida conclude with an affirmative vote of a majority of a quorum present and then with the signature of the "presiding officer and the clerk of the governing body." Sec. 166.041(6), Fla. Stat. (2024). The one typical exception to the City's ordinances going into effect upon adoption is annexation ordinances. These ordinances usually go into effect 30 days after adoption to give the public safety departments and the 911 system time to integrate the newly annexed lands into their systems.
[54] Sec. 166.033(6), Fla. Stat. (2024).

Bryan A. Garner, *The Elements of Legal Style*, Oxford University Press, 2002.

Bryan A. Garner, *Legal Writing in Plain English*, The University of Chicago Press, Chicago and London, 2001.

Robert L. Nabors, *Florida Home Rule Green Book*, Call Street Publications, 2011.

Laurel Currie Oates, Anne Enquist, and Kelly Kunsch, *The Legal Writing Handbook – Analysis, Research, and Writing*, 3rd Ed., Aspen Law and Business, New York, 2002.

Ralph J. Moore and The Publisher's Editorial Staff, *Municipal Legal Forms – With Commentary*, West Group, 1999.

Emily Talen, *City Rules – How Regulations Affect Urban Form*, Island Press, Washington, D.C., 2012.

Thomas A. Matthews and Byron S. Matthews, *Municipal Ordinances – Text and Forms*, West Group, 1998.

Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, Thomson/West, St. Paul, Minn., 2012.

Veda R. Charrow and Myra K. Erhardt, *Clear and Effective Legal Writing*, Little, Brown and Company, Boston and Toronto, 1986.

John C. Dernbach, Richard V. Singleton, II, Cathleen S. Wharton, *et. alia*, *A Practical Guide to Legal Writing and Legal Method*, 3rd Ed., Aspen Publishers, New York, 2007.

William P. Statsky, *Legislative Analysis and Drafting*, 2nd Ed., West Publishing, Co., St. Paul, Minn., 1984.

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Mayra Morris, FAICP, *Smart Codes: Model Land-Development Regulations*, American Planning Association, 2009.

McQuillin, *The Law of Municipal Corporations*.