

# MUNICIPALITIES AND THE FLORIDA CONSTITUTION

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## *I. INTRODUCTION*

All diligent city officials and parties dealing with municipalities should have a basic familiarity with their state constitution. The nature of the document, as well as the scope of subjects that are addressed within a constitution, makes this a practical necessity. The Florida Constitution is the basic source for all state legal questions, and it answers questions regarding the following: the operation of municipalities; the ability of a municipality to regulate and enforce ordinances, to provide services, to raise revenues, to borrow money, and to acquire property; and the process for accomplishing these activities. The Florida Constitution also deals with subjects like city-county relationships, the right of city employees to bargain terms and conditions of employment, the right to be sued, the right to create courts and administrative boards, and even the very existence of municipalities.

The purpose in writing this Article is to educate people about municipal issues by exploring the importance of constitutions, providing an overview of the Florida Constitution, and surveying different sections of the Florida Constitution affecting municipalities.

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## II. NATURE AND IMPORTANCE OF CONSTITUTIONS

For every constitutional government, the constitution is the document from which all functions of that government emanate. A constitution creates and identifies governmental entities that can exist in the state, and it divides powers among each of these entities. Specifically, a constitution outlines separation of powers within governmental units. Additionally, a constitution addresses basic financing structures, establishes the most fundamental rights of the people, identifies the basic priorities of the people, and potentially deals with moral and philosophical principles. Further, and most importantly, a constitution is almost always the primary document of each government, controlling pronouncements and actions of governmental entities within the state.

## III. DIFFERENCE BETWEEN THE UNITED STATES CONSTITUTION AND STATE CONSTITUTIONS

There are a number of differences between the federal and state constitutions. State constitutions tend to be much longer than their federal counterpart for the following reasons noted by James A. Gardner, constitutional scholar:

First, [state] constitutions tend to treat a much broader scope of subject matter than the [F]ederal Constitution. For example, the typical state constitution contains provisions governing the powers and organization of local governments; restricting the powers of the state legislature and local governments to tax, borrow, and spend; and setting out governmental obligations concerning public education. Second, . . . the constitutions of the states tend to go into far more detail on the subjects they treat than does the [United States] Constitution.<sup>1</sup>

State constitutions may also grant different and greater individual rights to their citizens than are granted in the United States Constitution.<sup>2</sup> For example, the Florida Constitution con-

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1. James A. Gardner, *Interpreting State Constitutions: A Jurisprudence of Function in a Federal System* 26 (U. Chi. Press 2005).

2. See *Mich. v. Long*, 463 U.S. 1032, 1037–1038 (1983) (stating that Michigan pro-

tains a specific section on the right of privacy,<sup>3</sup> while no such language is contained in the United States Constitution. In addition, while both the state and federal constitutions have almost identical sections dealing with due process, the Florida Supreme Court, for instance, has said greater rights are granted by the Florida provision.<sup>4</sup>

In addition to granting greater rights, state constitutions are more easily amended than their federal counterpart.<sup>5</sup> For example, Florida has five separate ways of amending its Constitution, including initiatives instituted by a petition of registered voters.<sup>6</sup> However, unlike its federal counterpart, all amendments must be approved by the voters.<sup>7</sup>

Finally, while the United States Constitution is a grant of power to the federal government where no power previously existed, a state constitution is a limitation upon the powers of the state legislature.<sup>8</sup> This difference means that while the United States government must look to the Constitution for authority to act, state governments may act unless the federal or state constitution prohibits the action.<sup>9</sup>

#### IV. OVERVIEW OF THE FLORIDA CONSTITUTION

The Florida Constitution has twelve articles. Each article contains anywhere from six to twenty-seven sections and deals with different subjects. There are 184 sections in the entire Con-

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vides greater protection from unreasonable search and seizure under its state constitution than does the United States Constitution); John C. Cooper, *Beyond the Federal Constitution: The Status of State Constitutional Law in Florida*, 18 Stetson L. Rev. 241, 247 (1989) (stating that the Florida Constitution has provisions for which there are no federal equivalents).

3. Fla. Const. art. I, § 23.

4. See *State v. Glosson*, 462 So. 2d 1082, 1085 (Fla. 1985) (rejecting the “narrow application” of the due process clause on the federal level).

5. Gardner, *supra* n. 1, at 27; John J. Dinnan, *The American State Constitutional Tradition* 29 (U. Press of Kan. 2006).

6. Fla. Const. art. XI, § 3; see also Fla. Const. art. XI, §§ 1–2, 4, 6 (stating that the other ways of amending the Florida Constitution are the following: by proposal of the Legislature; by a constitution revision commission; by a constitutional convention; and by a taxation and budget reform commission).

7. *Id.* at art. XI, § 5.

8. *Peters v. Meeks*, 163 So. 2d 753, 755 (Fla. 1964).

9. See *Bush v. Holmes*, 919 So. 2d 392, 398 (Fla. 2006) (stating that the Florida Constitution provides the basis for limiting the actions of the Florida Legislature).

stitution. Article I is “Declaration of Rights”; Article II deals with “General Provisions”; Articles III, IV, and V describe the following branches of state government: “The Legislature,” “The Executive,” and “The Judiciary”; Article VI is “Suffrage and Elections”; Article VII regulates “Finance and Tax” for all levels of government; Article VIII pertains to “Local Government”; Article IX involves “Education”; Article X contains “Miscellaneous Provisions”; Article XI describes “Amending the Constitution”; and Article XII contains implementation schedules.

This Article will examine in detail Articles VII and VIII, which directly address the governing and financing of municipalities. Because other articles in the Florida Constitution have particular sections that are significant to the operation of municipalities, this Article will highlight those articles and briefly discuss their application to municipalities.

#### V. ARTICLE VIII: LOCAL GOVERNMENT

Article VIII, “Local Government,” of the Florida Constitution deals with the following topics: the relationships between county and municipal governments, including their regulatory powers;<sup>10</sup> the limitation on county taxation of property situated within a municipality;<sup>11</sup> the creation and powers of municipalities;<sup>12</sup> annexation;<sup>13</sup> consolidation;<sup>14</sup> and the transfer of powers between governmental units.<sup>15</sup>

##### A. Creation of Municipalities

Article VIII, section 2(a) provides for the establishment or abolition of municipalities by general or special law. The Florida Legislature implemented this provision through Florida Statutes Section 165.041, which states that a charter shall be adopted only by a special act of the Legislature, which is generally subject to voter approval.

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10. Fla. Const. art. VIII, § 1(f).

11. *Id.* at art. VIII, § 1(h).

12. *Id.* at art. VIII, § 2(a), (b).

13. *Id.* at art. VIII, § 2(c).

14. *Id.* at art. VIII, § 3.

15. *Id.* at art. VIII, § 4.

## B. Home Rule

Article VIII, section 2(b) gives municipalities “home rule.” “Home rule” is the ability of a municipality to act without legislative authorization. Prior to the adoption of section 2(b), municipalities had only those powers granted by the Legislature.<sup>16</sup> The law was that if a reasonable doubt existed as to a particular power, that doubt was resolved against the city.<sup>17</sup>

The present provision in Article VIII, section 2(b) states the following:

Municipalities shall have governmental, corporate[,] and proprietary powers to enable them to conduct municipal government, perform municipal functions[,] and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

The Florida Legislature enacted Section 166.021 of the Florida Statutes to implement this constitutional language.

The “home rule” authority to regulate and provide services has been liberally construed.<sup>18</sup> Municipal action will be upheld if it is undertaken (1) for a municipal purpose; and (2) *if it is not expressly prohibited by the constitution*, general or special law, or county charter.<sup>19</sup> A municipal charter, another special act of the Legislature approved by the voters, may act as a limitation on a municipality’s right of “home rule.”

Municipal purpose has been broadly defined as when a municipality is exercising its regulatory power or providing services that will benefit the citizens of the municipality.<sup>20</sup> A municipal

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16. See *Colen v. Sunhaven Homes, Inc.*, 98 So. 2d 501, 505 (Fla. 1957) (concluding that a county had no authority to grant an exclusive franchise for the construction of sewer and water lines because neither the Constitution nor statutes granted such authority).

17. See *State ex rel. Ellis v. Tampa Waterworks Co.*, 47 So. 358, 363 (1908) (concluding that contract provisions between a city and water company were reasonable and thus enforceable by the city because a city has the authority to secure utilities for the public); see also *Hardee v. Brown*, 47 So. 834, 837 (1908) (reversing a lower court by finding that the city had the authority to impose a license tax and thus did not exercise unreasonable power).

18. See e.g. *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1280 (Fla. 1983) (stating that “[i]n 1973 the [Florida] [L]egislature made clear its intent to allow broad exercise of the home rule powers granted by the [Florida] [C]onstitution”).

19. *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

20. *City of Boca Raton*, 440 So. 2d at 1280 (citing *State v. City of Jacksonville*, 50

determination as to the public purpose rarely gets overruled by the courts. The Florida Supreme Court recently stated the following:

In fact, the only restriction we have placed on the exercise of municipal powers for a municipal purpose under [A]rticle VIII, section 2(b) is to hold that “borrowing money for the primary purpose of reinvestment is not a valid municipal purpose.”<sup>21</sup>

Only in the following circumstances have courts determined that no municipal purpose existed: when the benefit to municipal residents has not been readily apparent, the benefit appears to inure to non-municipal residents, or the city has attempted to frustrate the purpose of another governmental entity.<sup>22</sup>

Municipal action is expressly prohibited by another government’s regulation where the municipal action frustrates the purpose of the other government’s pronouncement.<sup>23</sup> Most of the law in this area involves inconsistency with the state constitution or a state statute. Inconsistency may be found where the municipal action is either preempted or in conflict with the state constitution or a state law.<sup>24</sup> Preemption means that a municipality is precluded from exercising authority in a particular area.<sup>25</sup> For example, the Florida Constitution preempts anyone other than the state legislature from authorizing taxation.<sup>26</sup> Additionally, annexation is another area in which state statute preempts municipal action.<sup>27</sup> State statute also preempts regulation of vote

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So. 2d 532, 535 (Fla. 1951)).

21. *Fla. Dept. of Revenue v. City of Gainesville*, 918 So. 2d 250, 263 (Fla. 2005).

22. *See Basic Energy Corp. v. Hamilton Co.*, 652 So. 2d 1237, 1238–1239 (Fla. 1st Dist. App. 1995) (finding that the use of eminent domain for the purpose of constructing a prison was not a valid municipal purpose because it was not particularized to the municipal inhabitants); *see also City of Ormond Beach v. County of Volusia*, 535 So. 2d 302, 304–305 (Fla. 5th Dist. App. 1988) (holding that municipal ordinances that exempted property from county impact fees had no municipal governmental function and thus were invalid).

23. *Tallahassee Meml. Regl. Med. Ctr. v. Tallahassee Med. Ctr.*, 681 So. 2d 826, 831 (Fla. 1st Dist. App. 1996) (citing *Thomas v. State*, 614 So. 2d 468 (Fla. 1993); *City of Casselberry v. Orange Co. Police Benevolent Assn.*, 482 So. 2d 336 (Fla. 1986)) (recognizing that when a local government and the state may legislate in an area, the local ordinance must not conflict with the state statute).

24. *Id.*

25. *Id.*

26. Fla. Const. art. VII, § 1(a).

27. *Id.* at art. VIII, § 2(c).

counting in state and federal elections.<sup>28</sup> A conflict exists where a municipality has the right to act in a particular area, but the municipal action frustrates the purpose of the state regulation.<sup>29</sup> For instance, a city could not pass an ordinance that would preclude the location of a hazardous waste facility, which a state-siting statute allows.<sup>30</sup>

### C. City-County Relationship

A city may also be constrained by a county's actions. This issue is addressed in Article VIII, section 1. The rules relating to the priority of city and county ordinances differ between counties that operate pursuant to a "home rule" charter or non-charter.<sup>31</sup> Generally, city ordinances control within the municipal limits unless a county charter provides otherwise.<sup>32</sup> If a county charter states that it controls, then a conflicting city ordinance is invalid. For instance, a county charter that gives countywide platting authority to the county would allow a municipality to provide for stricter standards, but would not allow a city to enforce municipal ordinances that conflict with the county charter ordinance.<sup>33</sup> As opposed to counties with charters, non-charter county ordinances control within municipal limits only if there is no conflicting valid city ordinance.<sup>34</sup> Even in a non-charter county, however, a city ordinance will not control within the municipal limits unless it serves a valid municipal purpose.<sup>35</sup> Thus, a city in a non-charter county could not opt out of a countywide road impact fee by ordinance unless that ordinance served a municipal purpose.<sup>36</sup>

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28. *Browning v. Sarasota Alliance*, 968 So. 2d 637, 653–654 (Fla. 2d Dist. App. 2007).

29. *Id.*

30. *See City of Jacksonville v. Am. Env'tl. Servs., Inc.*, 699 So. 2d 255, 256–257 (Fla. 1st Dist. App. 1997) (holding that "local governments are entitled to control the zoning of such [hazardous] [waste] facilities . . . but may not impose an additional obligation to satisfy a test for local need").

31. *See supra* Section V(B) (discussing the "home rule" provision of Article VIII, section 2(b)).

32. Fla. Const. art. VIII, §§ 1(f), (g).

33. *City of Coconut Creek v. Broward Co. Bd. of Co. Commrs.*, 430 So. 2d 959, 964 (Fla. 4th Dist. App. 1983).

34. Fla. Const. art. VIII, § 1(f) (stating that a non-charter county "ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict").

35. *Seminole Co. v. City of Casselberry*, 541 So. 2d 666, 667 (Fla. 5th Dist. App. 1989).

36. *Id.* at 666–667.

#### D. Consolidation

Article VIII, section 3 permits city and county governments to consolidate if that consolidation is adopted by a special act and approved by the voters.<sup>37</sup> Jacksonville/Duval County is the only current consolidated government in Florida.<sup>38</sup>

#### E. Transfer of Powers

Article VIII, section 4 permits the transfer of powers from one governmental entity to another after a vote.<sup>39</sup> This section is almost never utilized because temporary transfers of powers are not required to utilize the dual-referendum process provided for in this section.<sup>40</sup> Thus, a contract with the sheriff (county) to provide police services within the incorporated area (city) did not come within the ambit of section 4 because it was not a permanent relinquishment of the service.<sup>41</sup> Notably, a transfer of regulatory power, such as a gun-control regulation, does not require a dual referendum as does a transfer of services.<sup>42</sup>

#### F. Taxation of Municipal Residents by the County

Article VIII, section 1(h) states that “[p]roperty situate[d] within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.” At first glance, this section would appear to be beneficial to municipal residents who, for instance, might have their own police department patrolling their neighborhoods.<sup>43</sup> Basic concepts of fairness and the language of

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37. Fla. Const. art. VIII, § 3 (stating that “[t]he government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities”).

38. City of Jacksonville Off. Gen. Counsel, *About Us*, <http://generalcounsel.coj.com/aboutus.asp> (accessed Apr. 23, 2008) (noting that voters in Duval County passed the charter that created the consolidated government in 1967).

39. Fla. Const. art. VIII, § 4 (stating that the powers may be transferred from one governmental entity to another “after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise approved by law”).

40. *City of Palm Beach Gardens v. Barnes*, 390 So. 2d 1188, 1189 (Fla. 1980).

41. *Id.*

42. *Broward Co. v. City of Ft. Lauderdale*, 480 So. 2d 631, 635 (Fla. 1985).

43. *See Town of Palm Beach v. Palm Beach Co.*, 460 So. 2d 879, 881 (Fla. 1984) (ruling



this section seem to indicate that, under these circumstances, municipal residents should not have to pay county ad valorem<sup>44</sup> taxes for the sheriff's road patrol.

However, the Florida Supreme Court has stated the following contrary view:

The issue of county taxation of municipalities for services accruing primarily to the benefit of unincorporated areas is not one of equity and fairness. The constitutional proscription against "double taxation," [A]rticle VIII, [S]ection 1(h), Florida Constitution, and indeed, the statutory prohibition, [S]ection 125.08, Florida Statutes (1981), are not framed in terms of proportionality. Each merely requires that the municipality and its residents receive a benefit which must achieve a magnitude described as "real and substantial."<sup>45</sup>

In this same holding, the Court denied relief under Article VIII, section 1(h) to city residents because they failed to prove that they received no real and substantial benefit from a number of county services.<sup>46</sup> This evidentiary test—no real and substantial benefit—constitutes such a heavy burden of proof that this section of the Florida Constitution has been of little benefit to municipal citizens seeking to obtain relief from county taxes.<sup>47</sup>

## VI. ARTICLE VII: FINANCE AND TAXATION

Article VII, entitled "Finance and Taxation," specifically addresses which governmental entity has the power to authorize and assess taxes.<sup>48</sup> Much of Article VII deals with ad valorem taxation<sup>49</sup> and includes five sections detailing assessment of, limi-

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on a similar factual scenario where the city claimed that the county taxes amounted to double taxation).

44. "Ad valorem" is defined as "proportional to the value of the thing taxed." *Black's Law Dictionary* 57 (Bryan A. Garner ed., 8th ed., West 2004). In this context, the "thing taxed" is property. For more information about ad valorem taxation, see *infra* Part VI(B).

45. *Town of Palm Beach*, 460 So. 2d at 881 (citing *City of St. Petersburg v. Briley, Wild & Assocs., Inc.*, 239 So. 2d 817, 823 (Fla. 1970)) (emphasis added).

46. *Id.* at 884. The specific services included the sheriff's road patrol, detective divisions, and nonclassified roads. *Id.*

47. See *id.* at 881 (noting that "it is incumbent upon the petitioners to prove . . . that a service provided" by the county "does not provide a real and substantial benefit," which is a heavy burden, but not impossible).

48. Fla. Const. art. VII, §§ 1(a), 9(a).

49. See *supra* n. 44 (defining "ad valorem").

tations to, and exemptions from ad valorem taxation.<sup>50</sup> In addition to ad valorem taxation, Article VII contains multiple sections discussing the following aspects of finance and taxation: municipal property that may be subject to taxation;<sup>51</sup> distribution of funds from the State to local governments;<sup>52</sup> the city's authority to enter business transactions and borrow money;<sup>53</sup> the State's authority to issue bonds for items important to municipalities, like waste-water treatment plants and low-income housing;<sup>54</sup> and mandates, which is the Florida Legislature's ability to require local governments to spend money.<sup>55</sup>

#### A. Authority to Raise Revenue

Article VII, section 1(a) states that “[n]o tax shall be levied except in pursuance of law.” The judiciary has interpreted this provision to mean that any tax must be authorized by the Florida Legislature although the Legislature or the Florida Constitution may authorize local governments to levy, collect, and utilize tax proceeds.<sup>56</sup> However, this section does not preclude municipalities from imposing and collecting regulatory and service fees.<sup>57</sup> Fees are differentiated from taxes in that fees are charged in exchange for a particular governmental service that benefits the fee payer.<sup>58</sup> An example of a regulatory fee is a building-permit fee that funds building inspections. A service fee, on the other hand, might be for water, for sewer, or for using a city-recreation program. Many types of fees have been deemed constitutional, including franchise fees,<sup>59</sup> impact fees,<sup>60</sup> and special assessments.<sup>61</sup>

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50. Fla. Const. art. VII, §§ 2–4, 6, 9.

51. *See id.* at art. VII, § 3(a) (stating that “[a] municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located”).

52. *Id.* at art. VII, §§ 7–8.

53. *Id.* at art. VII, §§ 10–11.

54. *Id.* at VII, §§ 14, 16.

55. *See id.* at art. VII, § 18 (stating that the Florida Legislature may require a county or municipality to expend funds if the Legislature determines that it is for an important state interest).

56. *City of Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1, 3 (Fla. 1972).

57. *Id.* at 3.

58. *Fla. Power Corp. v. City of Winter Park*, 887 So. 2d 1237, 1241 (Fla. 2004); *State v. City of Port Orange*, 650 So. 2d 1, 4 (Fla. 1994).

59. *Fla. Power Corp.*, 887 So. 2d at 1242.

60. *Home Builders & Contractors Assn. of Palm Beach Co., Inc. v. Bd. of Co. Commrs.*

## B. Ad Valorem Taxation

Article VII, section 1(a) precludes the State from imposing a state ad valorem tax upon real estate or tangible personal property. Article VII, section 9 provides that the Florida Legislature may, by general law, allow counties, school districts, and municipalities to levy ad valorem tax on real and personal property. “Ad valorem taxation” is taxation that is based on the assessed value of property.<sup>62</sup> The amount of ad valorem tax is determined by placing a taxable value on the property (determined by the property appraiser) and then levying a tax rate (by the taxing authority, city, county, or school district) based on millage (a mill equals one dollar per thousand dollars of assessed property value).<sup>63</sup> The Constitution places constraints on both the assessment and tax-levying processes.<sup>64</sup>

### 1. Assessments

The first step in the assessment process is the just valuation of all property.<sup>65</sup> “Just valuation” is the amount a purchaser willing, but not obliged, to buy would pay a seller willing, but not obliged, to sell.<sup>66</sup> This value is based on the highest and best use that can be made of the property.<sup>67</sup> Thus, vacant land may be assessed based upon a potential commercial or residential use.<sup>68</sup> Article VII, section 4 provides the only exceptions to this concept. In order to encourage owners of agricultural land and high water recharge areas to retain their present beneficial use, Article VII, section 4(a) allows for these lands to be assessed based on the

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of *Palm Beach Co.*, 446 So. 2d 140, 144–145 (Fla. 4th Dist. App. 1983).

61. *City of Boca Raton v. State*, 595 So. 2d 25, 31–32 (Fla. 1992).

62. *Rutledge v. Chandler*, 445 So. 2d 1007, 1009 (Fla. 1984); *supra* n. 44.

63. Fla. Stat. § 200.065(1); *Rutledge*, 445 So. 2d at 1008–1009; Fla. Dept. Revenue, *Florida Property Tax Definitions*, <http://dor.myflorida.com/dor/property/definitions.html> (accessed May 1, 2008).

64. *Rutledge*, 445 So. 2d at 1009–1010.

65. Fla. Const. art. VII, §§ 1(a), 4.

66. *Walter v. Schuler*, 176 So. 2d 81, 86 (Fla. 1965).

67. *Id.* at 84–86.

68. *See Palm Beach Dev. & Sales Corp. v. Walker*, 478 So. 2d 1122, 1123, 1125 (Fla. 4th Dist. App. 1985) (upholding a county appraisers’ valuation of 800 vacant lots based upon a potential residential development use).

present character or use rather than on their development potential.

Article VII, section 4(c) contains the “Save our Homes” provision, which limits the amount of increase in the assessed value of homestead property to three percent or the percentage change in the consumer price index, whichever is lower.<sup>69</sup> Additionally, Article VII, section 4(e) allows counties to reduce assessments for improvements made to property for living quarters for parents or grandparents over sixty-two years of age. The reduction in assessed value cannot exceed the value of the improvement or “[t]wenty percent of the total assessed value of the property as improved.”<sup>70</sup>

## 2. Immunities and Exemptions from Ad Valorem Tax

The next issue in determining the taxable value of property concerns total exemptions or immunities.<sup>71</sup> State and county properties are immune from taxation based on the concept of sovereign immunity,<sup>72</sup> which applies no matter how the property is used.<sup>73</sup> Municipal property does not enjoy this same immunity.<sup>74</sup>

Pursuant to Article VII, section 3, municipal property is exempt from ad valorem taxation only if it is being used by the municipality for a municipal purpose. The term “municipal purpose” under this Article has been defined more narrowly than under the “home rule” provisions previously discussed.<sup>75</sup> In order for municipal property to qualify for an ad valorem tax exemption under Article VII, section 3(a), it must be shown that the “exemption encompass[es] activities that are essential to the health, morals, safety, and general welfare of the people within the municipality.”<sup>76</sup> Under this test, the Florida Supreme Court ruled municipal

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69. Fla. Const. art. VII, § 4(c).

70. *Id.* at art. VII, § 4(e).

71. *Markham v. Broward Co.*, 825 So. 2d 472, 473 (Fla. 4th Dist. App. 2002).

72. *Id.*

73. *Id.* at 474.

74. *Canaveral Port Auth. v. Dept. of Revenue*, 690 So. 2d 1226, 1227–1230 (Fla. 1996).

75. Compare *Fla. Dept. of Revenue*, 918 So. 2d at 253 (narrowly defining “municipal purpose” as activities “essential to the welfare of the community”); with *supra* nn. 18–22 and accompanying text (describing the liberal construction courts use to interpret “municipal purpose” under “home rule” authority).

76. *Fla. Dept. of Revenue*, 918 So. 2d at 264.

telecommunication facilities do not necessarily qualify for the Article VII exemption.<sup>77</sup>

### *3. Partial Exemptions*

In addition to total exemptions and immunities, the Florida Constitution provides for some partial exemptions. For instance, Article VII, section 6 grants a homestead exemption. The owner of homestead property is generally entitled to one \$25,000 exemption although Amendment 1 may raise this amount.<sup>78</sup> Additional exemptions may be allowed for low-income senior citizens, and a tax discount is provided for veterans who entered the service as a Florida resident, are over the age of sixty-five, and have a combat-related disability.<sup>79</sup>

Article VII, section 3 allows exemptions for the following items: personal property up to one thousand dollars; economic development projects for up to ten years if approved by the local government and the electorate; renewable energy source devices and property on which the devices are installed; and historic properties for the purpose of historic preservation.<sup>80</sup> Widows, widowers, and property owners with certain disabilities are also eligible for exemptions in this section.<sup>81</sup>

Once the taxable value of property has been determined, the local government entities, including municipalities, set their millage rates.<sup>82</sup> Article VII, section 9(a) requires the Florida Legislature to authorize municipalities, counties, and school districts to levy ad valorem taxes; section 9(b) authorizes municipalities to levy up to ten mills. If approved by the electorate, an additional millage may be added for up to two years to make payments upon

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77. *See id.* at 265–266 (stating that, under this test, it is possible that a telecommunications facility may not be essential to the welfare of the community and thus may not necessarily qualify for an exemption).

78. *See infra* pt. VI(B)(4) (discussing the amendment to Article VII, which voters approved on January 29, 2008).

79. *See* Fla. Const. art. VII, § 6(f) (giving homestead exemption of no greater than \$50,000 to senior citizens that are sixty-five years or older and that have a household income of \$20,000 or less); *id.* at art. VII, § 6(g) (allowing disabled veterans older than sixty-five to receive a tax exemption).

80. *Id.* at art. VII, §§ 3(b)–(e).

81. *Id.* at art. VII, § 3(b).

82. *Id.* at art. VII, § (9)(a)–(b).

bonds.<sup>83</sup> Article VII, section 2 requires that the millage rate be uniform within each taxing unit. Thus, all properties within the same municipality must be taxed at the same rate. It is unclear to what extent the Florida Legislature may regulate, limit, or place conditions on the municipal authority to levy up to ten mills.

#### 4. Amendment I

On January 29, 2008, voters approved proposals concerning additional and greater limitations on assessments as well as exemptions. The amendment to Article VII, among other things, (1) raises the homestead exemption from \$25,000 to \$50,000 (the additional \$25,000 is not exempt from the school millage rate); (2) provides for a partial exemption for tangible personal property; (3) provides for portability of the “Save Our Homes” limitations up to \$500,000; and (4) caps property-assessment increases to ten percent a year for non-homestead property.<sup>84</sup>

#### C. State-Shared Revenue

Article VII, section 8, entitled “Aid to Local Governments,” specifically authorizes the appropriation of state funds to all levels of local government by general law. Additionally, Article VII, section 7 discusses allocation of pari-mutuel<sup>85</sup> taxes if the State chooses to share these revenues.

#### D. Pledging Credit and Borrowing

Article VII, section 10 prohibits any governmental entity from becoming a joint owner or stockholder of a private entity. It also prohibits the use of taxing power or credit to aid private persons or corporations.<sup>86</sup> The only specific exceptions in the Constitution from this prohibition relate to investing public funds in certain

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83. *Id.* at art. VII, § 9(b).

84. *Id.* at art. VII, § 3–4, 6 (amended on Jan. 29, 2008).

85. *The New Shorter Oxford English Dictionary* defines “pari-mutuel” as “[a] form of betting in which those backing the first three places divide the losers’ stake.” *The New Shorter Oxford English Dictionary* vol. 2, 2102 (Lesley Brown ed., 4th ed., Oxford U. Press 1993).

86. *See id.* at art. VII, § 10 (stating “[n]either the state nor the county, school district, municipality, special district, or agency . . . shall . . . lend or use its taxing power or credit to aid any corporation, association, partnership[,] or person”).

types of investments; issuing bonds for enumerated capital projects, including manufacturing plants, airports, and port facilities; and generating electrical energy or transmission facilities.<sup>87</sup>

For a number of years, these provisions were interpreted in a manner that limited the ability of local governments to borrow money or to initiate projects where a private entity would receive substantial benefit.<sup>88</sup> However, the Florida Supreme Court rejected the idea that public financing could not be allowed when a private interest received benefits from a project.<sup>89</sup> Instead, the Court now considers whether a project serves a paramount public purpose.<sup>90</sup> The term “public purpose” has been broadly defined.<sup>91</sup> For instance, issuing bonds for professional sports facilities, no matter how much benefit the sports franchise receives, has been determined to constitute a paramount public purpose because the facilities attract tourists and bring economic benefit to the community.<sup>92</sup> The only recent case to reject bond financing because of a lack of public purpose is *State v. City of Orlando*,<sup>93</sup> which determined that it was not a valid public purpose to issue bonds for the purpose of reinvesting the proceeds to obtain a profit.<sup>94</sup>

The Florida Constitution also mandates certain requirements for the issuance of bonds, depending upon the revenue that will be used for the repayment of the bond proceeds.<sup>95</sup> If any obligation will be repaid from ad valorem taxation and will mature in twelve

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87. *Id.* at art. VII, § 10(b)–(d).

88. *See e.g. State v. Town of N. Miami*, 59 So. 2d 779, 787 (Fla. 1952) (finding that a city contract was void because “the municipality [was] attempting to use [its] power . . . to purchase land and erect industrial or manufacturing plants thereon for the use of a private corporation for private profit and private gain”).

89. *See Linscott v. Orange Co. Indus. Dev. Auth.*, 443 So. 2d 97, 101 (Fla. 1983) (holding that the issuance of industrial development revenue bonds for the construction of an office for a multistate insurance company did not violate Article VII, section 10 of the Florida Constitution).

90. *See Poe v. Hillsborough Co.*, 695 So. 2d 672, 675 (Fla. 1997) (holding that “a bond issue does not violate [A]rticle VII, [s]ection 10 so long as the project serves a ‘paramount public purpose,’ and any benefits to private parties from the project are incidental”).

91. *Id.* at 676.

92. *See id.* at 679 (upholding the issuance of bonds totaling \$180.5 million for the construction of a new stadium and practice facility for the Tampa Bay Buccaneers because the issuance of the bonds would attract numerous tourists to the area and would provide new jobs and other economic benefits to the surrounding community).

93. 576 So. 2d 1315 (Fla. 1991).

94. *Id.* at 1317.

95. Fla. Const. art. VII, § 12.

months or longer, the proceeds must be used for a capital project, and the obligation must be approved by the electorate.<sup>96</sup> The Florida Supreme Court recently applied the requirements of Article VII, section 12 to tax-increment-financing plans (utilizing future increases in ad valorem tax revenue to repay the bonds), indicating that this type of financing scheme required bonds to be approved by referendum.<sup>97</sup>

### E. Mandates

The term “mandate” is generally used to describe any State action that requires a local government to spend local revenue.<sup>98</sup> Article VII, section 18 was added to the Florida Constitution in 1990 and limits the Florida Legislature’s ability to enact certain mandates. Except for subjects that are specifically excluded from this constitutional provision, a mandate may not be enacted unless the Florida Legislature determines that the law fulfills an important state interest, and two-thirds of the Legislature approves it.<sup>99</sup>

## VII. REMAINDER OF THE CONSTITUTION

Many of the other articles and sections of the Constitution, while not dealing directly with municipal governance, address items of great consequences to a city’s ability to operate.

### A. Article I: Declaration of Rights

Article I contains the “Declaration of Rights.” Municipalities, like the State, cannot abridge these rights.<sup>100</sup> Thus, in passing ordinances and providing services, a city must consider freedoms

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96. *Id.*

97. *See Strand v. Escambia Co.*, \_\_\_ So. 2d \_\_\_, 2007 WL 2492294 at \*11 (Fla. Sept. 28, 2007) (finding that Escambia County did not have the authority to repay bonds with future increases in ad valorem tax revenue without a referendum).

98. *See Fla. Const. art. VII, § 18(a)* (stating that “[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless [there is] . . . an important state interest”).

99. *Id.*

100. *See State v. J.P.*, 907 So. 2d 1101, 1109 (Fla. 2004) (describing that “[i]t is settled law that each of the personal liberties enumerated in the Declaration of Rights of the Florida Constitution is a fundamental right,” which a municipality cannot violate).



guaranteed by Article I of the Florida Constitution, including but not limited to religious freedom,<sup>101</sup> freedom of speech,<sup>102</sup> right to assemble,<sup>103</sup> freedom from impairment of contractual obligations,<sup>104</sup> and right to substantive and procedural due process.<sup>105</sup>

The “Declaration of Rights” also affects a municipality’s ability to enforce their ordinances. Since 1972, municipalities cannot have their own courts.<sup>106</sup> Thus, enforcement of municipal ordinances is within the purview of the county court.<sup>107</sup> Because of the extensive case load of these courts and because of the attitude of many county judges who enforce municipal ordinances, court enforcement of municipal ordinances has not been a viable option.<sup>108</sup> To alleviate this problem, many municipalities have created quasi-judicial boards, like code-enforcement boards, which are authorized by Article V, section 1 of the Florida Constitution.<sup>109</sup> These quasi-judicial boards have proven to be very useful in enforcing city codes. Assessments of legislatively authorized fines by a quasi-judicial municipal board or a hearing officer have been upheld by the courts.<sup>110</sup> However, these boards are constrained in their enforcement capabilities by other sections of the Florida Constitution. For example, Article X, section 4, providing homestead protection from creditors, precludes a municipality from

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101. See Fla. Const. art. I, § 3 (stating that [t]here “shall be no law . . . prohibiting or penalizing” religious freedom).

102. See *id.* at art. I, § 4 (stating that “[n]o law shall be passed to restrain or abridge the liberty of speech or of the press”).

103. See *id.* at art. I, § 5 (stating that “[t]he people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances”).

104. See *id.* at art. I, § 10 (stating “[n]o . . . law impairing the obligation of contracts shall be passed”).

105. See *id.* at art. I, § 9 (stating “[n]o person shall be deprived of life, liberty[,] or property without due process of law”).

106. See *id.* at art. V, § 1 (describing that the only courts in Florida shall be the Supreme Court, district courts of appeal, circuit courts, and county courts, and no courts can be established by any municipality).

107. *Id.* at art. V, § 6.

108. See *e.g. Verdi v. Metro. Dade Co.*, 684 So. 2d 870, 873 (Fla. 3d Dist. App. 1996) (finding that a county’s administrative enforcement proceedings were not limited to just pending or repeat violators of county ordinances).

109. See Fla. Const. art. V, § 1 (stating “[c]ommissions established by law, or administrative officers or bodies[,] may be granted quasi-judicial power in matters connected with the functions of their offices”).

110. See *Verdi*, 684 So. 2d at 873–874 (holding that a county code-enforcement board’s imposition of fines did not violate the Florida Constitution because the board’s proceedings were quasi-judicial in nature).

placing a code-enforcement lien against homestead property;<sup>111</sup> however, the fine may be enforced upon profit from a sale of the property that is not reinvested in another homestead property.<sup>112</sup> Additionally, Article I, section 21 provides that people shall have access to courts, and section 22 of the same Article provides for trial by jury. Pursuant to these sections, the courts have determined that certain types of penalties may only be imposed by a court where a jury trial is available.<sup>113</sup> For instance, a local government human-rights commission could not award pain and suffering or other types of unliquidated damages to a person who had been discriminated against in violation of a county ordinance.<sup>114</sup> The Court determined that these types of damages may only be awarded by a jury as part of a court proceeding.<sup>115</sup> These same sections along with Article I, section 18, which deals with administrative penalties, also preclude these boards from imposing incarceration.<sup>116</sup>

Article I, section 6 of the Constitution grants to all public employees the right to collectively bargain. This section did not become effective until implemented by the Florida Legislature.<sup>117</sup> Chapter 447 of the Florida Statutes outlines collective-bargaining rights utilized by a number of municipal employees who have become members of a union.<sup>118</sup>

Article 1, section 24 guarantees public access to municipal board and commission meetings and establishes the public's right to inspect or copy records received or created during the transac-

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111. See *Demura v. Co. of Volusia*, 618 So. 2d 754, 756 (Fla. 5th Dist. App. 1993) (finding that a county cannot place a lien on homestead property and that the property may be sold without the lien clouding the property's title so long as the proceeds from the sale are reinvested in another homestead property within a reasonable time).

112. See *Town of Lake Park v. Grimes*, 963 So. 2d 940, 944 (Fla. 4th Dist. App. 2007) (holding that a party's surplus from a sale of homestead property may be taken by the county to satisfy all or part of the county's lien when the party does not reinvest the surplus in another homestead property within a reasonable time).

113. *Broward Co. v. La Rosa*, 505 So. 2d 422, 424 (Fla. 1987).

114. *Id.*

115. *Id.*

116. Fla. Const. art. I, § 18.

117. Roger I. Abrams, *Public Sector Collective Bargaining: A Labor Arbitrator's View of the Florida Constitution*, 18 Nova L. Rev. 733, 733-734 (1994).

118. See Fla. Stat. §§ 447.301, 447.505, 447.509 (delineating rights and prohibitions of employee organizations); see also *Hillsborough Co. Govtl. Employees Assn., Inc. v. Hillsborough Co. Aviation*, 522 So. 2d 358, 359 (Fla. 1988) (providing a description of municipal employees entering into employment organizations and collectively bargaining).

tion of public business. Attorneys representing clients who deal with municipalities should be familiar with the public meetings and records provisions contained in this section. The rights established by this section often result in representation of clients in open venues, public and media access to what might otherwise be private correspondence, and public scrutiny that might not occur when business is transacted between private parties.

### B. Article II: Public Offices and Ethics

Article II contains two provisions that deal with public officials. Section 5 pertains to dual office holding, and section 8 deals with ethics in government.

Article II, section 5(a) states that “[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities . . . .”<sup>119</sup> This section applies to elected municipal officials, the city manager, the city attorney, or other officers sharing the sovereign power of government; however, additional offices that are held as part of the municipal official’s duties, such as membership on a regional planning council, would not constitute a violation of this section.<sup>120</sup> This section also exempts entities whose purpose is to recommend constitutional amendments or advisory bodies created by statute.<sup>121</sup>

Article II, section 8, which regulates ethics in government, first defines a public office as a public trust and states that “[t]he people shall have the right to secure and sustain that trust against abuse.”<sup>122</sup> Next, it provides for specific measures to assure the public trust is maintained.<sup>123</sup> These measures include financial disclosure, disclosure of campaign finances, forfeiture of retirement benefits for breaching the public trust, adoption of a code of ethics by the Legislature, and creation of an independent

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119. See Fla. Const. art. II, § 5(a) (making an exception for notary publics and military officers to hold another office under the government).

120. *Id.*; see also *Bath Club, Inc., v. Dade Co.*, 394 So. 2d 110, 112 (Fla. 1981) (describing the dual office-holding clause as one meant to prevent conflict when inconsistent duties arise, but when no inconsistency exists, new duties are simply seen as “an addition to existing responsibilities”).

121. Fla. Const. art. II, § 5(a).

122. Fla. Const. art. II, § 8.

123. *Id.*

commission to investigate breaches of the public trust by public officers or employees.<sup>124</sup> Accordingly, the Florida Legislature implemented the Code of Ethics for Public Officers and Employees<sup>125</sup> and established the independent commission in Chapter 112 of the Florida Statutes.

### C. Articles III and IV

Article III, section 14 allows for the creation of civil-service systems and boards for municipal employees. Municipalities have the power to create these boards pursuant to city charter.<sup>126</sup>

While Article IV, section 7 gives the governor broad suspension authority over state and county officers for misconduct, the governor's power over municipal officers is limited to suspension when such officer is "indicted for crime."<sup>127</sup> Additionally, the governor may appoint a replacement during the period of suspension.<sup>128</sup> The governor's powers in this area are limited to those situations where the municipal charter or a statute does not address these issues.<sup>129</sup>

### D. Article V: Judiciary

Article V addresses the state judiciary but contains two sections directly pertinent to municipalities.<sup>130</sup> Article V, section 1, adopted in 1972, provides that Florida's judicial power is vested in a supreme court, district courts of appeal, circuit courts, and county courts, which effectively abolished municipal courts.<sup>131</sup> Afterwards, county courts or quasi-judicial bodies, provided for in Article V, section 1,<sup>132</sup> had to enforce municipal ordinances, and

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124. *Id.*

125. Fla. Stat. §§ 112.311–112.326.

126. Fla. Const. art. VIII, § 2(a) (stating that "[m]unicipalities may be established or abolished and their charters amended pursuant to general or special law"); *see also id.* at art. VIII, § 2(b) (stating that "[m]unicipalities shall have governmental, corporate[,] and proprietary powers to enable them to conduct municipal government, perform municipal functions[,] and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law").

127. Fla. Const. art. IV, § 7(c).

128. *Id.* at art. IV, § 7(a).

129. *Id.*

130. *Id.* at art. V.

131. *Id.* at art. V, § 1.

132. *Id.* (allowing administrative agencies to exercise quasi-judicial power in matters

as previously discussed, this method of enforcement had limited effectiveness.<sup>133</sup>

Article V, section 17 provides that all prosecutions within the State should be handled by the state attorney except “when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors.”<sup>134</sup> Section 34.13(5) of the Florida Statutes codified this constitutional requirement.

To reiterate, the Constitution provides for the jurisdiction of all State courts.<sup>135</sup> Nevertheless, Article V contains the following two issues that are pertinent to municipalities: (1) all appeals from bond-validation proceedings proceed directly to the Florida Supreme Court pursuant to Article V, section 3; and (2) the circuit courts have certiorari jurisdiction under Article V, section 5(b) to review all municipalities’ quasi-judicial decisions.<sup>136</sup>

#### E. Miscellaneous Provisions

Article VI, which covers elections, details the qualification of electors and describes the oath the electors must take.<sup>137</sup> Registration and elections in municipalities, however, are governed by law.<sup>138</sup>

Four sections in Article X are pertinent to municipalities. Article X, section 4 is the homestead protection from a forced sale.<sup>139</sup> Article X, section 6 deals with eminent domain and provides that “[n]o private property shall be taken except for a public purpose and with full compensation therefor[e] paid to each owner . . . .”<sup>140</sup>

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related to their agency).

133. *See supra* nn. 106–116 and accompanying text (describing the drawbacks, such as high case loads and constitutional constraints on damages, of enforcing municipal ordinances in county courts or quasi-judicial boards).

134. *Id.* at art. V, § 17.

135. *See id.* at art. V, §§ 3–5 (clarifying the jurisdictions for the Supreme Court, district courts of appeal, and circuit courts).

136. *Id.* at art. V, §§ 3, 5(b).

137. *See id.* at art. VI, §§ 2–3 (providing that every citizen who is at least eighteen years old and registered in a county may vote after subscribing to an oath affirming that the elector is eligible to vote and will uphold the United States Constitution and Florida Constitution).

138. *Id.* at art. VI, § 6.

139. *Id.* at art. X, § 4; *see supra* nn. 111–112 and accompanying text (discussing the interaction between this constitutional provision and the municipalities’ ability to place code-enforcement liens).

140. Fla. Const. art. X, § 6(a).

A subsection (c) was added to this section in 2006 in response to a United States Supreme Court decision allowing eminent domain to be utilized in furtherance of a private development that was part of a redevelopment effort.<sup>141</sup> The new subsection restricts the conveyance of property taken by eminent domain in that the property may only be conveyed to a natural person or private entity if provided for by general law.<sup>142</sup>

Article X, section 13 provides that the Florida Legislature may, by general law, waive the State's right not to be sued. The Legislature implemented this section in Florida Statutes Section 768.28. This statute is a broad waiver of sovereign immunity of all political entities in the State of Florida.<sup>143</sup> However, some protection from lawsuits is still provided because of separation of powers and legal duty considerations, which are beyond the scope of this Article.<sup>144</sup>

Article X, section 14 discusses public-retirement systems. It states that after 1977, no governmental pension system may "provide any increase in the benefits . . . unless such [governmental] unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis."<sup>145</sup>

### VIII. AMENDING THE CONSTITUTION

As previously mentioned, there are five ways to propose amendments to the Florida Constitution. Amendments may be proposed by the following: (1) the Legislature;<sup>146</sup> (2) the revision

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141. See *Kelo v. City of New London*, 545 U.S. 469, 488 (2005) (noting that this holding did not prevent states from placing further restrictions on the power of eminent domain).

142. Fla. Const. art. X, § 6(c).

143. Fla. Stat. § 768.28(1).

144. *Trianon Park Condo. Assn., Inc. v. City of Hialeah*, 468 So. 2d 912, 923 (Fla. 1985); *Commercial Carrier Corp. v. Indian River Co.*, 371 So. 2d 1010, 1020 (Fla. 1979).

145. Fla. Const. art. X, § 14.

146. See *id.* at art. XI, § 1 (stating an amendment "may be proposed by joint resolution agreed to by three-fifths").

commission;<sup>147</sup> (3) initiative;<sup>148</sup> (4) constitutional convention;<sup>149</sup> and (5) the Tax and Budget Reform Commission.<sup>150</sup>

Presently, there are several controversial amendments pertinent to municipalities that are in various stages of the adoption process.<sup>151</sup> Amendment I was passed by the voters on January 29, 2008 and is currently being implemented by the county property appraisers.<sup>152</sup> Another is the so-called “Hometown Democracy Amendment,” which will require that all amendments to the local comprehensive plan be approved by the voters prior to implementation.<sup>153</sup>

In addition, the Tax and Budget Reform Commission is presently meeting, as part of its responsibility to hold hearings every twenty years, to propose amendments concerning financial matters that will be presented to the electorate.<sup>154</sup>

### IX. CONCLUSION

This Article has attempted to discuss briefly the portions of the Florida Constitution directly affecting municipalities. A number of other sections, however, may affect city operations. These sections are generally applicable to all persons and entities, not just cities. Thus, a familiarity with the entire Florida Constitution is essential for any person dealing with municipalities.

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147. *See id.* at art. XI, § 2 (providing that “within thirty days before the convening of the 2017 regular session of the legislature” and every twenty years thereafter, a thirty-seven-member revision commission shall convene).

148. *See id.* at art. XI, § 3 (reserving the power to the people to amend the constitution through initiative).

149. *See id.* at art. XI, § 4 (reserving the power to the people to call a convention).

150. *See id.* at art. XI, § 6(a) (stating that “[b]eginning in 2007 and each twentieth year thereafter,” the commission shall be established).

151. Fla. Dept. St., Div. Elections, *Initiatives/Amendments/Revisions*, <http://election.dos.state.fl.us/initiatives/initiativelistNL.asp> (accessed Apr. 23, 2008).

152. *Supra* pt. VI(B)(4).

153. Fla. Dept. St., Div. Elections, *Constitutional Amendment Petition Form, Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes*, <http://election.dos.state.fl.us/initiatives/fulltext/pdf/45282-1.pdf> (accessed Apr. 23, 2008).

154. *Supra* n. 150. This Article was written in 2007 when the Tax and Budget Reform Committee was meeting.